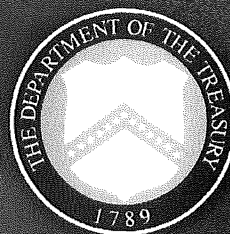
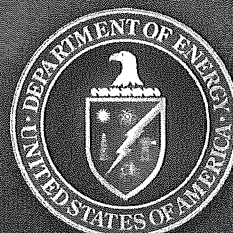
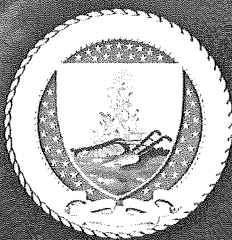


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# Interagency Review of Prior Inspector General Recommendations Related to U.S. Export Controls

VOLUME II

September 2008



## *SPECIAL WARNING*

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Report No. D-2008-095

**Offices of Inspector General of the  
Departments of Agriculture, Commerce, Defense, Energy, Homeland  
Security, State, and the Treasury; and the Central Intelligence Agency; and  
the United States Postal Service**

**Report No. D-2008-095**

**September 30, 2008**

**Interagency Review of Prior Inspector General  
Recommendations Related to U.S. Export Controls**

**Volume II**

**Department of Homeland Security Report and Followup on  
Prior Interagency Reviews**

**Volume Summary**

Due to its sensitivity, this volume contains the agency-specific report issued by the Department of Homeland Security (Appendix H). The report is classified as For Official Use Only.

In addition, this volume contains the status or disposition of recommendations made in prior reports (as mandated by Public Law 106-65, "National Defense Authorization Act for Fiscal Year (FY) 2000" as amended) in Appendix I. The recommendations were made by the Offices of the Inspector General of the Departments of Agriculture, Commerce, Defense, Energy, Homeland Security, State, and the Treasury; and in the Central Intelligence Agency; and the United States Postal Service.

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# Table of Contents

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## Appendixes

H. Department of Homeland Security Report (FOUO) <sup>1</sup>	H-1
I. Followup on Prior Interagency Reviews (FOUO)	I-1

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<sup>1</sup> FOUO – For Official Use Only

## **Appendix H. Department of Homeland Security Report**

H-1

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## Appendix I. Followup on Prior Interagency Reviews

As amended, Public Law 106-65, "National Defense Authorization Act for FY 2000," requires the Offices of Inspector General (OIGs) to include in their annual report the status or disposition of recommendations made in prior reports. In the first year of the Act, the OIGs each conducted an audit or review of compliance with export licensing requirements contained in the Export Administration Regulations (EAR) and International Traffic in Arms Regulation (ITAR) at U.S. Government facilities. 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 and Report No. 00-OIR-05, "(U) Measures to Protect Against the Illicit Transfer of Sensitive Technology," March 27, 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 U.S. Munitions List. The results of the reviews were consolidated in Report No. D-2001-092, "Interagency Review of the Commerce Control List and the 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.

In the fourth year of the Act, the OIGs each conducted an audit or review of the adequacy and effectiveness of the activities of the Federal Government to enforce export controls. The results of the review were consolidated in Report No. D-2003-069, "Interagency Review of Federal Export Enforcement Efforts," April 2003.

To meet the fifth-year requirement of the Act, the OIGs conducted an interagency review on the release of export-controlled technology to:

- foreign nationals at U.S. academic institutions,
- Federal contractors and other private companies, and
- research facilities.

That interagency report, Report No. D-2004-062, "Interagency Review of Foreign National Access to Export-Controlled Technology in the United States," was issued in April 2004.

To meet the sixth-year requirement of the Act, the OIGs conducted an interagency review to assess whether the current export licensing process could help deter the proliferation of chemical and biological commodities that could be used to help

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produce weapons of mass destruction. An interagency report, Report No. D-2005-043, "Interagency Review of the Export Licensing Process for Chemical and Biological Commodities," was issued on June 10, 2005.

To achieve the seventh-year requirement of the Act, the OIGs conducted an interagency review to assess the effectiveness of the U.S. Government's export control policies and practices with respect to preventing the transfer of sensitive U.S. technologies and technical information to China. An interagency report, Report No. D-2007-050, "Interagency Review of U.S. Export Controls for China," was issued January 31, 2007.

For the eighth and final year's requirement of the Act, the OIGs followed up on Federal managers' implementation of the recommendations made from FY 2000 through FY 2006.

Each annual interagency review contains the complete text of each OIG's agency-specific report. The following is the status of both the interagency and agency-specific recommendations made by each agency, as of December 31, 2006 or the dates of the agency-specific reports. For specific acronyms pertaining to Appendix I, see the list at the end of this section.

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## Interagency OIG Reports

The Interagency Group issued eight reports from fiscal years 2000 to 2007 under the requirement of Public Law 106-65, "National Defense Authorization Act for FY 2000," as amended. Seven of the eight interagency reports did not contain recommendations. Those reports were:

- Report No. 00-OIR-05, "(U) Measures to Protect Against the Illicit Transfer of Sensitive Technology," March 27, 2000.
- D-2000-109, "Interagency Review of the Export Licensing Process for Foreign National Visitors," issued on March 24, 2000;
- D-2001-092, "Interagency Review of the Commerce Control List and the U.S. Munitions List," was issued in March 2001;
- D-2003-069, "Interagency Review of Federal Export Enforcement Efforts," was issued in April 2003;
- D-2004-062, "Interagency Review of Foreign National Access to Export-Controlled Technology in the United States," was issued in April 2004;
- D-2005-043, "Interagency Review of the Export Licensing Process for Chemical and Biological Commodities," was issued on June 10, 2005; and
- D-2007-050, "Interagency Review of U.S. Export Controls for China," was issued on January 31, 2007.

Following are the recommendations from the unclassified reports. Recommendations for the classified reports are shown in Volume III.

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## INTERAGENCY OIG RECOMMENDATIONS

### Status of the OIG Report No. D-2002-074, "Interagency Review of Federal Automated Export Licensing Systems," March 2002<sup>2</sup>

#### 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, take the necessary actions to establish accountability for developing, integrating, and modernizing Federal automated dual-use export licensing systems without unnecessary duplication. At a minimum, those actions should include the formulation of a senior-level organizational structure, such as an interagency working group or steering committee, to oversee the system development efforts. That entity should undertake the following:

**Recommendation 1.** Create a charter 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.

**Status: Closed.** In its June 2005 action plan, the Bureau of Industry and Security (BIS) suggested that this recommendation has become unnecessary, given its planned initiative to modernize the Export Control Automated Support System (ECASS).<sup>3</sup> The Commerce OIG agrees, but encourages BIS to actively engage its interagency partners in its ECASS Modernization effort when appropriate, as discussed in recommendation three of the 2003 report addressed below. Accordingly, this recommendation is closed.

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

**Status: Closed.** With the exception of the Simplified Network Application Process (SNAP), Commerce OIG is not convinced that BIS has built on recent interagency efforts to modernize the interagency automated systems for processing export license applications. However, Commerce OIG believes any action taken by BIS with respect to recommendation three will capture the intent of this recommendation. Therefore, this recommendation is closed.

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

**Status: Open.** According to BIS, it is addressing this issue as part of its ECASS-Redesign and -Modernization projects. Specifically, the common central

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<sup>2</sup> The status of these recommendations is as of March 2007.

<sup>3</sup> ECASS is an unclassified system that processes and stores dual-use export licensing information for BIS.

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repository for all unclassified data records that pertain to the review and approval of an export license will be completed as part of ECASS-Redesign through the ECASS Migration Data Base. Access to that data base will be made available to interagency licensing officials consistent with BIS policy in 2009. The broader objective—BIS' contribution to definition and development of an interagency defined, shared, and implemented common central repository for all unclassified data records that pertain to the review and approval of an export license—is dependent on the ECASS-Modernization project, with a conservative target date of fiscal year 2013. As such, this recommendation will remain open until BIS implements its central repository.

**Recommendation 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: Closed.** Given that BIS and the other licensing referral agencies have decided to work independently on their own export licensing systems, this recommendation has become moot. Consequently, this recommendation is closed.

**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 munitions licensing systems 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: Closed.** Discussion about the Information Technology (IT) Memorandum of Understanding (MOU) with Department of Defense (DOD), which Political–Military Affairs, Directorate of Defense Trade Controls (PM/DDTC) has always made clear was a potential prototype for arrangements with other agencies, as necessary, ended after the document was initialed on June 12, 2003. Subsequently, the Deputy Under Secretary of Defense Technology Security Policy and Counterproliferation (TSP&CP)/Director of the Defense Technology Security Administration (DTSA) declined to sign the document. Nonetheless, operationally, Directorate of Defense Trade Controls (DDTC) has engaged DTSA and its IT arm U.S. Exports Systems (USXPORTS) and developed a working regimen under which D-Trade cases are referred to DOD electronically and a monthly technical experts review regimen is in place. As such this recommendation is closed.



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## **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: Closed.** As of March 2005, the Department of State transfers approximately 10 percent of the munitions cases with the technical specifications electronically to the DoD. The Department of Commerce transfers all dual-use cases electronically to DoD, but technical specifications in support of a license review remain hard copy. DoD transfers all positions back to the Departments of State and Commerce electronically. Although DoD worked with the Department of Energy in the design phase for USXPORTS, DoD does not staff cases to the Department of Energy, as this is done by the Department of State for munitions cases and by the Department of Commerce for dual-use cases. The DoD USXPORTS system can accept 100 percent of munitions and dual-use cases electronically to include all technical data. DoD continues to work with the Departments of State and Commerce to make the transfer process seamless. DoD validates data fields and adheres to standards. As such this recommendation is closed.

#### **2. Redirect the primary focus of the U.S. Export Systems Interagency Program Management Office 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: Closed.** USXPORTS deployed munitions case processing in June 2004 and deployed dual-use case processing in December 2004. The next release is scheduled for May 2005 with a final release in the Fall of 2005. The program will be officially turned over in December 2005 to operations and maintenance and the program office closed. USXPORTS can accept 100 percent of munitions and dual-use cases electronically to include all technical data and transfers all DoD positions electronically back to the Departments of State and Commerce. Internally within DoD, USXPORTS is used to electronically disseminate cases to the Services/Organizations and to their sub organizations. As such this recommendation is closed.

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## **Department of Agriculture Recommendations**

### **Status of Agriculture OIG Report No. 33601-4-AT, "Review of Export Licensing Process for Animal and Plant Health Inspection Service Listed Agents or Toxins," March 2005**

**Recommendation 1. Work with Department of Commerce (DOC)/BIS to disseminate, and keep current, the Commerce Control List export requirements to registered entities to help ensure that all controls regarding movement of biological agents or toxins that pose a severe threat to animals and plants are followed.**

**Status: Closed.** In an effort to better disseminate the Commerce Control List export requirements, APHIS added a DOC/BIS hyperlink to its select agent program web page. Also, in June 2006, a standard operating procedure was prepared and distributed to both APHIS and BIS officials. The audit recommendation is closed.

**Recommendation 2. Notify DOC/BIS of changes to the list of agents or toxins posing a severe risk to animals or plants, and work with that agency to help determine whether the CCL should be updated on APHIS changes.**

**Status: Closed.** APHIS and BIS developed a process for maintaining information related to select agents. In June 2006, a standard operating procedure was prepared and distributed to both APHIS and BIS officials. On June 12, 2006, DOC/BIS published a final regulation that added the APHIS select agents to the Commerce Control List. The audit recommendation is closed.

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## Department of Commerce Recommendations (as of March 2007)

### Status of the Commerce OIG Report No. IPE-17500, "U.S. Dual-Use Export Controls for China Need to Be Strengthened," March 2006

#### Recommendations for the Bureau of Industry and Security

1. **Determine whether a military "catch-all" provision should be incorporated in the Export Administration Regulations (EAR) for items that could contribute to the development of conventional weapons but are not specifically controlled for national security reasons, and implement, as appropriate.**

**Status: Open.** BIS issued a proposed rule in July 2006 to update its policies on dual-use exports to China. The proposal intends to clarify U.S. policy on exports of items controlled for national security reasons to China and will also implement new controls on exports of certain otherwise uncontrolled items when the exporter knows they are destined for a military end use in China. The comment period ended in December 2006. According to the Assistant Secretary for Export Administration, BIS has reviewed all of the comments and is currently working with the export licensing agencies to modify the rule, as appropriate. BIS is striving for the rule to be finalized by May 2007. Until the rule is finalized and published in the *Federal Register*, this recommendation will remain open.

2. **Develop one consistent policy regarding exports to military end users or for military end uses in China and amend the regulations as necessary to reflect that policy.**

**Status: Open.** The rule described in recommendation one above will also reaffirm that the U.S. government's existing policy is to generally deny exports that will contribute to the advancement of Chinese military capabilities. Until the rule is finalized and published in the *Federal Register*, this recommendation will remain open.

3. **Increase the number of end-use checks that should be conducted in Hong Kong based on past performance.**

**Status: Open.** According to BIS' May 2006 action plan, its ongoing reorganization of Export Enforcement's Office of Enforcement Analysis (OEA), including the selection of a senior executive service-level director and the creation of a specific division responsible for license review and end-use check functions, will result in an increase in the quantity and quality of BIS resources supporting the end-use check program. In addition, starting in fiscal year 2007, the number of end-use checks to be conducted increased from 50 to 58-60 for posts that have Export Control Officers (ECOs). However, only 38 end-use checks were closed out in fiscal year 2006 for Hong Kong. BIS attributed this low number of end-use checks to the gap in ECO coverage from March 2006, when the former ECO left post, to August 2006, when the current ECO arrived at post. While we still believe that the ECO in Hong Kong could conduct more than the newly

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prescribed 60 end-use checks due to the size of the territory covered and lack of host government restrictions on conducting such checks, we understand that BIS is going to make the Hong Kong ECO position a regional position. As such, in addition to conducting 60 end-use checks in Hong Kong in a given year, the ECO informed us that he will be required to conduct end-use checks in other countries in the region (e.g., Singapore, Malaysia, Thailand, and Indonesia). However, until the ECO meets the current end-use check requirement for Hong Kong, this recommendation will remain open.

4. **Improve the targeting of end-use checks in Hong Kong through (a) adequate upfront research on no-license-required shipments prior to Post Shipment Verification (PSV) requests, (b) enhanced and continued intelligence sharing between the Office of Export Enforcement (OEE) and OEA; and (c) the utilization of intelligence information to help identify appropriate end-use checks.**

**Status: Open.** According to its May 2006 action plan, BIS has taken steps to improve the targeting of end-use checks in Hong Kong. Specifically, the action plan reports that BIS' current reorganization of OEA is designed in part to improve coordination between it and OEE on sharing intelligence information, which will help to identify appropriate end-use checks in Hong Kong. While the reorganization plan appears appropriate, we noted that the newly reorganized office has some critical vacancies including the new senior executive service-level director position and the GS-15 director position for the newly created division responsible for license review and end-use check functions.

In addition, while it is our understanding that OEA and OEE staff routinely attend weekly intelligence meetings, OEA and OEE managers were unable to assess the impact this has had on better targeting of PSVs in Hong Kong. Furthermore, due to resource constraints,

COMMERCE REDACTION

Nonetheless, we did note that of the 16 PSVs conducted in Hong Kong in fiscal year 2007, to date, 15 reportedly involved no-license required shipments. Six of the 15 no-license required PSVs involved EAR99<sup>4</sup> items. With possibly two exceptions, it is unclear why these particular transactions were selected given that they would generally not require a license to most countries, including China. Until BIS resolves the concerns raised above, this recommendation will remain open.

5. **Work with the U.S. Census Bureau to modify the Automated Export System to expand the Export Control Classification Number field from the current five-digits to eight-digits.**

**Status: Open.** BIS is striving to publish an advance notice of proposed rulemaking soliciting comments from industry sectors and individual companies

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<sup>4</sup> EAR99 essentially serves as a "basket" designation for items that are subject to the Export Administration Regulations (EAR) but not listed on the Commerce Control List. EAR99 items can be shipped without a license to most destinations under most circumstances unless certain prohibitions apply (e.g., export to an embargoed destination). The majority of U.S. exports are EAR99 items.

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on the projected impact on them of expanding the Automated Export System fields. BIS also stated that it will consult with the Census Bureau regarding the impact such a change would have on the Automated Export System prior to publishing the notice. BIS hopes to issue the advance notice in the *Federal Register* in July 2007. Accordingly, this recommendation will remain open.

6. **Develop a staffing plan to provide continuity in the stationing of qualified ECOs in Hong Kong and China to avoid interruptions in operations and initiate that plan at least 6 to 12 months before the end of the term of the departing ECO.**

**Status: Closed.** BIS developed and implemented a formal staffing plan that provides specific deadlines for recruiting, selecting, training, and stationing qualified ECOs at designated post. The plan also provides a period of overlap between assignments to ensure continuity in operations during the transition between the departure of one ECO and the arrival of that ECO's replacement at post. In addition, if BIS management foresees that there will be a gap between assignments, the plan provides for travel by other OEE personnel to post to ensure coverage during the gap. BIS' actions meet the intent of our recommendation.

7. **Put procedures in place to provide for a technical review of technical documentation submitted by exporters and end users to ensure their compliance with license conditions.**

**Status: Open.** According to its May 2006 action plan, BIS considers this recommendation closed. Specifically, BIS' chief licensing officer sent updated guidance on May 9, 2006, to all licensing officers on proper procedures for license conditions that require technical documentation from exporters. One of the requirements outlined in the guidance requires licensing officers to review technical documentation submitted pursuant to a license condition if the reports were requested because of concerns with the transaction. However,

COMMERCE REDACTION

BIS has the authority to administer and enforce the EAR and, as such, is ultimately responsible for monitoring and enforcing all conditions placed on a dual-use license. Without knowing whether an exporter or end user is fully compliant with license conditions, BIS cannot make informed decisions on future license applications involving the same parties or take appropriate enforcement action on the current license. As such, this recommendation will remain open until BIS revises its procedures with respect to the review of technical documentation by licensing officers to require that *all* technical documentation requested by any licensing agency, and included in an approved license, be examined by the appropriate licensing officer upon submission by the exporter to ensure compliance with the reporting conditions.



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8. **Review the process of marking and countersigning license applications with Condition 14 to identify and correct any weaknesses to ensure that these license applications are properly entered into Export Enforcement's Follow-up Subsystem and monitored by OEA.**

**Status: Open.** According to its May 2006 action plan, BIS considers this recommendation closed. Specifically, BIS reported that it reviewed the process for marking and countersigning license applications and, on May 5, 2006, issued an e-mail instructing licensing officers to use a "Countersigning Check Sheet" to ensure consistency and uniformity with guidelines established. Based on our recent review of export controls for India, all the licenses in our sample were properly marked for condition 14. However, we did identify several licenses from our sample that contained various reporting requirements but were not properly marked for "follow-up" by the licensing officers. These errors occurred despite the fact that each export license application was reviewed and signed off by a countersigner. We do not know whether the May 2006 guidance has improved officer compliance with this requirement since the licenses not marked for follow-up were processed before this memorandum was issued. Under the circumstances, we suggest that BIS review a sample of license applications to see whether licensing officers and countersigners are consistently marking the appropriate licenses for follow-up. As such, this recommendation will remain open until BIS determines whether licensing officers and countersigners are fully implementing this guidance.

9. **Ensure that the Office of Exporter Services (OExS) promptly forwards to OEA any copy of a shipper's export declaration that is submitted by an exporter.**

**Status: Open.** According to its May 2006 action plan, BIS considers this recommendation closed. On March 16, 2006, the Director of OExS instructed the Operations Support Division to forward shipper's export declaration documents to OEA within 48 hours of receipt. The Operations Support Division was also instructed to place a copy of the documents and the transmittal memo in the Multipurpose Application Records and Retrieval System, which is the permanent record retention system for documents related to export applications and classifications. However, during our recent review of export controls for India, we found that OExS staff failed to forward shipping documentation they received for at least one license to OEA so that a PSV could be initiated after the May 2006 shipment. One of the responsible OExS employees for this license said that she did not forward the shipping documentation to OEA because she believed monitoring the license conditions in this case was the responsibility of OExS. As such, this recommendation will remain open until BIS conducts a review to ensure that OExS staff (1) understands which license conditions they are responsible for monitoring and (2) are properly forwarding documentation to OEA.

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**Status of the Commerce OIG Report No. IPE-16946, "The Export Licensing Process for Chemical and Biological Commodities Is Generally Working Well, but Some Issues Need Resolution," March 2005**

**Recommendation 1. Establish specific timeframes for reviewing and signing off on license applications after approval by the referral agencies.**

**Status: Closed.** According to BIS' June 2005 action plan, the Office of Exporter Services (OExS) distributed a policy memo establishing the relevant time frames for licensing officers (LOs) and counter-signers. The policy memo provides that LOs should take final action on an application within 24 hours after all issues have been resolved, and that countersigners will sign off or refer the application back to the LO within 24 hours of receipt. This meets the intent of the recommendation.

**Recommendation 2. Develop and maintain clear, consolidated, and up-to-date guidance, or an internal operations handbook, to strengthen current license application review practices and help ensure that they are consistently applied.**

**Status: Open.** According to its May 2006 action plan, BIS was planning to place the licensing officer operations manual on the BIS employee intranet. However, BIS did not complete the task because (1) the project was never funded and (2) security concerns were raised about the information being included on the employee intranet. As an interim measure, the Operating Committee chair placed the *Operating Committee for Export Policy Handbook of Useful Documents* on the BIS shared drive. While the handbook provides valuable documents for the licensing officers, the handbook was originally prepared by the Operating Committee chair as a training tool for licensing officers and it is not a comprehensive licensing officer operations manual. As such, the Assistant Secretary for Export Administration has tasked the Operating Committee chair to determine what additional documents need to be added to the handbook to make it a comprehensive licensing officer operations manual. Therefore, this recommendation will remain open until BIS completes the manual and has a procedure in place to maintain and update it.

**Recommendation 3. Assess the feasibility of providing licensing officers with the information housed in the Automated Targeting System and Automated Export System for use in their review of license applications.**

**Status: Closed.** BIS reported in March 2006 that it has arranged for certain LOs to be provided access to the Automated Export System via the Department of Homeland Security's Automated Targeting System. This action meets the intent of the recommendation.

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**Recommendation 4. Work with the intelligence community to develop a method to analyze and track the cumulative effect of dual-use exports to countries and entities of concern.**

**Status: Open.** According to its May 2006 action plan, BIS considers this recommendation closed. Specifically, BIS reported that the director of its Chemical and Biological Controls (CBC) Division sent letters [REDACTED] in December 2005 and May 2006, requesting input from the intelligence community with respect to the cumulative effect of dual-use exports to countries and entities of concern. BIS received a May 24, 2006, classified response [REDACTED] suggesting various alternatives to BIS for this purpose.

However, BIS informed us that it did not respond [REDACTED] because it did not agree with [REDACTED] proposals. As such, BIS reportedly plans to perform its own cumulative effect analyses through two measures. First, BIS' intelligence liaison, established in June 2006 in the office of the Assistant Secretary for Export Administration, will work with the intelligence community to develop a method to analyze and track the cumulative effect of dual-use exports to countries and entities of concern. Second, BIS' Office of Technology Evaluation, also established in 2006, will work with BIS' intelligence liaison and perform detailed analyses of both export license data and general export data available from the Census Bureau. The director of the Office of Technology Evaluation informed us that he hopes to begin some cumulative effect studies sometime in 2007. Until BIS begins to analyze and track the cumulative effect of dual-use exports to countries and entities of concern, this recommendation will remain open.

**Recommendation 5. Take appropriate actions to sustain recent improvements in the timeliness of U.S. publication of Australia Group (AG) guidelines and rule changes that impact the Commerce Control List.**

**Status: Closed.** At least to date, BIS has continued to improve its response time in publishing AG guidelines and rule changes. In 2005, BIS circulated the proposed rule for interagency comment within only four weeks after receiving the official results from the AG. BIS then published the final rule on August 5, 2005. This recommendation is closed based on the continued improvement in response time, from an average of 11 months prior to 2004, down to 4 months in 2005. Commerce OIG hopes BIS continues to publish AG guidelines and rule changes within similar timeframes in the future.

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**Recommendation 6. Work with the State Department, and the other licensing referral agencies, to develop and implement written procedures for handling the AG denial notification process. The procedures should cover, at a minimum:**

- the U.S. policy on submitting denials to the AG,
- when U.S. denial notifications will be sent to the AG—either when the intent to deny letter is sent or after the 45-day rebuttal period has lapsed, and
- how U.S. decisions to rescind prior denial notifications to the AG will be made. This should specify how State will exercise its representation authority and how the other licensing agencies will be involved in the decision making process.

**Status: Closed.** In its January 2006 action plan, BIS reported that it had developed procedures, in conjunction with the State Department, for handling AG denials.

The U.S. policy is to submit AG denial notifications on AG-controlled exports to non-AG countries that are denied pursuant to the AG Guidelines, and non-AG-controlled exports to non-AG countries that are denied under catch-all controls and pursuant to the AG Guidelines. The U.S. will submit these denials to the AG once the export license has been fully denied and will review denials every three years to determine whether they should be continued or rescinded. This meets the intent of the recommendation.

**Recommendation 7. Explore ways to do more outreach to the chemical exporting community, including lower cost outreach alternatives, such as setting up briefings in Washington, mailings, or piggybacking on outreach done in connection with Chemical Weapons Convention (CWC) compliance activities conducted by BIS' Treaty Compliance Division (TCD).**

**Status: Closed.** According to its May 2006 action plan and our discussions with the former and current director for the CBC Division, BIS personnel participate in quarterly meetings with the American Chemistry Council. In addition, personnel from the CBC Division participated in three outreach sessions for the chemical industry in 2006 put on by BIS' Treaty Compliance Division on the new Chemical Weapons Convention regulation. BIS' actions meet the intent of our recommendation.

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**Recommendation 8. Pursue multilateral controls on the 25 items now on the HHS/APHIS<sup>5</sup> Select Agent List that are not currently controlled for export. If agreement cannot be reached multilaterally, evaluate putting the 25 items on the CCL unilaterally.**

**Status: Closed.** On June 12, 2006, BIS published a final rule in the *Federal Register* to unilaterally control the 23 agents currently on the CDC and APHIS lists that were not controlled for export (the remaining two agents missing from the CCL were removed from the APHIS list subsequent to our report). In addition, at the June 2006 AG plenary meeting, the AG agreed to multilaterally control 3 of the 23 agents. As such, on November 24, 2006, BIS issued a final rule in the *Federal Register* revising the unilateral control to multilateral control for these three agents. We encourage BIS to continue to seek multilateral control of the remaining 20 agents. BIS' actions meet the intent of our recommendation.

**Recommendation 9. Inform APHIS and CDC registered entities in writing of the need to comply with the EAR and how to apply for an export license if they plan to export controlled items.**

**Status: Closed.** In its May 2006 action plan, BIS reported that the Deputy Assistant Secretary for Export Administration informed the Directors of APHIS and CDC in a memorandum dated July 2005 of the need to inform their registrants of the requirement to comply with the EAR and to provide them with the website where they can find the EAR and information regarding licensing requirements and processing. In addition, in April 2006, the former director of the CBC Division contacted both agencies and again offered assistance in disseminating this information to their registrants. In March 2007, BIS informed us that neither APHIS nor CDC has notified its registered entities in writing (e.g., via e-mail or mass mailing) of the need to comply with the EAR and how to apply for an export license. However, as a result of BIS' multiple requests, APHIS and CDC established a website where the registrants can find a link to BIS' website and to the EAR. As such, BIS' actions meet the intent of our recommendation

**Recommendation 10. Direct the Office of Export Enforcement (OEE) to inform TCD of the outcome of the CWC-related investigations upon completion so information can be shared with the chemical exporting community and the Organization for the Prohibition of Chemical Weapons.**

**Status: Closed.** According to its June 6, 2005 action plan, OEE has implemented a mechanism to track CWC-related investigations and provide feedback to TCD.

COMMERCE REDACTION

These actions appropriately respond to the recommendation.

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<sup>5</sup> The U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) and the U.S. Department of Health and Human Services' (HHS) Centers for Disease Control and Prevention (CDC) jointly maintain a list of select agents and toxins that pose a severe threat to livestock, plants, and/or public health. Entities that possess, use, or transfer agents or toxins on the Select Agent List must register with the appropriate federal agency. Most of the items on the Select Agent List are also controlled under the EAR.



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**Recommendation 11. Ensure that TCD builds a system to track CWC investigative referrals so it can follow up if OEE has not provided the status of the investigations in a specified period of time.**

**Status: Closed.** According to its June 6, 2005 action plan, TCD has built a system to track CWC investigative referrals and follow up on the status of OEE's CWC-related investigations. The system involves  
**COMMERCE REDACTION**

**COMMERCE REDACTION** This meets the intent of the recommendation.

**Status of the Commerce OIG Report No. IPE-16176, "Deemed Export Controls May Not Stop the Transfer of Sensitive Technology to Foreign Nationals in the U.S.," March 2004**

**Recommendations for the Bureau of Industry and Security**

**Recommendation 1. Modify the definition of "use" in the EAR in order to help licensing and enforcement officials better implement and enforce deemed export controls associated with the technology for the use of controlled equipment.**

**Status: Open.** According to its May 2006 action plan, BIS considers this recommendation closed. Although it originally agreed with our recommendation to modify the definition of "use" in the EAR, the action plan reported that BIS decided not to modify the current definition based on its review of the more than 300 comments it received in response to its March 28, 2005, advance notice of proposed rulemaking published in the *Federal Register* on OIG recommendations related to deemed exports. Many of the comments received expressed strong opposition to the proposed changes. As a result, the Secretary of Commerce established a Deemed Export Advisory Committee in June 2006 to review BIS' deemed export control policy, including the OIG report recommendations. According to BIS officials, the committee's report is expected to be finalized sometime in late 2007.

We recognize the substantial time and effort BIS has devoted to our deemed export recommendations. We believe our report helped open this issue to public debate and raise the awareness level of many in the academic and research community. We will keep this recommendation open until the Deemed Export Advisory Committee publishes its report and BIS takes the necessary action to develop revised regulatory language and guidance that is clear, understandable, and carefully targeted to address identified threats without unnecessarily burdening exporters or the scientific community.

**Recommendation 2. Inform the U.S. academic community, industry, and federal agencies of the deemed export controls associated with the technology for the use of EAR-controlled equipment by foreign nationals.**

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**Status: Closed.** BIS created a new presentation addressing the issue of technology associated with equipment used to conduct research (including fundamental research). In addition, since issuance of Commerce OIG's March 2004 report, BIS has held a number of meetings with government (including federal laboratory) and academic officials as well as conducted site visits at four leading U.S. academic institutions to discuss this issue. BIS officials have also reportedly participated in various academic association meetings and conducted telephone reviews of research technology with various academic and federal laboratory officials. While Commerce OIG believes BIS has met the intent of the recommendation, Commerce OIG encourages BIS to continue its outreach efforts in the area. Accordingly, this recommendation is closed.

**Recommendation 3. Amend BIS' current policy to require U.S. entities to apply for a deemed export license when a foreign national employee or visitor was born in a country where the technology transfer in question is EAR-controlled.**

**Status: Closed.** BIS stated in its November 2005 action plan that as a result of public comment and its internal review of other countries' immigration policies, as well as an assessment of the effect the policy change would have on the risk to national security, it will not adopt the country of birth recommendation. Instead, BIS stated that it will maintain the current licensing policy of recognizing a foreign national's most recent citizenship or permanent residence. Given BIS' consideration of this issue and decision not to adopt this recommendation, Commerce OIG agrees to close it at this time.

**Recommendation 4. Reevaluate its approval of deemed export licenses for foreign nationals from Iran and Iraq to ensure such approvals are consistent with current law and deemed export control licensing policies and procedures.**

**Status: Closed.** As set forth in the July 30, 2004, rule regarding exports to Iraq, there is no longer a general policy of denial for exports to Iraq. Consequently, Commerce OIG's recommendation concerning BIS' deemed export-licensing policy for Iraqi nationals is no longer applicable. With regard to Iran,

COMMERCE REDACTION

Although Commerce OIG encourages BIS to make all of its licensing policies transparent to exporters, the OIG recognizes that BIS has met the letter of this recommendation by reevaluating its practice to ensure that it is not contrary to law or policy. Therefore, this recommendation is closed.

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**Recommendation 5. Establish and implement a strategic outreach plan for deemed exports that has annual goals and identifies priority industries, federal agencies, and academic institutions that are not currently applying for deemed export licenses.**

**Status: Closed.** BIS established a strategic outreach plan outlining its deemed export outreach objectives in 2005. The plan includes continued outreach to industry, federal research facilities, and the academic community, as well as a cooperative effort with the Department of Homeland Security's U.S. Citizenship and Immigration Services (CIS). The plan also included a new link on the BIS website to specifically target universities; additional export control training sessions in Washington, D.C. targeted at universities; ongoing dialogue with key academic associations (e.g., Council of Governmental Relations, Association of American Universities, and the National Council of University Research Administrators); and visits to research universities. BIS' actions and/or proposed actions meet the intent of the recommendation.

**Recommendation 6. Clarify and periodically update the deemed export "Questions and Answers" in Supplement No. 1 to Part 734 of the EAR.**

**Status: Open.** According to its May 2006 action plan, BIS prepared clarifications of the relevant "Questions and Answers" from Supplement No. 1 to Part 734 of the EAR and was going to post them to the BIS website in June 2006. While BIS did clarify some of the answers on its website (under the Deemed Exports Frequently Asked Questions page), it did not update one of the "answers" we questioned in our report from the supplement itself. Specifically, Question A(4) from the supplement, discusses whether "prepublication clearance" by a government sponsor would void the "publishability" exemption in the EAR and trigger the deemed export rule. The answer provided in the supplement states that "no...the transaction is not subject to the EAR."

However, in response to a similar question on its website, BIS states that,

"Under the Export Administration Regulations (EAR), U.S. government sponsored research is handled very much like corporate sponsored research. It may be 'fundamental research,' or it may be proprietary (See Question 22)."

The answer to Question 22 on BIS' website states,

"It depends. You need to look at the research and the contract terms for release of the results of the research. If there are no conditions placed on the research, and it is the intent of the research team to publish its findings in scientific literature, then it is considered 'fundamental research,' and no license is required. *If the contract requires that the private corporation review the findings of the research team with the intent of controlling what results are to be released in open literature, then the research is considered proprietary, and a license is required.*" [Emphasis added.]

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Given that Supplement No. 1 to Part 734 of the EAR states that the research in question would not be subject to the EAR but the answers to Questions 22 and 23 on BIS' website state that it might be, we believe BIS should clarify the answer provided to this question in the supplement. As such, until BIS revises the answer to this question in Supplement No. 1 to Part 734 of the EAR, this recommendation will remain open.

**Recommendation 7. Develop a compliance program that effectively evaluates deemed export license holders' compliance with license conditions. At a minimum, the review should determine whether:**

- a. All research, including access to technology, is being performed in accordance with license conditions;**
- b. Deviations to the foreign national's job responsibilities stay within the technical parameters of the license; and,**
- c. The technology control plan used by the subject U.S. entity accurately and fully reflects its practices.**

**Status: Closed.** In June 2006 BIS issued procedures for deemed export license compliance verification inspections. Based on our review of the procedures, it appears that the inspection objectives outlined in our recommendation above are adequately covered.

COMMERCE REDACTION

BIS' actions meet the intent of our recommendation.

**Recommendations for the National Institute of Standards and Technology (NIST)**

**Recommendation 1. Review NIST's equipment on hand in the labs to identify EAR-controlled equipment, interview managers of labs that have controlled equipment to establish what foreign nationals (if any) use or have access to the equipment, and work with BIS to develop an effective means to identify when a deemed export license might be required.**

**Status: Closed.** As reported in Commerce OIG's 2005 follow-up report,<sup>6</sup> NIST had, at that time, inventoried and inspected most of the EAR-controlled equipment at its Gaithersburg, MD, facility. According to its May 31, 2005 action plan, NIST completed the inventory and inspection of all EAR-controlled equipment and implemented appropriate documentation and controls in both its Gaithersburg and Boulder facilities. In addition, Commerce OIG examined NIST's access controls for 12 EAR-controlled items during its 2006 China review and found them to be satisfactory. Commerce OIG is pleased to see the level of commitment NIST has made to this effort.

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<sup>6</sup> *Annual Follow-Up Report on Previous Export Control Recommendations, as Mandated by the National Defense Authorization Act for Fiscal Year 2000*, U. S. Department of Commerce Office of Inspector General, IPE-17361, March 2005.

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**Recommendation 2. Conduct periodic deemed export control training, including coverage of the transfer of technology associated with the “use” of controlled equipment, for all NIST employees that work with EAR-controlled technology and/or equipment.**

**Status: Closed.** According to its January 2005 action plan, the NIST Counsel conducted training sessions for Group Leaders and Division Chiefs at both Gaithersburg and Boulder (via video conferencing) facilities in the summer of 2004 that included a detailed explanation of the EAR and deemed exports. Four additional training sessions were conducted in March 2005 to reiterate deemed export controls as well as to discuss NIST’s new “upfront” review procedures to determine if individual research projects fall under deemed export control regulations or contain sensitive homeland security information (see discussion in recommendation three below for more detail). In addition, and as mentioned above, each employee that has access to EAR-controlled equipment is required to understand what the deemed export controls and restrictions are for that piece of equipment. Commerce OIG is encouraged by the export control training sessions NIST has held to date and encourages NIST to continue periodic deemed export control training in the future. NIST’s actions meet the intent of the recommendation.

**Recommendation 3. Ensure that NIST management reviews the subject of NIST research “upfront” to determine its sensitivity and applicability to deemed export controls.**

**Status: Closed.** NIST has developed a policy calling for management review of all research projects to determine whether the research may be freely published or should be controlled for export control and/or homeland security purposes. Specifically, NIST’s January 2005 policy calls for up-front reviews to be included as part of the performance planning and review process for each researcher, and documented in each employee’s performance management record at designated points throughout the year. NIST conducted two iterations of this process in the spring and fall of 2005. NIST’s actions meet the intent of the recommendation.

**Recommendation 4. Work with BIS to determine if NIST’s Editorial Review Board process voids the fundamental research exemption in the EAR and seek appropriate deemed export licenses, as necessary.**

**Status: Closed.** This recommendation was superseded by the action discussed in recommendation three above. Accordingly, this recommendation is closed.

**Recommendation 5. Adhere to departmental policy regarding vetting foreign national visitors and guest researchers before allowing them access to its facilities.**

**Status: Open.** According to NIST’s May 2006 action plan, NIST requires sponsors—a NIST employee who is responsible for the day-to-day activities associated with the visit—for each foreign national visitor or guest. NIST requires sponsors to complete and submit NIST Form 1260, Report of Foreign Visitor(s) and/or Lecturer(s), for each Foreign Visitor or Guest. The action plan



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also states that the NIST police in Gaithersburg and the Commerce police in Boulder will deny access to a foreign national if the sponsor does not provide complete and accurate information sufficiently in advance of a visit. In addition, each sponsor is required to receive a counterintelligence briefing, including employees who might serve as escorts. According to Office of Security (OSY) officials, these employees may be briefed on an annual basis rather than each time a foreign visit occurs. Furthermore, each sponsor must complete and sign the "Certification of Conditions and Responsibilities for the Departmental Sponsor of Foreign National (FN) Guests" for each foreign national guest. This document is then sent to the appropriate OSY unit within the Department for processing and clearance.

Based on OIG discussions with OSY and NIST officials as well as a review of NIST's training materials related to this matter, NIST appears to be implementing the security measures outlined in the new Department Administrative Order (DAO) 207-12, Foreign National Visitor and Guest Access Program. Both the OSY and NIST reported several examples where foreign nationals were not allowed access to NIST facilities because the sponsor(s) did not follow the new procedures. In addition, while the number of guest researchers appears to have remained constant over the past several years, the number of visitors reported has greatly increased. Office of Security officials attribute this increase to the new DAO requirements and subsequent outreach efforts by the OSY and NIST.

However, while NIST officials appear to be adhering to the new DAO in practice, the guidance contained in the NIST Administrative Manual on this subject has not been revised to reflect the changes. As such, this recommendation will remain open until NIST incorporates its new access controls into the NIST Administrative Manual.

**Recommendation 6. Install card readers between different laboratories to prevent foreign national guest researchers assigned to one lab from entering laboratories to which they are not assigned.**

**Status: Closed.** As reported in the Commerce OIG March 2005 annual follow-up report.

COMMERCE REDACTION

Therefore,  
this recommendation is closed.

**Recommendation 7. Consider installing additional card readers within laboratories, as appropriate, to safeguard EAR-controlled equipment.**

**Status: Closed.**

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COMMERCE REDACTION

NIST's actions meet the intent of the recommendation.

**Recommendations for the National Oceanic and Atmospheric Administration (NOAA)**

**Recommendation 1. Create and implement agency-wide export control policies and procedures relating to foreign national access to EAR-controlled technology.**

**Status: Closed.** In May 2006 NOAA promulgated NOAA Administrative Order 207-12 on Technology Controls and Foreign National Access. The order sets forth agency-wide policies and procedures governing export controls and foreign national access and incorporates policies and procedures contained in the new DAO 207-12. Based on our discussions with NOAA and departmental security officials as well as our review of applicable documentation, NOAA headquarters appears to be adequately monitoring the implementation of the policies and procedures outlined in the NAO. We are very pleased to see the substantial effort NOAA has expended to meet our recommendation. Accordingly, this recommendation is closed.

**Recommendation 2. Review its equipment inventory to determine:**

- a. What commodities are EAR-controlled.
- b. What foreign nationals have access to those commodities and whether improved access controls are needed.
- c. Whether a deemed export license may be required.

**Status: Closed.** In cooperation and consultation with BIS, NOAA has made extensive progress toward meeting this recommendation since our March 2004 report. Because of its size and structure (more than 800 physical locations across the country, as well as ships and aircraft), NOAA developed a two-stage implementation plan for its export control compliance program. The first stage, termed Priority 1, focused on all areas where foreign nationals are present and all areas involving national critical infrastructure, including those with certain computer and satellite systems used for weather and climate data collection, analysis, and prediction. Priority 2 sites are those without foreign nationals or critical infrastructure.

For priority 1 sites, NOAA reportedly began by identifying and logging the location of all foreign national employees, contractors, guests, and other program participants (excluding permanent residents) present at NOAA facilities. This portion of the project was originally completed in September 2005. NOAA then conducted a review of all equipment and technology in areas where foreign nationals were found to be present, and in areas with critical infrastructure. Once the inventories were complete, NOAA sent the inventories to BIS for review.

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NOAA completed this portion of the project in October 2005. NOAA line offices then developed access control plans for all facilities that reported controlled technology. NOAA also instituted an annual certification process to ensure controlled technology assessments are completed at Priority 1 facilities. Under this process, NOAA's Deputy Assistant Administrators are required to annually certify that a controlled technology inventory and access controls are in place for locations hosting foreign national guests that have controlled technology. Based on our discussions with NOAA headquarters officials, we learned that they had just finished reviewing the first year certifications and are in the process of working with the line offices to reconcile noted discrepancies between headquarters records and those of the line offices.

At Priority 2 sites, NOAA plans to conduct controlled technology inventories on a case-by-case basis (e.g., when the facility expects to host foreign national guests). According to NOAA, an inventory will not be required if the facility will only host a foreign national visitor because NOAA will utilize escorts and other access controls described in the NAO 207-12 to mitigate any potential threats. According to BIS officials, NOAA's risk management approach is an appropriate risk management strategy. We agree. Accordingly, this recommendation is closed.

**Recommendation 3. Establish an employee training program that effectively disseminates the necessary deemed export control provisions to all NOAA employees that work with EAR-controlled technology and/or equipment.**

**Status: Closed.** According to its June 2006 action plan, formal training was completed for NOAA executives, managers, and management representatives in 2005. In addition, NOAA issued a NOAA-wide e-mail on May 19, 2006, to make employees aware of their responsibilities under the DAO and NAO. NOAA plans to conduct additional "formal" training on an annual basis. The next scheduled training session is tentatively planned for summer 2007. Furthermore, departmental sponsors who host foreign national guests and visitors are required to read the Espionage Indicators Guide and read/sign the Certification of Conditions and Responsibilities for Departmental Sponsors of Foreign National Guests. Finally, NOAA established a deemed export website that offers additional training and awareness for NOAA employees. NOAA's actions meet the intent of our recommendation.

**Recommendation 4. Review NOAA research and NOAA-sponsored research to determine the applicability of deemed export controls.**

**Status: Closed.** According to its June 2006 action plan, NOAA established a mandatory grant/cooperative agreement/contract provision requiring awardees to comply with EAR requirements. In June 2006, NOAA issued a NOAA-wide e-mail providing additional guidance concerning the applicability of the EAR to NOAA research and NOAA-sponsored research. After consultation with and training from BIS, NOAA acknowledged that EAR controls apply to particular aspects of research and that NOAA needs to heighten its awareness within the research community to this issue. As such, NOAA developed a table, accompanying research guidance, and awareness documents to assist researchers to determine whether technology covered during aspects of research could be

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subject to the EAR. BIS stated that the controls and procedures instituted by NOAA address the research issue sufficiently, provided that the researchers constantly monitor their research, taking into consideration whether or not any foreign nationals may have access to it. Based on our discussions with NOAA and BIS officials as well as a review of applicable documents, NOAA's actions meet the intent of our recommendation.

**Recommendation 5. NOAA should formulate adequate security procedures governing visits by foreign nationals to its facilities that adhere to departmental security policy.**

**Status: Closed.** The NAO on technology controls and foreign national access, discussed under Recommendation 1, includes security procedures governing visits by foreign nationals to its facilities. These procedures are consistent with current departmental security policies covering foreign national access to Commerce facilities. NOAA and OSY reported an increase in the number of foreign national visitors being submitted for clearance since the DAO and NAO have been implemented. Based on our review of applicable documentation, it appears that NOAA headquarters is holding NOAA line offices, and particularly the Deputy Assistant Administrators, accountable for complying with the new security procedures. As such, NOAA's actions meet the intent of our recommendation.

**Recommendation for the Chief Financial Officer and Assistant Secretary for Administration**

**Recommendation 1. Enforce—including conducting periodic on-site security reviews—the Department's security policies related to foreign national visitors or guest researchers and hold Commerce bureaus accountable for compliance with those policies.**

**Status: Open.** Commerce's Office of the Chief Financial Officer and Assistant Secretary for Administration, through the Office of Security, issued DAO 207-12, Foreign National Visitor and Guest Access Program, in April 2006. OSY reported that,

COMMERCE REDACTION



this recommendation will remain open.

**Status of the Commerce OIG Report No. IPE-15155, "Improvements are Needed to Better Enforce Dual-Use Export Control Laws," March 2003**

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## Recommendations for the Bureau of Industry and Security

### **Recommendation 1. Improve case development by:**

**(a) Creating a task force to identify and dispose of export enforcement cases currently pending in OEE field offices that have no potential for criminal or administrative prosecution.**

**Status: Closed.** Rather than a task force, the former Deputy Assistant Secretary for Export Enforcement and the applicable Special Agents-in-Charge (SAC) reportedly undertook full caseload reviews of each OEE field office to identify and dispose of Export Enforcement cases that had no potential for criminal or administration action. According to BIS, reviews were conducted with a view toward prioritization consonant with law enforcement policy and likelihood of prosecution. Cases opened **COMMERCE** were reviewed with a presumption toward closure unless they were pending for administrative or criminal enforcement. Toward this end, in 2004, OEE reportedly created the **COMMERCE REDACTION** to help it prioritize its caseload to focus on the most critical cases. The list offers OEE managers **COMMERCE REDACTION**

b(2)  
b(7)(E)

**BIS' actions meet the intent of the recommendation.**

**(b) Ensuring that SACs conduct a review of all new credible case leads within 120 days and open a full-scale investigation only upon determining that sufficient evidence exists to warrant such action.**

**Status: Closed.** BIS' new Investigative Management System is a two-tiered system and, as such, **COMMERCE REDACTION**

b(7)(E)

**BIS' actions or proposed actions meet the intent of Commerce OIG's recommendation.**

**(c) Conducting periodic field office reviews to evaluate the adequacy of case management by its SACs, including their continuing review and closure of all cases with little or no merit, as well as the issuance of warning letters.**

**Status: Closed.** BIS' action plan stated that its recent and upcoming caseload reviews—which were to be conducted for the first year at the mid-year and nine month mark—as well as OEE's new Investigative Management System should be adequate for Export Enforcement headquarters to evaluate the adequacy of case management by its SACs. With regard to warning letters, BIS' action plan stated that its standard warning letter has been revised and issued to the field offices. A new protocol on the issuance of warning letters is included as a part of BIS' new administrative enforcement protocol, which is currently undergoing final review.

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Commerce OIG would appreciate a copy of this new protocol when completed. Commerce OIG continues to encourage Export Enforcement headquarters periodic review of OEE cases to ensure the adequacy of case management by its SACs. Accordingly, this recommendation is closed.

**(d) Requiring SACs to provide quarterly reports to OEE headquarters on the status of their quarterly case reviews. Such reports should include the total number of cases open in their field office, the number of cases opened and closed during a particular quarter, as well as warning letters, indictments, convictions, and the number of administrative cases pending at headquarters.**

**Status: Closed.** According to BIS' action plan, OEE instituted a policy in February 2003, which requires its SACs to conduct case reviews twice a year, not quarterly. In addition, BIS' *Special Agent Manual* was modified to require its SACs to certify to the Director of OEE and the Assistant Director for Investigations every six months that they have completed reviews of all of their field offices' cases. Finally, BIS reported that SACs are required to report actual progress on outcomes consistent with performance measures to headquarters on a monthly basis. For example, each SAC is required to provide various data concerning the number of

COMMERCE REDACTION

b(7)(E)

Accordingly, BIS' actions meet the intent of Commerce OIG's recommendation.

**Recommendation 2. Review each headquarters program (visa referral, Shipper's Export Declaration, intelligence leads) designed to provide export enforcement leads in an effort to measure their success and adjust resources dedicated to these programs accordingly. This assessment should identify successful criminal and administrative cases and other outcomes, such as the issuance of warning letters and any detentions and seizures resulting from OEE investigations.**

**Status: Closed.**

COMMERCE REDACTION

b(2)

b(7)(E)

BIS' actions meet the intent of Commerce OIG's recommendation.

**Recommendation 3. Ensure that Export Administration and Export Enforcement implement the License Determination (LD) Work Plan and that the plan's objectives are achieved.**

**Status: Closed.** According to BIS, this recommendation is being addressed through weekly Tiger Team meetings to review new and pending LD requests. BIS' actions meet the intent of the recommendation.

**Recommendation 4. Improve Export Administration's processing of LDs by:**

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**(a) Ensuring that division directors and licensing officers complete “accurate and timely” LDs, as required in their respective performance plans.**

**Status: Closed.** In its response to Commerce OIG draft export enforcement report, BIS stated that it has clarified its internal policies to require the licensing division with the strictest controls (e.g., Nuclear and Missile Technology) to have the final sign-off on an LD. Additionally, to ensure that LDs are not issued with clerical errors, BIS has instituted an additional review of certified LDs by a Nuclear and Missile Technology employee not involved in the case. BIS’ action meets the intent of the recommendation.

**(b) Providing more instruction and guidance to OEE agents on the information needed to complete a determination accurately and in a timely manner.**

**Status: Closed.** According to BIS, this recommendation is being addressed through (1) the weekly Tiger Team meetings, (2) training conducted by Export Administration personnel at each of the OEE field offices, and (3) presentations by Export Administration officials at Export Enforcement’s annual special agents training. With regard to training, BIS reported that Export Administration has completed training at seven of the eight field offices. Because of its proximity to headquarters and its frequent interactions, training is not planned for OEE’s Herndon, Virginia, field office. BIS’ actions meet the intent of Commerce OIG’s recommendation.

**(c) Adding a feature to ECASS that allows OEE to submit requests for certified LDs electronically and permits Export Administration to track requests within the system.**

**Status: Closed.** According to BIS, its current system for tracking pending certified LD requests along with the creation of the Tiger Team allows BIS to track LDs on a weekly basis. Specifically, BIS reported that

COMMERCE REDACTION

OEE and licensing representatives meet to discuss both types of LDs at the Tiger Team meeting. Accordingly, BIS’ actions meet the intent of Commerce OIG’s recommendation.

**Recommendation 5. Improve administrative case processing by:**

**(a) Developing a table of penalties to serve as a guide for determining appropriate sanctions.**

**Status: Closed.** Although Commerce OIG recommended that BIS develop a table of penalties to serve as a guide for determining appropriate administrative sanctions, Commerce OIG supports BIS’ alternative efforts to set forth guidelines for how penalties are established in administrative enforcement cases. BIS released these guidelines on February 11, 2004, in the *Federal Register*, as a final rule to the EAR, with an effective date of February 20, 2004. The guidelines explain in detail the factors that are considered in setting penalties for

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administrative cases and how those factors relate to one another. BIS' actions meet the intent of Commerce OIG's recommendation.

**(b) Establishing a written agreement that specifies internal target dates for processing administrative cases.**

**Status: Closed.** BIS established new administrative case procedures that were provided to the OIG in June 2004. The new procedures include a more streamlined approach to processing administrative cases. For

COMMERCE REDACTION

BIS' action meets the intent of Commerce OIG's recommendation.

b(2)

b(7)(E)

**Recommendation 6. Strengthen OEE's up-front review procedures to ensure that administrative case reports, submitted to the Office of Chief Counsel for administrative action, comply with *Special Agent Manual* requirements.**

**Status: Closed.** Export Enforcement revised its case report format and a copy was provided to the OIG in June 2004. BIS' action meets the intent of Commerce OIG's recommendation.

**Recommendation 7. Formulate and implement procedures for ensuring that actions are promptly taken against companies and individuals who are delinquent in paying the penalties imposed against them.**

**Status: Closed.** BIS provided

COMMERCE REDACTION

BIS' action meets the intent of the recommendation.

b(2)

b(7)(E)

**Recommendation 8. Strengthen the 2002 *Special Agent Manual* by:**

**(a) Formulating and including strong case management procedures.**

**Status: Closed.** BIS revised the *Special Agent Manual* to reflect that case reviews should be conducted by the SAC every six months. In addition, the *Special Agent Manual* instructs SACs to review cases older than three years.

COMMERCE REDACTION

Taken together, these steps should help strengthen strong case management. BIS' actions meet the intent of the recommendation.

b(7)(E)

**(b) Incorporating a chapter that describes in detail BIS' and OEE's mission, authority, and organizational structure.**



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**Status: Closed.** OEE incorporated BIS' mission and guiding principles into its *Special Agent Manual*. BIS' action meets the intent of the recommendation.

**(c) Updating the *Special Agent Manual* periodically to ensure it reflects current policies and procedures.**

**Status: Closed.** According to BIS' action plan, OEE will periodically review the *Special Agent Manual* and make changes, as needed. Since issuance of its final report on export enforcement, Commerce OIG has noted that OEE has updated the manual on various occasions. BIS' actions meet the intent of the recommendation.

**(d) Addressing the additional weaknesses identified in the *Special Agent Manual* that are noted in Appendix B of Commerce OIG's 2003 report.**

**Status: Closed.** BIS has addressed the weaknesses identified in Appendix B of the National Defense Authorization Act report on export enforcement. However, it should be noted that while Export Enforcement established written procedures for the LD process, Commerce OIG is concerned that it does not specifically explain what an LD is or how to fill one out (information which might be useful to new agents). The current Deputy Assistant Secretary for Export Enforcement believes that these procedures are sufficient given that (1) LDs are a subject area covered at Export Enforcement's annual agent training and (2) no new or junior agents are left on their own when they are first hired and that they would learn about LDs through hands on experience. Given these supplemental activities, this recommendation is closed.

**Recommendation 9. Improve agent training by directing OEE to:**

**(a) Ensure that newly hired agents receive adequate export enforcement training, and instruct special agents-in-charge to implement OEE's on-the-job training program.**

**Status: Closed.** In its response to Commerce OIG's draft export enforcement report, BIS stated that it received excellent feedback from the agent training held in April 2002. As such, it is in the process of adapting some of that material together with new case studies and a new regulation course to develop a new agent-training module before the end of the year. Furthermore, OEE stated that it has received good feedback on its revised on-the-job training program that was incorporated into its November 2002 *Special Agent Manual*. While encouraged by BIS' actions, Commerce OIG wants to emphasize the importance of ensuring that the new training materials, including BIS' on-the-job training program, are implemented. BIS' actions meet the intent of the recommendation.

**(b) Develop and implement individual development plans to enhance agents' knowledge, skills, and abilities for enforcing dual-use export control laws.**

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**Status: Closed.** BIS does not agree with Commerce OIG's recommendation to develop individual development plans for its agents. Instead, BIS' action plan states that OEE uses two different methodologies to measure the career advancement of its agents. First, BIS stated that it uses case assignments to enhance an agents' knowledge, skills, and abilities to enforce dual-use export control laws. Specifically, as the agent matures, his or her assignments become more complex and high profile. Second, BIS stated that its promotion ladder to a GS-13 requires the rigorous review of an agent's talents and abilities by a SAC and Export Enforcement headquarters. It further stated that these promotion reviews are usually conducted annually. Accordingly, this recommendation is closed.

**(c) Explore the merits of supplementing classroom training with (1) temporary reassignments of field agents to headquarters and vice versa, (2) regularly scheduled agent workshops for exchanging investigative experiences, and (3) relevant training programs offered by federal, state, or local law enforcement counterparts.**

**Status: Closed.** In its response to Commerce OIG's export enforcement draft report, BIS stated that this recommendation reflects long existing policy of OEE. Specifically, BIS indicated that OEE rotates agents between headquarters and the field as caseloads and the budget permit. It also stated that it sends new managers to supervisory training and agents to a variety of specialized courses. BIS' actions meet the intent of Commerce OIG's recommendation.

**Recommendation 10. Strengthen Export Enforcement's relationship with U.S. Attorneys and Assistant U.S. Attorneys (AUSAs) by:**

**(a) Continuing its one-on-one sessions with AUSAs and seeking other ways to expand its outreach with AUSAs to communicate the importance of export control laws.**

**Status: Closed.** According to BIS' action plan, OEE focuses on one-on-one sessions with AUSAs involving specific cases to increase the probability that its cases will be accepted for prosecution. BIS stated that OEE will continue to view these sessions as a priority. Accordingly, BIS' actions or proposed actions meet the intent of Commerce OIG's recommendation.

**(b) Encouraging SACs and agents to contact AUSAs in the initial stages of their investigations to help build stronger interest in their cases.**

**Status: Closed.** According to BIS' action plan, it is standing OEE policy for agents and SACs to contact AUSAs in the initial stages of their investigations. However, as Commerce OIG noted in its final report on export enforcement, many AUSAs with whom Commerce OIG spoke stated that their first contact with OEE was when the case package was presented for consideration of prosecution. Commerce OIG encourages BIS to ensure that OEE's existing policies on this matter are followed. BIS' action meets the intent of Commerce OIG's recommendation.

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**Recommendation 11. Enhance its enforcement relationship with the U.S. Customs Service<sup>7</sup> by having Export Enforcement:**

**(a) Encourage SACs and agents to work more closely with their Customs counterparts, both agents and inspectors, at all major ports to (1) increase interagency cooperation and coordination in conducting investigations and scheduling educational visits with companies to use limited law enforcement resources effectively, (2) emphasize the importance of dual-use export controls, and (3) keep Customs agents and inspectors abreast of changes to the dual-use export control regulations.**

**Status: Closed.** While BIS' action plan stated that it is standing OEE policy to work closely with its counterparts at the Bureau of Immigration and Customs Enforcement (BICE) and that OEE's relationship with BICE has never been better and has resulted in several joint investigations, the response did not fully address the specifics of Commerce OIG's recommendation. As Commerce OIG noted in its export enforcement report, Commerce OIG found that BIS' relationship with the former Customs Service was generally good and has improved significantly since the 1993 MOU. However, it also identified a number of areas where the relationship could be enhanced, such as more contact with BICE inspectors. Specifically, many inspectors told Commerce OIG that they rarely have contact with OEE agents and indicated that they would welcome more communication and the opportunity to conduct joint cargo examinations. Commerce OIG encourages the inspectors and OEE agents to pursue more joint operations. Accordingly, this recommendation is closed.

**(b) Ensure that OEE agents screen every suspect against Customs' Treasury Enforcement Communications System in the initial stages of an investigation and prior to scheduling an outreach visit with a company to ensure that limited resources are not put towards overlapping investigations and duplicative educational efforts.**

**Status: Closed.** OEE updated the *Special Agent Manual* to require all new cases to be screened against the Treasury Enforcement Communications System in an effort to avoid overlapping investigations and duplicative educational efforts between OEE and BICE. BIS' action meets the intent of the recommendation.

**(c) Work with Customs to evaluate the terms of the 1993 MOU to determine if they are still valid and, if not, update the MOU as necessary, or take other appropriate measures to address problems inhibiting OEE and Customs cooperation.**

**Status: Closed.** According to BIS, OEE and BICE have evaluated the current MOU and do not believe that it needs revision. Again, Commerce OIG encourages BIS to work with BICE to ensure continued cooperation. This recommendation is closed because a new MOU does not seem feasible at this time. However, as noted in recommendation 11(a), Commerce OIG still needs

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<sup>7</sup>The U.S. Customs Service transferred from the Department of the Treasury to the Department of Homeland Security in 2003. Most of its responsibilities, including those related to enforcement of export control laws, now reside in the Bureau of Immigration and Customs Enforcement.

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additional information to confirm that the two agencies have improved cooperation.

**Recommendation 12. Improve Export Enforcement's relationship with the Federal Bureau of Investigation (FBI) by directing it to:**

**(a) Work with the FBI to implement an agreement—similar to its MOU with Customs—or explore other means to outline procedures for sharing information and handling export control investigations that overlap with the FBI's counterintelligence interests.**

**Status: Closed.** BIS does not agree with the recommendation that an MOU with the FBI is beneficial. According to BIS, its decision not to enter into a MOU with the FBI has in no way hindered its ability to participate in joint cases. BIS also notes that OEE has enjoyed an ongoing and productive relationship with the FBI's Joint Terrorism Task Forces (JTTFs) around the country. Commerce OIG agrees that OEE's interagency cooperation with the FBI appears to be strong on individual JTTF investigations. However, Commerce OIG is still concerned about OEE and FBI agents' ability to work joint cases and share information on dual-use export control investigations. As such, Commerce OIG encourages BIS to explore methods of sharing information and handling investigations that overlap with the FBI's counterintelligence interests. Accordingly, this recommendation is closed.

**(b) Assess the costs and benefits of assigning Export Enforcement agents to the national and local JTTFs to determine the most effective and appropriate level of agency involvement in this initiative.**

**Status: Closed.** In its response to Commerce OIG's draft export enforcement report, BIS indicated that it is assessing, on a case-by-case basis, the cost and benefits of assigning agents to the JTTFs. BIS stated that it is making decisions based on such analysis and that OEE is participating in JTTFs as appropriate. BIS' actions meet the intent of this recommendation.

**Recommendation 13. Improve Export Enforcement's relationship with the Central Intelligence Agency (CIA) by:**

CIA & COMMERCE REDACTION



CIA & COMMERCE REDACTION



Recommendation 15. Work with the U.S. Postal Service (USPS) to clarify the latter's appropriate role in helping prevent individuals from circumventing U.S. export control laws through the U.S. mail. As a part of

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**that effort, increase interagency cooperation and coordination in identifying potential violations of dual-use export control laws.**

**Status: Open.** We originally closed this recommendation in our March 30, 2006, NDAA follow-up report because OEE had established what appeared to be a working relationship with the U.S. Postal Service. However, after two joint initiatives in 2005, the coordination between the agencies appeared to stop.

OEE's unit chief responsible for this

COMMERCE REDACTION

b(2)  
b(5)  
b(7)(E)

Accordingly, this recommendation is re-opened.

**Recommendation 16. Improve BIS' monitoring of license conditions by taking the following actions:**

**(a) Review Export Administration's follow-up procedures and modify, as necessary, to ensure that open licenses with reporting conditions are effectively monitored and followed up to the maximum extent practicable.**

**Status: Closed.** To help prevent and detect the illegal export of controlled U.S. technology, BIS is charged with monitoring export licenses to ensure that license holders comply with all license conditions.

COMMERCE REDACTION

b(2)

However, according to BIS' February 2005 action plan, the Congress did not approve funding for Export Enforcement's license condition unit in FY 2005. As such, Export Administration informed Commerce OIG that it still has two staff members assigned to work on the follow-up system. While Commerce OIG encourages BIS to continue with its efforts to develop a license condition enforcement program, this recommendation is closed.

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**(b) Develop an automated e-mail program that allows the Office of Exporter Services to electronically remind exporters 30 days prior to a license's expiration date of the need to submit required documentation of any shipment that was or will be made during the licensing period.**

**Status: Closed.** BIS informed Commerce OIG that ECASS now automatically generates e-mail reminders to license holders at various times during the life of a license (e.g., six months after a license is issued, three months before it expires, and immediately upon expiration). In an effort to clean up the back-log of delinquent notices, ECASS sends out a warning notice to any exporter whose license has expired giving them 14 business days to provide the necessary documentation or provide a written explanation for failing to comply (e.g., sale was lost and items not exported). BIS' actions meet the intent of Commerce OIG's recommendation.

**(c) Ensure that licensing officers thoroughly review a company's license compliance history when processing new licenses to ensure that noncompliant exporters are not issued additional licenses.**

**Status: Closed.** As previously reported, BIS responded to a related aspect of this recommendation in 2003 by programming ECASS to automatically generate reminders to exporters of their reporting requirements six months after a license is issued, three months prior to expiration, and immediately after expiration.

According to BIS' June 2005 action plan.

COMMERCE REDACTION

This electronic list indicates exports made against a Commerce license, which OExS crosschecks against licenses contained in the ECASS follow-up subsystem. When there is a match, ECASS will generate a notice to the exporter reminding the exporter of the reporting requirement. Thus, instead of automatic, ECASS-generated reminders being sent to exporters upon expiration even when a shipment is not made, the new process will stop unnecessary notices to exporters while enhancing BIS' ability to quickly determine which companies have not complied with reporting conditions.

Commerce OIG recognizes the improvements BIS has made to its follow-up system and related procedures. Although BIS' actions meet the intent of this recommendation, Commerce OIG's 2006 review of export controls for China raised additional concerns. Specifically, the OIG found

COMMERCE REDACTION

Therefore, although this specific

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<sup>8</sup> COMMERCE REDACTION

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recommendation is being closed, related issues are addressed in Commerce OIG's 2006 report.

**(d) Take the necessary actions to follow-up on open licenses with Condition 14 at least one year after they are issued to verify whether a shipment was made and initiate a post shipment verification, if needed. In addition, the Office of Enforcement Analysis should ensure that expired Condition 14 licenses receive adequate monthly follow-up.**

**Status: Closed.** The Office of Enforcement Analysis implemented procedures in October 2003 to ensure all licenses with Condition 14 are followed up on at least one year after issuance. These procedures also require follow up on all expired licenses with Condition 14 within 30 days of the date of expiration. Finally, all of the employees in the Office of Enforcement Analysis are required to recommend denial of any subsequent license application involving a party who has not complied with a previous license condition requiring the submission of shipping documents within 30 days. According to BIS, all of these matters will be referred to OEE as an investigative lead. Absent good cause and until OEE resolves all concerns about the suitability of the party to receive further valid licenses, Export Enforcement will not remove its objection to the issuance of the license. According to BIS, the Office of Enforcement Analysis has made several recommendations to deny license applications based on a company's noncompliance with licenses issued with Condition 14. As such, approval of these licenses was reportedly held up until proper documentation was received. BIS' actions meet the intent of the recommendation.

**(e) The Office of Enforcement Analysis should consider sending automated reminders (e.g., e-mail) to exporters requesting verification and required documentation of any shipment that was or will be made during the licensing period.**

**Status: Closed.** According to its action plan, Export Enforcement agreed to study Commerce OIG's recommendation further. Essentially, the response stated that Export Enforcement was concerned that the recommendation could be construed as shifting the responsibility for compliance from the exporter to BIS. The response also points out that any automated process requires significant planning and testing prior to implementation. However, given that Export Administration was able to implement this same recommendation (see recommendation 16(b) above) for license conditions it is responsible for monitoring compliance with, Commerce OIG is not convinced that development of a similar system by Export Enforcement would be that difficult. Regardless, during a subsequent meeting with the Deputy Assistant Secretary for Export Enforcement in December 2003, Commerce OIG was told that Export Enforcement would hold license holders responsible for complying with license conditions and submitting required documentation before the end of a license's two-year validity period without sending out reminders. Although BIS' actions to date do not meet the intent of Commerce OIG's recommendation, the procedures proposed by the Office of Enforcement Analysis noted in recommendation 16(d) above—once implemented—should meet the intent of this recommendation.

**Recommendation 17. Make outreach to industry a more proactive and strategic tool by:**



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**(a) Establishing a national outreach plan that has annual goals and identifies priority industries to be visited across the country.**

**Status:** Closed

COMMERCE REDACTION

Accordingly, this recommendation is closed.

**(b) Monitoring the outcome of the visits at OEE headquarters in order to identify any common themes in the information obtained and evaluate the results of this effort.**

**Status:** Closed. BIS' response to this recommendation in its action plan referred Commerce OIG to its response to recommendation 17(a). Commerce OIG believes that the creation of a formal, proactive national outreach plan (as discussed above) would require OEE managers to monitor the outcomes of previous outreach visits in addition to data

COMMERCE REDACTION

Accordingly, this recommendation is closed.

**(c) Incorporating into the *Special Agent Manual* pertinent parts of the Strategic Outreach presentation, made at the April 2002 new agent training, so that all current and future agents have instruction on how to use outreach proactively as a preventive and investigative tool.**

**Status:** Closed. BIS updated its Project Outreach section in its *Special Agent Manual* to include pertinent parts of the Strategic Outreach Protocol. BIS' action meets the intent of Commerce OIG's recommendation.

**Recommendation 18. Improve the quality and timeliness of end-use checks performed by the U.S. and Foreign Commercial Service (US&FCS) officers by taking the following actions:**

**(a) Work with the Assistant Secretary and Director General for US&FCS to develop and provide end-use check training to US&FCS officers.**

**Status:** Closed. Export Enforcement and US&FCS officials met on March 10, 2003, on this issue. As a result of the meeting, BIS agreed to provide training on end-use checks to overseas commercial officers on an ongoing basis in the following ways: (1) provide end-use check training during US&FCS training seminars conducted in the United States, (2) allow BIS overseas attaches to participate in US&FCS regional training programs, (3) require Safeguard teams to

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brief US&FCS officers in-country on end-use check procedures, and (4) brief commercial officers at Commerce headquarters prior to their deployment overseas. With regard to the first action, the Director of the Office of Export Analysis delivered a presentation on conducting end-use checks and other licensing issues at an annual US&FCS training seminar held in Phoenix, Arizona, in July 2003. According to both BIS and US&FCS, BIS offered to conduct similar briefings at future training sessions, however, no specific sessions have been scheduled. BIS informed Commerce OIG that the Office of Enforcement Analysis Division Director for the relevant geographic area or country will be responsible for providing future briefings, along with the Director of the Office of Enforcement Analysis and other OEE personnel, as appropriate. BIS' actions meet the intent of Commerce OIG's recommendation.

**(b) Revise the end-use check handbook section on interagency cooperation at overseas posts to provide specific instructions for coordinating end-use checks with other U.S. government agencies at post.**

**Status: Closed.** BIS informed Commerce OIG that it believes that embassy personnel at post are in a better position than U.S. Government personnel in Washington, DC, for being aware of which embassy sections would have information to assist with the conduct of end-use checks. However, based on responses to Commerce OIG's survey sent to 14 overseas US&FCS posts, as well as Commerce OIG's discussions with US&FCS officers in Hong Kong and Singapore on this issue, none of these posts were fully coordinating end-use check requests with other mission sections **CIA REDACTION**

**[REDACTED]**. Commerce OIG encourages BIS to monitor whether US&FCS officers are coordinating their end-use checks with other embassy personnel in order to ensure that all relevant information on a particular end user—including information that may not be available to the public—is included in the end-use check report. Accordingly, this recommendation is closed.

**(c) Permit US&FCS to put the end-use check handbook on its intranet to ensure that every post has access to the most current edition.**

**Status: Closed.** On January 22, 2004, BIS provided its revised end-use check handbook electronically to US&FCS to upload on its password-protected intranet, which is accessible to US&FCS posts worldwide. On February 3, 2004, US&FCS announced in a worldwide e-mail to all posts that the handbook was available on its intranet. BIS' action meets the intent of Commerce OIG's recommendation.

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**(d) Enhance the technical information provided in its end-use check request cables to help US&FCS officers conduct better checks. Such information might include, for example, specific questions that officers should ask, as well as photos or technical literature related to the commodities to be inspected.**

**Status: Closed.** In its response to Commerce OIG's draft export enforcement report, BIS stated that its end-use check handbook already contains both general guidance and specific questions for US&FCS officers to ask during end-use checks. However, BIS indicated that it will consider providing, on a case-by-case basis, additional information in its end-use check request cables that may be of assistance to US&FCS officers. BIS' action meets the intent of this recommendation.

**Recommendation 19. Revise the guidance for the Safeguards Verification program and enhance the quality and timeliness of Safeguards checks conducted by agents by:**

**(a) Requiring Safeguards teams to hold briefings with other U.S. Government agencies at post in order to share valuable law enforcement or intelligence information on targeted companies and international diversion and proliferation efforts.**

**Status: Closed.** Export Enforcement updated its Safeguards Verification Program section in its *Special Agent Manual* to require agents to schedule entrance and exit conferences with Embassy commercial officers/representatives and other U.S. Government agencies at post. BIS' action meets the intent of Commerce OIG's recommendation.

**(b) Ensuring that OEE's agents submit reports within the required 30-day time frame or disqualify them from future Safeguards assignments.**

**Status: Closed.** BIS updated the Safeguards Verification Program section in its *Special Agent Manual* to advise agents of their responsibility to submit a Safeguards trip report to OEE within 30 days of the trip's completion or face possible denial from future Safeguards trip assignments. In order to verify whether agents have been adhering to this new guidance, BIS provided Commerce OIG with copies of its three most recent Safeguards trip reports, including **COMMERCE REDACTION**. Two of the three reports were issued beyond the 30-day deadline (they averaged 38 days). While BIS has met the intent of Commerce OIG's earlier recommendation by putting a prompt reporting requirement in place, Commerce OIG encourages BIS managers to periodically determine if agents are, in fact, adhering to this new guidance. Accordingly, this recommendation is closed.

**(c) Revising the Safeguards report format to require (1) a bulleted list of all findings, and (2) a listing of all unfavorable end-use checks, supplemented by graphs, charts, and other visual effects.**

**Status: Closed.** In its response to Commerce OIG's draft export enforcement report, BIS stated that it reviewed the format of the report prior to reissuing Chapter 7 of the *Special Agent Manual* in mid-2002 and intends to adhere to the

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current guidelines. While Commerce OIG believes that the suggestions contained in this recommendation would enhance a report's readability and its value as a training or reference tool, Commerce OIG accepts BIS' decision to utilize its current trip report format.

**(d) Encouraging Safeguards teams to photograph controlled commodities, as appropriate, and incorporate those photos in the reports to enhance their readability and value as training materials.**

**Status: Closed.** In its response to Commerce OIG's draft export enforcement report, BIS agreed to consider this recommendation on a case-by-case basis taking into account

COMMERCE REDACTION

Commerce OIG believes BIS' action meets the intent of the recommendation.

**(e) Disseminating trip reports, and any relevant analyses,**

COMMERCE REDACTION

**Status: Closed.** BIS updated the Safeguards Verification Program section in its

COMMERCE REDACTION

Accordingly, this recommendation is closed.

**Recommendation 20. Instruct Export Administration to remind its directors and licensing officers about the export license dispute resolution process outlined in the 1996 Export Administration and Export Enforcement MOU and ensure they use it.**

**Status: Closed.** On March 18, 2003, the Director of OExS sent an e-mail to all licensing officials reminding them of the dispute resolution process outlined in the 1996 Memorandum of Understanding between Export Administration and Export Enforcement. BIS' action meets the intent of Commerce OIG's recommendation.

**Recommendation 21. Institute appropriate internal controls in ECASS to ensure that a license application cannot be returned without action over an Export Enforcement recommendation to reject.**

**Status: Closed.** In July 2004, BIS established an internal process to be followed to reach a unified BIS position on a license application. In addition, according to its February 2005 action plan, an enhancement in ECASS has been completed so

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that no BIS license application with a final LO determination of “return without action” and an Export Enforcement final recommendation of “reject” will be immediately validated. Instead, the system will escalate the case to the Director of OEE for subsequent resolution with Export Administration. BIS’ actions meet the intent of the recommendation.

**Recommendation 22. Reevaluate the guidance in the 1996 MOU concerning the return of license applications without action.**

**Status: Closed.** As mentioned above, in July 2004, BIS established new procedures to be followed in reaching a unified BIS position on license applications. Specifically, if Export Administration disagrees with an Export Enforcement recommendation, Export Administration will escalate the issue for Office Director review within one business day. Export Administration and Export Enforcement Office Directors will then have two days to reach an agreed BIS position. Recommendations that are not reconciled at this level within two days will be escalated to the Deputy Assistant Secretary/Assistant Secretary level for resolution. If they cannot reach agreement, the recommendations will then be promptly escalated to the Under Secretary for final resolution. BIS’ action meets the intent of the recommendation.

**Recommendation 23. Notify the licensing referral agencies of all unfavorable pre-license check results and any subsequent BIS recommendation to return the relevant license application without action.**

**Status: Closed.** According to its May 2006 action plan, BIS considers this recommendation closed. Specifically, the plan states that the reviewing agencies already have the ability to receive all PLC cables through their individual communication centers and provide comments to Commerce before final action is taken on a license application. BIS sent a memorandum to the referral agencies on May 8, 2006, recommending that each agency utilize its established communication and distribution center to receive cable traffic on PLCs and PSVs. According to the Deputy Assistant Secretary for Export Administration, none of the agencies responded to this memorandum. While we agree that the referral agencies can request copies of all cables involving end-use checks, we believe it would be more efficient and transparent for BIS to notify them—especially of negative checks—through the established licensing referral process since this information is already incorporated into the official licensing record. As such, this notification should not be a burden to BIS licensing officers. Nonetheless, while Commerce OIG disagrees with BIS on this matter, this recommendation is closed because the referral agencies have a mechanism in place to receive information on PLCs and PSVs.

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**Recommendation 24. Ensure that Export Administration works with Customs in the following areas:**

**a. Develop and issue guidance to Customs agents and inspectors that sets forth procedures and a standard format for (1) submitting LD requests, (2) processing them in a timely manner, and (3) providing recourse when they are late.**

**Status: Closed.** In March 2005, BIS issued a letter to Border and Transportation Security, Department of Homeland Security, outlining BIS procedures for handling LD requests from external law enforcement agencies. The letter sets forth the procedures for submitting requests, provides that BIS will complete LDs within 20 days for items that have been detained or seized, and within 25 days for other LDs. The letter also instructs representatives to contact Export Enforcement's Chief, Field Support Unit if the LDs have not been completed within this timeframe. BIS' actions meet the intent of Commerce OIG's recommendation.

**b. Automate the LD referral process as part of BIS' modernization of ECASS.**

**Status: Open.** According to its May 2006 action plan, BIS is addressing this recommendation as part of Stage 3 of the ECASS program—the ECASS Modernization Project—which is tentatively scheduled for completion in FY 2013. As such, this recommendation will remain open until the license determination referral process is automated.

**Recommendations for the International Trade Administration**

**Recommendation 1. Develop specific performance criteria for the conduct of end-use checks by US&FCS officers and rate them accordingly.**

**Status: Closed.** While US&FCS disagreed with its recommendation to develop specific performance criteria to rate its commercial officers on their end-use check responsibilities, Commerce OIG acknowledges its efforts to invite BIS feedback for use in officer evaluations and to work with BIS to improve officer training to ensure that consistent high-quality end-use checks are conducted. Based on these actions, this recommendation is closed.

**Recommendation 2. Work with BIS to obtain feedback on officers' performance of end-use checks.**

**Status: Closed.** On May 1, 2003, the Deputy Assistant Secretary for International Operations for US&FCS sent an e-mail to BIS' Deputy Assistant Secretary for Export Enforcement (and to other Departmental representatives) requesting input to be used for FY 2003 commercial officer performance evaluations. According to the International Trade Administration's (ITA) response to Commerce OIG's draft report, a similar message will be sent annually. While BIS informed Commerce OIG that it has provided feedback to commercial officers in US&FCS Hong Kong and India on the conduct of their end-use checks (including a recent commendation by the Assistant Secretary for

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Export Enforcement to the commercial officer responsible for end-use checks in US&FCS Hong Kong), it does not routinely do so. While US&FCS' actions generally meet the intent of this recommendation, Commerce OIG encourages US&FCS to continue to work with BIS to ensure adequate feedback is obtained regarding commercial officers' performance of their end-use check responsibilities. ITA's action meets the intent of Commerce OIG's recommendation.

**Recommendation 3. Ensure that US&FCS officers understand the importance of the 28-day pre-license check time limit and complete pre-license checks on time.**

**Status: Closed.** On July 7, 2003, the Deputy Assistant Secretary for International Operations for US&FCS sent out a worldwide e-mail to its posts reminding commercial officers of the importance of the 28-day time limit for conducting pre-license checks and to work towards meeting that deadline. ITA's action meets the intent of Commerce OIG's recommendation.

**Recommendation 4. Work with BIS to ensure that appropriate procedures are developed and implemented to prevent unauthorized access to [REDACTED]**  
COMMERCE REDACTION

b(2)

**Status: Closed.** According to ITA's action plan, it agreed to work with BIS to ensure that appropriate measures are taken to prevent unauthorized access to [REDACTED]  
COMMERCE REDACTION In addition, the response indicated that individual US&FCS posts and BIS  
COMMERCE REDACTION [REDACTED] ITA's action meets the intent of Commerce OIG's recommendation.

b(2)  
b(7)(E)

**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<sup>9</sup>**

**Recommendation 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 (BPR) study, the USXPORTS BPR, as well as BIS' August 2001 internal licensing task force report, should be factored into the design and requirements for ECASS 2000+.**

**Status: Closed.** BIS management informed Commerce OIG that it reviewed each of the documents referenced and incorporated those items it deemed appropriate. It should be noted that BIS is currently conducting a detailed requirements effort in FY 2004 as part of a re-baselining activity associated with the ECASS 2000+ modernization effort (especially geared to changed or re-

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<sup>9</sup> The status of these recommendations is as of March 2006. An updated report on the status of all open recommendations pursuant to Commerce OIG's NDAA reporting will be issued in March 2007.

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engineered business processes). However, BIS' actions meet the intent of Commerce OIG's recommendation.

**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.** According to its May 2006 action plan, BIS considers this recommendation closed because funding for its ECASS-Redesign project is incorporated in its base budget. However, as Commerce OIG previously reported, the ECASS program comprises two phases: short-term (stages 1 and 2) and medium-term (stage 3). The goal of the short-term phase, defined as "ECASS Redesign," is to migrate the current ECASS Legacy system to a stable supportable platform. BIS reported that it would need funding for this first phase through FY 2009, although this date has now slipped again to 2011. The goals of the medium-term phase, now defined as "ECASS Modernization," include (1) business process reengineering and support for new software applications, (2) a data repository, and (3) a commercial content and digital asset management system to store and integrate supporting application-related paper and electronic documents.

The intent of this recommendation was for BIS to identify and secure adequate funding for its entire ECASS project including redesign and modernization. While BIS was able to secure funding for ECASS-Redesign in FY 2007, it still needs to secure funding for ECASS-Redesign through FY 2011. In addition, while BIS needs to secure funding for ECASS-Modernization from FY 2007 through FY 2013, it failed to obtain the requested funding in FY 2007. Specifically, BIS requested \$3 million for ECASS-Modernization from the department in FY 2007, but it only received \$274,000. BIS stated that the Department will provide another \$274,000 for ECASS-Modernization in FY 2008. However, BIS officials informed Commerce OIG that funding for both ECASS-Redesign and ECASS-Modernization during the next three fiscal years will be a challenge. Therefore, this recommendation will remain open until BIS secures adequate funding or develops a plan to implement both projects with existing resources.

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

**Status: Open.** While BIS reported in its May 2006 action plan that it considered this recommendation closed, BIS' Chief Information Officer (CIO) and her staff later acknowledged that, with the exception of the Simplified Network Application Process (SNAP-R) effort, which was completed in 2006, BIS has not engaged the referral agencies in a discussion of the requirements for its redesign or modernization efforts. The CIO informed Commerce OIG that BIS intends to establish an interagency committee, in Spring 2007, to discuss and review requirements for the redesign of its current licensing system. However, the requirements definition stage—which will include input from the licensing referral agencies—is not a part of its ECASS-Redesign efforts but rather the



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ECASS-Modernization efforts. BIS reported that interagency involvement would be sought in FY 2009 for this purpose. Therefore, this recommendation will remain open until BIS fully engages both BIS and interagency licensing officials in the definition and validation of systems requirements for the licensing subsystem under its ECASS-Modernization efforts.

**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.** According to its May 2006 action plan, BIS considers this recommendation to be closed. Specifically, it reported that the ECASS-Redesign project plan provided for meeting all security requirements. However, BIS' CIO informed us in February 2007 that BIS recently allocated \$1 million for additional security-related requirements for ECASS-Redesign resulting from passage of the Federal Information Security Management Act of 2002 and other technical requirements related to cyber espionage that was attempted against BIS systems in FY 2006. Specifically, the money will be allocated to newly defined ECASS-Redesign certification and accreditation requirements in FY 2007.

While these efforts will impact BIS' overall information technology security program, they are not fully directed at its ECASS-Modernization system. Until BIS completes its verification and validation of its security requirements for ECASS-Redesign and prepares specific security requirements for its ECASS-Modernization project, 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.** The BIS 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 Commerce OIG's 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 the 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 the BIS configuration management process in an on-line environment. BIS' action meets the intent of the recommendation.

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

**Status: Closed.** BIS implemented a 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 the recommendation.

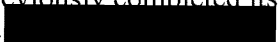
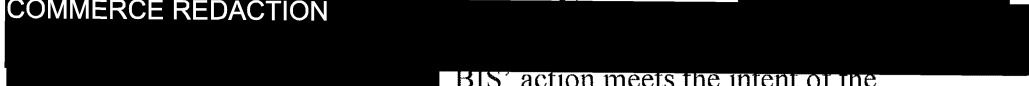
**Recommendation 8. Ensure that the ECASS 2000+ project team completes the necessary software acquisition training during the second quarter of FY 2002.**

**Status: Closed.** BIS ECASS 2000+ team members completed software acquisition training in November 2001. Commerce OIG believes this action meets the intent of the recommendation.

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

**Status: Closed.** According to BIS, the project management plan for the ECASS Redesign has been completed and approved by the current Chief Information Officer, although it is anticipated that it will be updated and augmented periodically. Accordingly, BIS has met the intent of the recommendation.

**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: Closed.** According to its May 2006 action plan, BIS selected a location to house its new export licensing automation system. (It previously completed its target architecture in May 2005.) Specifically, it selected a   
**COMMERCE REDACTION** 

 BIS' action meets the intent of the recommendation.

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

**Status: Closed.** According to BIS, Defense declined to use ECASS 2000+ as its new licensing system. Specifically, USXPORTS<sup>10</sup> recommended that Defense adopt a "Hybrid System of Systems" which will provide a Defense-centric license processing system combined with an "Interagency System of Systems." BIS stated that it will continue to advise and consult with USXPORTS as it funds and builds the Commerce case processing modules of ECASS 2000+ to ensure that there is interoperability with the USXPORTS system. BIS' actions meet the intent of Commerce OIG's recommendation.

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<sup>10</sup>In May 2000, Defense launched 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 this initiative.

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**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: Closed.** Please see OIG response under interagency OIG recommendation number three. (Page G-4)

**Recommendation 13.** Develop a written agreement between BIS and the license referral agencies, including the Departments of Defense, Energy, and State, and the Treasury, and the 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: Closed.** Please see OIG response under interagency OIG recommendation number one. (Page G-3)

**Status of the Commerce OIG Report No. IPE-13744, "Management of the Commerce Control List and Related Processes Should be Improved," March 2001**

**Recommendation 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: Closed.** As previously reported, BIS is using its internal tracking database to better track regulations under internal review. For those regulations that have been referred out for interagency review, BIS informed Commerce OIG 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. With regard to the Nuclear Suppliers Group regulatory changes, the final rule was published in the April 2002 *Federal Register*. Finally, the October 1999 Missile Technology Control Regime plenary regulation changes were published in the April 2003 *Federal Register*. BIS' actions meet the intent of Commerce OIG's recommendation.

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**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: Closed.** A rule entitled "Removal of National Security Controls from and Imposition of Regional Stability Controls on Certain Items on the Commerce Control List" was published in the *Federal Register* on March 29, 2004. Accordingly, this recommendation is closed.

**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 the U.S. Munitions List (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 Export Administration Act or similar legislation includes a requirement that the agencies eliminate the overlap and create such an index for both the CCL and the 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: Closed.** As reported previously, BIS implemented some of the recommendations from the Regulations and Procedures Technical Advisory Committee's 2001 study on how BIS can improve the CCL. In addition, BIS reported that the ongoing review of the USML under the Defense Trade Security Initiative Number 17 will address whatever overlap may exist between the CCL and USML. For example, BIS reported that regulations have been issued which have added pepper spray and some additional oxidizers to the CCL.

Nevertheless, BIS maintains that the current index to the CCL is sufficient for exporters and does not agree with Commerce OIG's recommendation to create a consolidated index. Commerce OIG maintains that the exporters are confused by the CCL and may make errors in determining whether their item is covered by the CCL. As a result, they may not apply for a license when one is required. As noted in Commerce OIG's report, many users reported that having a consolidated index of items on the CCL and USML would greatly help in navigating the two lists and understanding which agency has jurisdiction for a particular item. In its June 2004 action plan, BIS stated that it would welcome the availability of a USML item-specific index or indices which could be made available with the CCL indices. However, it stated that the development of such indices is outside of its purview as the State Department is responsible for and in control of the USML.

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. Thus, Commerce

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OIG urges BIS to begin work with State immediately on the index or come up with another alternative to make the CCL easier to navigate in conjunction with the USML. However, at this time, Commerce OIG agrees to close this recommendation.

**Recommendation 4. Review Export Administration priorities and staffing levels and make adjustments to improve BIS timeliness on commodity classifications (CCATS)<sup>11</sup> requests.**

**Status: Closed.** According to BIS, it reviewed its priorities and staffing levels with an eye toward improving its timeliness on commodity classifications. As a result, BIS reportedly hired additional LOs to process commodity classifications as well as other licensing products. BIS' action meets the intent of Commerce OIG's recommendation.

**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 Commerce OIG that it incorporated this feature into the current ECASS in May 2002. This action meets the intent of Commerce OIG's 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, the BIS Director of OExS sent an e-mail message to all Export Administration Office Directors instructing them to remind LOs 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 the recommendation.

**Recommendation 7. Request that 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: Closed.** According to its May 2006 action plan, BIS considers this recommendation closed. Specifically, BIS developed specific criteria and procedures for use by licensing officers in order to ensure that referrals are timely, transparent, and appropriate. BIS shared this guidance with the Departments of Defense and State in a memo dated May 23, 2006. According to the Deputy

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<sup>11</sup> CCATS is an acronym for BIS' Commodity Classification Automated Tracking System, but the term is also used to refer to requests submitted for commodity classification.

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Assistant Secretary for Export Administration, neither Defense nor State provided any feedback to BIS on the guidance. Based on Commerce OIG's review of the guidance and discussions with BIS officials on its current, internal commodity classification review process, it appears that BIS' actions meet the intent of the recommendation.

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

**Status: Closed.** According to its May 2006 action plan, BIS considers this recommendation closed. Specifically, BIS reported that beginning in April 2006, the final disposition of all applicable commodity classifications would be transmitted to State on a quarterly basis. Commerce OIG reviewed copies of the fax coversheet transmitting the final dispositions on applicable commodity classifications as well as the determinations themselves. However, according to State officials, they do not believe they are receiving these documents. In the spirit of cooperation, Commerce OIG suggests that BIS may want to reconcile this issue with State. BIS' actions meet the intent of the recommendation.

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

**Status: Closed.** BIS informed Commerce OIG that it reviewed its priorities and staffing levels with an eye towards improving its timeliness on commodity jurisdictions. As a result, BIS reportedly hired additional licensing officials (the same individuals referenced in recommendation four above) to process commodity jurisdictions as well as other licensing products. Commerce OIG is encouraged by this action, and request that BIS provide Commerce OIG with the average number of days taken to complete a CJ determination in FY 2004, to date. BIS' action meets the intent of Commerce OIG's recommendation.

**Recommendation 10. Work with State's Office of Defense Trade Controls and Defense, or include as part of the current system redesign efforts, an automated system for referring and processing commodity jurisdiction cases, similar to the current automated licensing system.**

**Status: Closed.** 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 commodity jurisdiction process through automation. The memorandum also offered BIS technical or other support to State on this endeavor. While no action has been taken to date, BIS believes that State will work with BIS on automating this process. Given that it is up to State to make the final decision on this matter, BIS' action meets the intent of Commerce OIG's recommendation.

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**Recommendation 11. Request that Directorate of Defense Trade Controls consult with BIS and Defense and 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 Commerce OIG that it has had no indication of any problems in the area since issuance of Commerce OIG's report. BIS' action meets the intent of the recommendation.

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

**Status: Closed.** BIS informed Commerce OIG 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. BIS' action meets the intent of the 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: Closed.**  
**COMMERCE REDACTION**

Commerce OIG is deeply concerned that no final decision has been made on the jurisdictional issues regarding night vision equipment and technology since its 2001 report. As a result, license applications are being escalated through the dispute resolution process because of jurisdictional issues rather than the merits of the case itself. In addition, it is Commerce OIG's understanding that license determinations (which are needed in export enforcement cases) are being held up because of this jurisdictional dispute. While BIS' action meets the intent of this recommendation, Commerce OIG encourages it to continue to work with the NSC and the referral agencies to quickly come to some agreement on this matter.

**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. 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 Wassenaar Arrangement decontrolled the remaining two categories in December 1998. The deletions were made to the CCL 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 the recommendation.

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**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 OExS has the lead responsibility for educating the business community and U.S. Government agencies about the “deemed export” provisions of the EAR. BIS informed Commerce OIG that the OExS 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, Commerce OIG noted that BIS senior managers periodically include information on deemed exports in speeches given at industry events.

In addition to the outreach activities, the 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 OEE officials, the guidance includes making the individuals aware of the deemed export provisions of the EAR.

During FY 2000, OEE 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). OEE officials informed Commerce OIG that because many of the dual-use technologies and commodities controlled under the EAR are high technology, a significant proportion of OEE contacts with the business community are with high-technology firms. In addition, OEE special agents have visited numerous research institutes and universities that employ or sponsor foreign nationals. BIS’ actions meet the intent of Commerce OIG’s 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 the recommendation.



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**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 the recommendation.

**(b) Followup with the Director of NIST on the three cases 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, did not require a deemed export license. BIS' actions meet the intent of Commerce OIG's recommendation.

**(c) Engage in discussions with the NOAA Administrator, as well as 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 NOAA.**

**Status: Closed.** In August 2003, BIS and NOAA officials met to discuss deemed export control regulations. Representatives from all of NOAA's line offices were present and several expressed an interest in having BIS review their programs. At that time, BIS offered to work with individual line offices, upon request, to ensure that technical information or know-how released to foreign nationals is in compliance with Federal export licensing requirements. BIS' action meets the intent of Commerce OIG's recommendation.

**(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 Commerce OIG that BIS 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 the recommendation.

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Despite a lack of action on some of Commerce OIG's recommendations, BIS appears to have made more concerted effort since issuance of Commerce OIG's March 2000 report that ensures 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 OEE conducted 350 liaison meetings with other Federal agencies during FY 2000. BIS also informed Commerce OIG 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 Commerce OIG 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 the Energy's Export Control Coordinators Organization conference. The Export Control Coordinators Office is the coordinating body for anyone who deals 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, OEE 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, OEE 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, OEE 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. OEE 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 OEE, several of the National Aeronautics and Space Administration operating units throughout the United States have been visited by OEE special agents in the last 3 years. Specifically, OEE reported that it has visited the National Aeronautics and Space Administration, Dryden Flight Research Center, California; Johnson Space Center, Texas; Langley Research Center, Virginia; and Jet Propulsion Laboratory, California. According to OEE, visits focused primarily on the deemed export of technology controlled under the EAR to visiting foreign scientists. OEE special agents have also taken part in annual National Aeronautics and Space Administration training at its Ames Research Center, California.

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**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 in the annual Update

Conferences held on the east and west coasts as well as through various outreach visits with U.S. businesses. Commerce OIG encourages BIS to continue these efforts to clarify the deemed export regulations, including the fundamental research exemption.

Commerce OIG also encourages 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 met the intent of Commerce OIG’s 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: Closed.** 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, BIS informed Commerce OIG that it is

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While it is Commerce OIG’s understanding that this effort will not completely address its concerns, Commerce OIG’s recently issued National Defense Authorization Act export control report on deemed exports will readdress this issue.<sup>12</sup> Accordingly, this recommendation is closed.

**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.** COMMERCE REDACTION

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A count of the visa applications that the Director believes need further review by the Division’s analysts are recorded on an electronic log, which is updated on a daily or weekly basis, as needed. BIS’ actions meet the intent of Commerce OIG’s recommendation.

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<sup>12</sup> *Deemed Export Controls May Not Stop the Transfer of Sensitive Technology to Foreign Nationals in the United States*, U.S. Department of Commerce Office of Inspector General, IPE-16176, March 2004.

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**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 [REDACTED] and [REDACTED] of the [REDACTED] visa application cables received from the State 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 the Office of Enforcement Analysis reviews are appropriate given current resource levels. Therefore, BIS believes no need exists for decreasing the number of visa application cables it reviews annually. BIS' actions meet the intent of Commerce OIG's 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.** Commerce OIG reported in its March 2001 follow-up report 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 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, Commerce OIG 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 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, analysts in the Office of Enforcement Analysis have noticed an improvement in the information provided on the visa application cables. BIS' actions meet the intent of Commerce OIG's 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 Export License Review and Compliance Division within the Office of Enforcement Analysis 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 in July 2000 to Division analysts. 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

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are being consulted during the review of visa application cables. BIS' actions meet the intent of the recommendation.

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

**Status: Closed.** A replacement system to Enforce, the Investigative Management System, was deployed to all OEE field offices and Export Enforcement headquarters in January 2003. The new system permits statistical queries as well as electronic notification to the responsible agent of a visa referral being made involving an existing case. The new system also requires that a search be conducted before any new information can be added.

COMMERCE REDACTION

BIS' actions meet the intent of Commerce OIG's recommendation.

**Recommendation 11. Designate a point of contact in the OEE Office of Intelligence and Field Support (Intel) 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 Director of OEE Intel was designated as the point of contact in the OEE 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 OEE Intel Director's "tickler" file, which enhances their visibility and enables the director to review and refer the referrals to field offices more quickly. Both the Director of the Export License Review and Compliance Division and the Director of the OEE Intel have seen a significant improvement in the timeliness of visa application referrals being made to 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 the recommendation.

**Recommendation 12. Institute a standard procedure for instances when the OEE 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, OEE sent procedural guidance to its field offices regarding reporting instances of possible visa fraud to State. Under the new procedures,

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BIS' actions meet the intent of Commerce OIG's 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. COMMERCE REDACTION

BIS' actions meet the intent of the 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.<sup>13</sup> Such referrals are now only made to the OEE for appropriate action. BIS' actions meet the intent of Commerce OIG's recommendation.

**Recommendation 15. Assess the Visa Application Review Program periodically, after the refinements Commerce OIG is 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: Closed.** BIS completed an assessment of its visa program in January 2003. Overall, the study concluded that, "...one single case or prevention generated by a visa referral in a national security context justifies [its] program." As a part of its March 2003 export enforcement report, Commerce OIG followed up on this issue and revised its recommendation, as appropriate (see recommendation number two from the March 2003 report). Accordingly, this recommendation is closed.

**Recommendation 16. Work with State and other interested agencies to formalize the review of visa applications under the Visas 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 Visas 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

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<sup>13</sup>The BIS Entity List is a published listing of foreign end users who are ineligible to receive items subject to the EAR without a license to the extent specified in Supplement No. 4 of Part 744 of the EAR.

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License Review and Compliance Division, communication between State and BIS has improved significantly since Commerce OIG's report was issued. In addition, meetings are being held more frequently among BIS, State, and other participating agencies. Nonetheless, BIS would still like to obtain formal feedback on referrals that it makes to State, and has made such a request to State. [REDACTED]

COMMERCE REDACTION [REDACTED]

[REDACTED] 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 the 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, BIS' 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 the BIS, each Committee on Foreign Investment in the United States file is reviewed by the Director of that office to ensure the Export Enforcement and ECASS checks are completed. BIS' actions meet the intent of Commerce OIG's recommendation.

**Recommendation for the National Institute of Standards and Technology (NIST)**

**Recommendation 1. Ensure that NIST Cooperative Research and Development Agreements<sup>14</sup> 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

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<sup>14</sup>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.

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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, Commerce OIG encouraged 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 the recommendation.

**Recommendation 2. 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 facility requires a deemed export license;**
- (b) Clearly state policies, procedures, and responsibilities of NIST hosts for determining whether a deemed export license is required.**
- (c) Establish a focal point at each appropriate NIST 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 facilities can be exported to foreign countries, with or without a license.**
- (e) Mandate training requirements for personnel at NIST facilities on the deemed export licensing requirements.**

**Status: Closed.** In response to Commerce OIG's recommendations, NIST established an Export Control Working Group that included officials from the major NIST management groups and divisions. The primary mission of the group was 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 vetted first through the Office of the NIST Counsel to determine whether deemed export licenses would be required and to prepare license applications if necessary. According to NIST, it filed two deemed export license applications with BIS, each of which was returned without action because no license was required.

Subsequently, a June 2000 memorandum from the Director of the NIST 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 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



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contained in the ITAR.<sup>15</sup> 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 Commerce OIG's March 2000 report, NIST has held 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 planned another series of training courses involving general scientific collaborations that would also incorporate a discussion of export control-related issues. NIST's actions meet the intent of the recommendations.

#### **Recommendation for the National Oceanic and Atmospheric Administration**

**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 NOAA facility requires a deemed export license.**
- (b) Clearly state policies, procedures, and responsibilities of NOAA hosts for determining whether a deemed export license is required.**
- (c) Establish a focal point at each appropriate 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 NOAA facilities can be exported to foreign countries, with or without a license.**
- (e) Mandate training requirements for personnel at NOAA facilities on the deemed export licensing requirements.**

**Status: Closed.** NOAA and BIS officials met to discuss deemed export regulations in August 2003. All of NOAA's line offices were present and several representatives

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<sup>15</sup>When 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 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.

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expressed an interest in having BIS come out and take a look at their programs. BIS offered to work with the individual line offices, upon request, to ensure that technical information or know-how released to foreign nationals is in compliance with federal export licensing requirements. Commerce OIG believes this meeting was a first step for NOAA in beginning to understand deemed export controls and its implications with regard to NOAA's foreign national visitors and guest researchers. Commerce OIG revisited these issues in its 2004 report on deemed exports. NOAA's more recent efforts are discussed on page I-23.

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

**Determine whether the ITA 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 ITA agree that the Commerce responsibility for coordinating Committee on Foreign Investment in the United States matters should continue to reside in ITA 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 ITA is the more appropriate Commerce organization to take the lead on the Committee on Foreign Investment in the United States. 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 ITA actions meet the intent of Commerce OIG's recommendation.

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## Department of Defense Recommendations

### Status of OIG Report No. D-2006-067, "Controls Over Exports to China"

#### Recommendation for the Deputy Under Secretary of Defense (Technology Security Policy and Counterproliferation)

##### **1. We recommend that the Deputy Under Secretary of Defense for Technology and Security Policy and National Disclosure Policy:**

**a. Grant access privileges to the four DoD organizations, currently without access to USXPORTS, to facilitate reviews of export applications.**

**b. Update the guidance for the export review process to reflect current organizations and responsibilities.**

**Status: 1.a. and 1.b. Open.** The Deputy Under Secretary of Defense (Technology Security Policy and National Disclosure Policy) (DUSD(TSP&NDP)) concurred with recommendation 1.a. on March 29, 2006, and stated that she would inform users of the U.S. Exports System (USXPORTS), within 60 days of becoming disconnected from the system, of the need to maintain access. However, as of December 21, 2006, we found that the DUSD(TSP&NDP) did not inform the four organizations' users of the need to maintain access to USXPORTS. As a result, the recommendation remains open.

Regarding recommendation 1.b., the DUSD(TSP&NDP) agreed, on March 29, 2006, with this recommendation to update guidance on the export review process to reflect current organizations and responsibilities. In addition, the DUSD(TSP&NDP) stated that organizational changes will be accurately reflected in the guidance on the export review process. We determined that the DUSD(TSP&NDP) established draft guidance, but, the guidance was not updated to reflect current DoD organizations and responsibilities. On November 14, 2006, a DUSD(TSP&NDP) official stated that the guidance is a draft and the current organizations and responsibilities cannot be completely determined until the Office of the Secretary of Defense completes its reorganization.

##### **2. We recommend that the Director, Defense Technology Security Administration:**

**a. Prepare written analyses to support decisions on export applications and maintain documents in USXPORTS to support those decisions.**

**Status: Open.** On May 19, 2006, the DUSD(TSP&NDP) agreed that complete analysis was a necessary and vital part of the licensing process. However, the DUSD(TSP&NDP) did not agree that inclusion of every facet of analysis considered in making a licensing determination was necessary in every individual case now that they had implemented USXPORTS, a new automated system for processing export license application. We judgmentally selected and reviewed 40 of the 3,489 application files and determined that 29 of the 40 files did not contain

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adequate analysis. In addition, 39 of the 40 did not have adequate supporting documentation. Therefore, we issued a final report on September 28, 2007 stating that we considered this recommendation open because the files did not contain adequate analysis and lacked documentation.

**b. Elevate decisions to the extent possible when the appeal process does not produce a decision that supports the national security posture.**

**Status: Closed.** We suggested that the Defense Technology Security Administration (DTSA) elevate its recommendations to the extent possible in the export application appeal process if the majority of the representatives from the Departments of Commerce, Energy, and State did not agree with a DTSA recommendation. We did not detect instances in which DTSA failed to use the appeal process to the extent it considered possible. Therefore, we consider this recommendation closed.

**c. Provide written responsibilities to the senior management control official for administering the management control program.**

**d. Maintain documentation of training that managers of operating and assessable units receive.**

**e. Adjust the internal management control program to more effectively assess internal controls for recording analyses and documentation in USXPORTS.**

**Status: Recommendation 2.c., d., and e. Open.** On March 29, 2006, DTSA concurred with our recommendations to provide written responsibilities to the senior management control official, maintain training documentation for managers of operating and assessable units, and more effectively assess internal controls for recording analyses and maintaining documentation in USXPORTS. Also, DTSA stated that it had adjusted its management control plan to incorporate the recommendations. On November 16, 2006, a DTSA official stated that controls were in place, but, not written into the draft management control plan because of significant personnel turnover. Therefore, we consider these three recommendations open until DTSA updates and approves the management control plan, including the requirements of our recommendations.

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**Status of OIG Report No. D-2005-042, “Controls Over the Export Licensing Process for Chemical and Biological Items”**

**Recommendation for the Deputy Under Secretary of Defense (Technology Security Policy and Counterproliferation)**

**Recommendation B.** We recommend that the Deputy Under Secretary of Defense (Technology Security Policy and Counterproliferation), together with the Department of Commerce, undertake an assessment of items on the U.S. Department of Agriculture List of Biological Agents and Toxins and the Department of Health and Human Services List of Select Agents and Toxins as changes occur to those lists and determine whether any of the listed agents and toxins should be controlled for export purposes by inclusion on the Commerce Control List (CCL).

**Status: Closed.** The Deputy Under Secretary of Defense (Technology Security Policy and Counterproliferation) concurred with the draft finding and recommendation. Since March 2005, the Defense Technology Security Administration (DTSA) has continued to work with the Departments of Commerce and State to assess and update the CCL. The CCL now includes all controlled items from the Australia Group lists, 45 of 49 Department of Health and Human Services (HHS) Select Infectious Agents, 36 of 43 United States Department of Agriculture (USDA) Pathogens and Toxins, and 3 of 10 Animal and Plant Health Inspection Service (APHIS) Plant Pathogens. DTSA will continue to monitor the HHS, USDA, and APHIS lists and, as changes occur, determine whether any of the listed viruses, bacteria, fungi, and toxins should be controlled for export and included on the CCL.

**Status of the OIG Report No. D-2004-061 Export Controlled Technology at Contractor, University, and Federally Funded Research and Development Center Facilities**

**Recommendation for the Deputy Under Secretary of Defense for Technology Security Policy and Counter proliferation**

**Recommendation 1.A.** Expand “Interim Guidance on Export Controls for Biological Agents, November 7, 2002 to:

1. Encompass all export-controlled technology.
2. Require program managers, in coordination with counterintelligence, security, and foreign disclosure personnel to:
  - a. Identify export-controlled technology, foreign national restrictions, and licensing requirements.
  - b. Identify threats by foreign countries that are targeting the specific technologies.
  - c. Identify vulnerabilities and countermeasures to protect the export-controlled technology.

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3. **Require program managers and contracting officers to ensure that contracts identify the export-controlled technology and contain requirements to maintain an access control plan, including unique badging technology; perform export compliance training; conduct annual self-assessments; and comply with Federal export laws by obtaining an export license, other authorized approval or exemption, or by safeguarding the technology when contracts involve export-controlled technology or information.**

**Recommendation 1.B. Incorporate the interim guidance into the revision of DoD Directive 2040.2, "International Transfers of Technology, Goods, Services, and Munitions," January 17, 1984, to include the roles and responsibilities of the program managers, counterintelligence, security, and foreign disclosure personnel.**

**Status: 1.A and 1.B Open.** The Deputy Under Secretary of Defense for Technology Security Policy and Counterproliferation concurred in general and issued follow-on draft guidance on protection of export controlled technologies, with application for contractor, university, and federally funded research centers, in August 2004. After further review, this guidance will be added to a revised DoD Directive 2040.2, which is still under review. Additionally, in February 2005, DTSA assisted the Defense Acquisition Regulation (DAR) Council in preparing a new rule for incorporation into the Defense Federal Acquisition Regulation Supplement (DFARS) by May 2005. The DFARS sets forth requirements for technology security under research contracts. By this new rule, contractors at universities and other research facilities will have better notice of requirements to protect export controlled technology. On August 30, 2007, we reviewed the revised DoD Instruction 2040.2 and found that it implemented the recommendation, except the portion requiring program managers and contracting officers to ensure that contracts include requirements for protecting export controlled technology. However, this Instruction is a draft with no completion date. Therefore, we considered these two recommendations open.

**Recommendation for the Under Secretary of Defense for Acquisition, Technology, and Logistics**

**Recommendation 2.A. Develop and incorporate into the Defense Federal Acquisition Regulation Supplement an export compliance clause that requires that the contractor:**

- a. **Comply with Federal export regulations and DoD guidance for export-controlled technology and technical data by obtaining an export license, other authorized approval or exemption, and preventing unauthorized disclosure to foreign nationals.**
- b. **Incorporate the terms of the clause in all subcontracts that involve export-controlled technology.**

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- c. **Conduct initial and periodic training on export compliance controls for those employees who have access to export-controlled technology.**
  - d. **Perform periodic self-assessments to ensure compliance with Federal export laws and regulations.**

**Status: Open.** The Under Secretary of Defense for Acquisition, Technology, and Logistics concurred with the recommendation and a DFARS Case 2004-D010 was opened in July 2004 so an appropriate clause and instructions for its use could be drafted, staffed, and published for public comment. The DAR staff tasked the Research & Development (R&D) Committee with drafting a proposed DFARS rule. The R&D Committee submitted its draft proposed rule on 19 Nov 04. The proposed rule, DFARS Case No. 2004-D010, was published in the Federal Register in July and received more than 130 comments. The proposed rule was very controversial, especially within the university community, and a revised proposed rule requesting comments was published in August 2006. However, as of February 5, 2007, the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD (AT&L)) officials told us they received comments from the public in November 2006, but, had not completed the proposed rule in the DFARS. The proposed rule did not require contractors to conduct initial and periodic training nor to perform periodic self-assessments on compliance with the Federal export laws and regulations. Therefore, we concluded that the proposed DFAR rule did not meet the intent of the recommendation and remains open.

**Recommendation 2.B. Require that contracting officers incorporate the appropriate export compliance clause into the solicitation and contract.**

**Status: Closed.** The Director, Defense Research and Engineering (DDR&E) drafted a memo that will inform all DoD Components that issue science & technology grants, solicitations, or contracts of the planned changes to the DFARS. The memo also reminds them that the new DFARS provisions will merely reinforce existing obligations to comply with export control laws and regulations and of the importance of making sure that their contractors are aware of Federal export regulations. DDR&E signed the memorandum on August 5, 2005, meeting the intent of this recommendation.

**Status of Inspector General of the Department of Defense Report No. D-2003-070, "DoD Involvement in Export Enforcement Activities,"  
March 28, 2003**

**Recommendation for the Deputy Under Secretary of Defense for Technology Security Policy and Counterproliferation**

**Recommendation A.1. Establish policies and procedures to verify the inclusion and the accuracy of DoD conditions in approved export licenses.**

**Status: Closed.** The Deputy Under Secretary of Defense for Technology Security Policy and Counterproliferation stated that a comprehensive review of all commonly used provisos was conducted, resulting in a thirty-percent decrease in

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the number of extraneous and inappropriate provisos applied to munitions licenses. On May 1, 2003, all licensing officers, engineers, and reviewers from the Services were instructed to submit all positions in sentence cases with critical statements in capital letters. Additionally, the Defense Technology Security Administration (DTSA) Licensing Division has initiated a quality assurance check, beyond that already provided by a senior analyst (second signer) review, to ensure inclusion and accuracy of provisos.

**Recommendation A.2. Establish criteria and guidance for the Defense Technology Security Administration and DoD Components for requiring enforcement actions, to include considering risks associated with the adequacy of export enforcement programs when developing DoD conditions.**

**Status: Closed.** The Deputy Under Secretary of Defense for Technology Security Policy and Counterproliferation issued written guidance on employment of end user verifications, including a discussion of resource constraints, in a Licensing Director Standard Operating Procedure.

**Recommendation A.3. Establish policies and procedures for the Defense Technology Security Administration and DoD Components for obtaining, reviewing, and assessing the adequacy of the results of enforcement actions required by DoD as conditions for approval of an export license application.**

**Status: Closed.** The Deputy Under Secretary of Defense for Technology Security Policy and Counterproliferation requested that DTSA be included as an addressee in the State, Directorate of Defense Trade Controls (DDTC) Blue Lantern cable requests. A formal reply was not provided, but DTSA has been included as an addressee on Blue Lantern cable traffic. DTSA has initiated a more rigorous program to verify conduct of Pre-License Checks prior to the release of a Defense opinion.

**Status of Inspector General of the Department of Defense 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 the 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 electric transactions to support the export licensing process, and determine the information security practices and management controls that are required to ensure information security.**

**Status: Closed.** The Deputy Under Secretary of Defense (Policy Support) indicated that the USXPORTS Interagency Program Management Office reports to an Executive Steering Committee chaired by the Deputy Under Secretary of Defense (Technology Security Policy and Counterproliferation) with membership



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to include Commerce, State, the Military Departments, and the National Security Agency. This interagency forum meets on an "as needed" basis to provide guidance and oversight for ensuring best practices between Federal agencies and Defense to support the electronic export license process. According to USXPORTS Program Management Office officials, the steering committee has an approved electronic dissemination strategy that includes information security and audit practices for export licensing within Defense. As of February 2005 Defense received approximately 10% of license reviews electronically from State to include technical specifications. Commerce transferred license reviews electronically to Defense, but technical specifications were still hard copy. User Groups and a Configuration Control Board have been established to continue to grow the system to the requirements of the Defense licensing community. Those actions meet the intent of our recommendation.

**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: Closed.** The Deputy Under Secretary of Defense (Policy Support) stated that the USXPORTS system received the approval to operate in January 2004. The first version of USXPORTS was deployed in June 2004 to support the munitions license process. The second version was deployed in December 2004 to support the dual-use process. A third release was deployed in February 2005. Two additional releases are scheduled for 2005. USXPORTS is available on the Secret Internet Protocol Router Network (SIPRNET) and Non-Classified Internet Protocol Router Network (NIPRNET) to support reviews in both the classified and unclassified environments. Those actions meet the intent of our recommendation.

**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 Counterproliferation) and the DTSA 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 co-chaired by the program manager of the legacy system and the program manager for USXPORTS to ensure the seamless merge of those initiatives into a single

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Defense system. The OIG focus was 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 Counterproliferation)**

**Recommendation A.1. Establish a process for working with Commerce to facilitate periodic interagency reviews of the COMMERCE CONTROL LIST.**

**Status: Closed.** The Defense Technology Security Administration (DTSA) continues to meet periodically with the Department of Commerce and other members of interagency working groups on an as-needed basis to update the CCL with regulation changes, including some that are needed to change export control regimes. DTSA and the interagency working group members meet with the Department of Commerce at least four times per year for export control regime-related CCL changes.

**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 COMMERCE CONTROL LIST.**

**Status: Closed.** The Deputy Under Secretary of Defense (Technology Security Policy and Counterproliferation) stated that while foreign policy is not a direct Defense responsibility, Defense does agree that regular interagency reviews of items on the Commerce Control List controlled unilaterally might benefit from Defense expertise. Defense will endeavor to offer its expertise to Commerce and State for reviews of the Commerce Control List. As of March 2004, the Deputy Under Secretary of Defense (Technology Security Policy and Counterproliferation) stated that DTSA has been working with Commerce in interagency groups, such as the Missile Technology Control Regime preparation group and the Wassenaar Experts Group, to periodically review the Commerce Control List (CCL). Suggestions to liberalize controls have been reviewed in light of the increased threat posed by controlled exports, particularly by non-state end users, and it has been concluded that efforts in this area are not supportive of national security.

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

**Status: Closed.** The Deputy Under Secretary of Defense (Technology Security Policy and Counterproliferation) 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. In September 2003, Defense stated that discussions with

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Commerce on updating the Commerce Country Chart were to begin shortly. Following up on earlier correspondence with Defense, the Department of Commerce conducted an internal review of country groups in the EAR, the results were sent to Defense and other interagency members for review on January 22, 2004. DTSA has been working with Commerce in interagency groups and will continue discussions with Commerce to regularize a process for periodic reviews.

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

**Status: Closed.** The Deputy Under Secretary of Defense (Technology Security Policy and Counterproliferation) 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 [now DTSA] in a disciplined and transparent procedure with strict time frames.**

**Status: Closed.** The Deputy Under Secretary of Defense (Technology Security Policy and Counterproliferation) concurred, stating that Defense is continuing to discuss the important matter of handling commodity classification requests with Commerce and other agencies. As of February 2005, the proposal to institutionalize Defense/DTSA review of commodity classification requests is still at the National Security Council for consideration.

**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 Counterproliferation) 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 Commodity Jurisdiction requests.**

**Status: Closed.** The Deputy Under Secretary of Defense (Technology Security Policy and Counterproliferation) stated that the DTSA and Defense increased personnel in the Technology Security Directorate Licensing Division. However,

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Commodity Jurisdiction request determinations are often complicated and require more time than license applications reviews. While Defense agreed that processing times for Commodity Jurisdiction requests could be improved, processing time was not a metric for determining the effectiveness of the Commodity Jurisdiction request process as with license application reviews.

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**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: Closed.** The Under Secretary of Defense for Policy agreed that Defense guidance should be updated to clarify licensing requirements for foreign national visitors and will be coordinated with Commerce and State. The revised Defense Directive 5230.20 will incorporate Defense policies regarding licenses of deemed exports, however the updated directive has been delayed pending agreement on additional policy guidance for export licensing at Defense facilities. The revised DoD directive 5230.20 was coordinated with DTSA and includes guidance on deemed exports. The DoD Directive 5230.20 was signed on June 2005. We examined the revised directive and stated, in a final report issued on September 28, 2007, that it included guidance that addresses our recommendations.

**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.** Initially, the Defense Technology Security Administration reported that the revisions to Defense Directive 2040.2 should be ready for coordination with Defense, Commerce, and State by October 2002. In addition, DTSA issued guidance on the restricted access to export controlled technologies for foreign nationals in November 2002, June 2003, and August 2004. DTSA also coordinated with the Defense Department's National Disclosure Policy Office on the revision to DoD Directive 5230.20, which provides guidance on requirements for foreign visitors. DoD Directive 5230.20 was signed on June 2005. During our followup review in fiscal year 2007, a DUSD(TSP&NDP) official assigned to the USD(P) provided a draft memorandum, "Interim Guidance of Export Controls for Biological Agents," dated August 14, 2004. We examined the memorandum and determined that it addressed our recommendation. A USD(P) official stated that the guidance will be included in DoD Instruction 2040.2; however, the Instruction remains in draft. Therefore, this recommendation remains open until the guidance is published in DoD Instruction 2040.2.

**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**

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**whether a deemed export license is required when a foreign national visits a Defense facility.**

**Status: Closed.** The Deputy Secretary of Defense signed the revised DoD Directive 5230.20 on June 22, 2005. The directive incorporates guidance on export controls and access for foreign nationals.

**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: Closed.** Defense Research and Engineering officials worked with the Deputy Under Secretary of Defense (Technology Security Policy and Counterproliferation) on developing guidance on when a visit or assignment of a foreign national to a DoD facility requires a deemed export license. The guidance made disclosure officials for the research facility responsible for determining whether an export license meets the intent of the recommendation.

**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: Closed.** Defense Research and Engineering officials stated that each research facility has a disclosure official who is responsible for making decisions concerning the release of controlled technical information. The disclosure official will also be responsible for the determination whether or not an export license is required. This action met the intent of the recommendation.

**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 Regulations.**

**Status: Closed.** Defense Research and Engineering officials stated a memo issued by Deputy Under Secretary of Defense (Technology Security Policy and Counterproliferation) on 08 March 2004 provided guidance on Military Department use of ITAR exemptions. Another memo issued by Deputy Under Secretary of Defense (Technology Security Policy and Counterproliferation) on 14 August 2004 provided a **revised** draft policy memorandum along with an attached guide, "Managing Foreign Access: Implementing DoD Guidance on Restricted Technology" which lays out a suggested process, with references and points of contact, to ensure compliance with export controls. While this guidance is still not yet formally issued, the aforementioned memos were provided to the Component organizations responsible for implementing said policy. The role of DDR&E is one of oversight and the first step towards ensuring the proper implementation of this policy is the identification of those persons that will directly implement it. To that end, DDR&E will request that the Services identify

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specific focal points at every DoD research facility who will assist scientists and engineers in identifying export-controlled technical data and in applying for licenses or exemptions as necessary. In addition, the Under Secretary of Defense for Policy published DoD Directive 5230.20, "Visits and Assignments of Foreign Nationals" on June 22, 2005. DoD Instruction 2040.2, which replaces DoD Directive 2040.2, is in formal coordination. During our followup review, we issued a final report on September 28, 2007, stating that we found the guide contained procedures for determining whether goods, services, and technology at DoD research facilities were exportable with or without a license. In addition, we determined that this guidance is in draft and will be included in the DoD Instruction 2040.2, which will be finalized by USD(P). Therefore, we decided to close our recommendation to the DDR&E and issue a new recommendation that requests USD(P) to complete and publish the DoD Instruction 2040.2.

**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: Closed.** The Deputy Under Secretary of Defense (Technology Security Policy and Counterproliferation) memo of 14 August 2004 stated that his office has prepared a training briefing for program managers, laboratory personnel, and security managers and will provide it upon request. Once the persons designated as research facility Export Control Focal Points (as mentioned above) have been identified, DDR&E will assess their understanding of the rules governing identification and proper release of export-controlled technology as explicitly defined in the United States Munitions List (USML) and Commerce Control List (CCL). That information will be used to assist the Deputy Under Secretary of Defense (Technology Security Policy and Counterproliferation) in documenting the current status and methods used to provide guidance to DoD personnel on compliance with U.S. export control laws. We issued a final report on September 28, 2007 reporting on our followup on this recommendation. In that report, we stated that we found the guidance contained procedures for training personnel at DoD research facilities on export licensing requirements. In addition, DDR&E officials told us that they trained program managers, laboratory personnel, and security managers on deemed export licensing requirements of the Export Administration Regulations and the International Traffic in Arms Regulation. We determined that this guidance is in draft and will be included in the DoD Instruction 2040.2, which will be finalized by USD(P). Therefore, we decided to close our recommendation to DDR&E and issue a new recommendation that requests USD(P) to complete and publish the DoD Instruction 2040.2.

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**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 for 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 Military Departments: 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 Military Departments 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, Defense 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 Military Departments have taken steps to reissue guidance to comply with the above. Those actions meet the intent of our recommendations.



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## Department of Energy Recommendations

The Energy OIG issued seven reports from fiscal years 2000 to 2006 under the requirement of Public Law 106-65, "National Defense Authorization Act for FY 2000," as amended. Two of the seven reports did not contain recommendations: "Inspection of Status of Recommendations from the Office of Inspector General's March 2000 and December 2001 Export Control Reviews," INS-L-03-07, May 2003, and "Inspection of the Department of Energy's Role in the Commerce Control List and the U.S. Munitions List," INS-O-01-03, March 2001. The following is the status of the recommendations from the other five reports. Of 17 total recommendations, 14 were previously closed and 3 remained open as of December 31, 2006.

### Status of the Energy OIG Report No. DOE/IG-0723, "The Department of Energy's Review of Export License Applications for China," April 2006

#### Recommendations for the Deputy Administrator, Defense Nuclear Nonproliferation

**Recommendation 1.** Expedite the development and implementation of the new Lawrence Livermore National Laboratory database for processing end-user reviews.

**Status: Closed.** Energy management stated that the end-user database at the Lawrence Livermore National Laboratory is up and running to support all new incoming export license applications received from Commerce. This database is being enhanced to help ensure a complete search capability by incorporating standard names for the facilities' names. The Energy OIG agreed to close this recommendation.

**Recommendation 2.** Coordinate with the Director, Office of Intelligence and Counterintelligence to ensure personnel affiliated with the Office of Defense Nuclear Nonproliferation who conduct export license reviews have continual access to Sensitive Compartmented Information computers and be able to hand-carry Sensitive Compartmented Information documents.

**Status: Closed.** Energy management stated that both offices met and coordinated regarding this recommendation. Access has subsequently been granted to contractor staff affiliated with the Office of Defense Nuclear Nonproliferation to use Sensitive Compartmented Information computers and hand-carry Sensitive Compartmented Information. The Energy OIG agreed to close this recommendation.

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**Status of the Energy OIG Report No. DOE/IG-0682, "The Department of Energy's Review of Chemical and Biological Export License Applications," March 2005**

**Recommendations for the Deputy Administrator, Defense Nuclear Nonproliferation**

**Recommendation 1. Take appropriate action to ensure that Energy licensing officers have access to the Department of Commerce's Export Control Automated Support System (ECASS).**

**Status: Open.** As of December 31, 2006, Energy management reported that National Nuclear Security Administration (NNSA) came one step closer when DoE Internet Technology staff agreed to install CITRIX on the DoE licensing officer's personal computers. The OIG determined that this recommendation will remain open until corrective actions are completed.

**Recommendation 2. Take appropriate action to ensure that Energy licensing officers are properly trained in the use of this system.**

**Status: Open.** As of December 31, 2006, Energy management reported that NNSA came one step closer when DoE Internet Technology staff agreed to install CITRIX on the DoE licensing officer's personal computers. The OIG determined that this recommendation will remain open until corrective actions are completed.

**Status of the Energy OIG Report No. DOE/IG-0645, Inspection Report on "Contractor Compliance with Deemed Export Controls," April 2004**

**Recommendation for the Director, Office of Security and Safety Performance Assurance**

**Recommendation 1. Expedite issuance of a draft unclassified foreign visits and assignments Order 142.X that addresses training requirements and responsibilities for hosts of foreign nationals.**

**Status: Closed.** Energy management reported that Energy Order 142.3 was approved on June 18, 2004. The Energy OIG determined that the Order included training requirements and responsibilities for hosts of foreign nationals. The Energy OIG agreed to close this recommendation.

**Recommendation for the Deputy Administrator, Defense Nuclear Nonproliferation**

**Recommendation 2. Ensure that export control guidance, including deemed export guidance, is disseminated and is being consistently implemented throughout the Energy complex.**

**Status: Open.** Although NNSA management has taken some action regarding this recommendation, it has not been fully implemented. The OIG determined

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that this recommendation will remain open until corrective actions are completed.

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

**Recommendation 1 and Nc**

**Administrator for Arms Control**

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

**Status: Closed.** Energy management reported that NNSA has taken actions as far as its cognizant authority allows. All remaining actions are contingent on other Government agencies. NNSA recommended that the interagency OIG group involved with export controls make specific recommendations to individual agencies in order to effect change. While actions are not completed, NNSA can no longer report meaningful status. The Energy OIG agreed to close this recommendation.

**Recommendation 2a. Coordinate with State to improve communications regarding reviews of export license applications for munitions commodities.**

**Status: Closed.** Energy management reported that NNSA has taken actions as far as its cognizant authority allows. All remaining actions are contingent on other Government agencies. NNSA recommended that the interagency OIG group involved with export controls make specific recommendations to individual agencies in order to effect change. While actions are not completed, NNSA can no longer report meaningful status. The Energy OIG agreed to close this recommendation.

**Recommendation 2b. Coordinate with State to 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: Closed.** Energy reported that NNSA has taken actions as far as its cognizant authority allows. All remaining actions are contingent on other government agencies. NNSA recommends that the interagency OIG group involved with Export Controls make specific recommendations to individual agencies in order to effect change. While actions are not completed, NNSA can no longer report meaningful status. The Energy OIG agreed to close this recommendation.

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**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 an 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 to strengthen its outreach training programs for Energy's National Laboratories. The Energy OIG agreed to close this recommendation.

**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: Closed.** Energy management reported that DOE Order 142.3 was approved on June 18, 2004. The Energy OIG determined that the Order included the principal roles and responsibilities for hosts of foreign national visitors and assignees. The Energy OIG agreed to close this recommendation.

**Recommendations for the Director, Office of Security and Emergency Operations**

**Recommendation 2. Ensure that a 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: Closed.** Energy reported that the Office of Security has incorporated all required changes into DOE Order 142.3, "Unclassified Foreign Visits and Assignments," which was approved on June 18, 2004. The Energy OIG determined that the Order included the principal roles and responsibilities for hosts of foreign national visitors and assignees. The Energy OIG agreed to close this recommendation.

**Recommendation 3. Ensure that a revision of the Energy Notice concerning unclassified foreign visits and assignments includes a requirement for Energy and Energy contractor officials to enter required foreign national visit and assignment information in the Foreign Access Records Management System, or a designated central data base, in a complete and timely manner.**

**Status: Closed.** Energy management reported that a new Energy-wide

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information system, the Foreign Access Centralized Tracking System (FACTS), was developed and implemented. Energy management further advised that draft Order 142.X includes a requirement for Energy sites to enter required foreign national visit and assignment information into FACTS in a complete and timely manner. Because Energy management's corrective action addressed usage of FACTS by all Energy Federal and contractor employees, the Energy OIG agreed to close this recommendation and 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: Closed.** Energy management reported that Energy Order 142.3 was approved on June 18, 2004. The Energy OIG determined that the Order included clear identification of requirements for foreign national visits and assignments, and identified responsible officials and organizations. The Energy OIG agreed to close this recommendation.

**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: Closed.** Energy management reported that DOE Order 142.3 was approved on June 18, 2004. The Energy OIG determined that the Order included the requirement for documentation in FACTS for all visit and assignment requests in a timely manner. The Energy OIG agreed to close this recommendation.

**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: Closed.** Energy management reported that DOE Order 142.3 was approved on June 18, 2004. The Energy OIG determined that the Order included the requirement that all sites having foreign national visitors or assignees are required to enter information regarding the visits and assignments into FACTS. The OIG agreed to close this recommendation.

**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 Y-12 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 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

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reviews. Under the system, requests are reviewed by five separate disciplines (Cyber Security, Export Control, Classification, Counterintelligence, and Security). In addition, requests associated with concerns are referred for resolution to the Non-citizen Access Review Committee. Energy management further reported that while each of the reviews can involve the National Security Program Office, the Oak Ridge National Laboratory Export Control Office is responsible for referring requests to the National Security Program Office as necessary. The Energy OIG agreed to close this recommendation

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## Department of Homeland Security Recommendations

Followup of prior years' audit reports recommendations. One audit report was issued after the divestiture of the Department of Treasury bureau to the Department of Homeland Security impacting on two audit reports.

### **Status of the Inspector General, Department of Homeland Security (DHS), Report Number OIG-05-021, "Review of Controls Over the Export of Chemical and Biological Commodities," May 2005**

**Recommendation 1. Evaluate the Outbound Program, including current resources and staffing needs, along with consistency of enforcement practices and make adjustments necessary to ensure that all of their enforcement responsibilities are accomplished.**

**Status: Open.** Management concurred with this recommendation, however, planned actions will not be completed until 2012. CBP is developing a resource allocation model. The model will be used to determine staffing needs for the outbound program. To address the consistency of enforcement practices, CBP issued a memorandum to field offices on June 25, 2005. The memorandum directs that CBP officers have full access to outbound databases and targeting systems as well as training in order to properly carry out their outbound related law enforcement responsibilities.

**Recommendation 2. Implement a procedure to require officers to enter the location of State Department licenses held at their respective ports in AES.**

**Status: Closed.** Management concurred with this recommendation. A memorandum was issued on September 9, 2005, to DFOs implementing a procedure to require CBP officers to input the port code in AES where the license is filed.

### **Status of the Inspector General, Department of Homeland Security (DHS), Report Number OIG-04-23, "Review of Deemed Exports," April 2004**

**Recommendation 1. We recommend that the Under Secretary for Border and Transportation Security (BTS)**  
DHS REDACTION

**Status: Closed.** DHS REDACTION

DHS REDACTION

**Recommendation 2.** We recommend that the Deputy Secretary strengthen current DHS change of status adjudication procedures including additional controls, such as obtaining an Security Advisory Opinion (SAO) from State for

DHS REDACTION

**Status: Open.** U.S. Citizenship and Immigration Services (USCIS) will incorporate the Technology Alert List into the adjudicative process through automation. USCIS will add instructions to Form I-129, *Petition for a Nonimmigrant Worker*.

DHS REDACTION

**Recommendation 3.** We recommend that the Director, CIS seek the discretionary authority to deny outright an immigrant or nonimmigrant benefit, including changes of visa status, on the grounds of national security.

**Status: Closed.** Language was included in Senate Bill 2611 to grant CIS the discretionary authority to deny outright any immigrant or nonimmigrant benefit.

**Recommendation 4.** We recommend that the Director, CIS provide Commerce with access to data from foreign nationals' approved change of status applications as stored in Computer Linked Application Information Management System (CLAIMS) to help identify possible investigative leads for follow-up.

**Status: Closed.** Management concurred with this recommendation. On June 17, 2004, USCIS met with the Department of Commerce. [CIS is] waiting on Commerce to move forward with their request for CLAIMS fields related to Form I-129 at which time USCIS will facilitate coordination with the Office of the CIO. Since then, we met again with the Department of Commerce on October 19, 2004, and left a tasking for the Department of Commerce to provide us with text that we can insert in the revised Form I-129 that may help Commerce and other stakeholders in alerting some petitioners that they may be subject to Deemed Export License requirements and/or restricted as to the export of dual use

<sup>16</sup> VISA Mantis – screens individuals who may seek to violate U.S. export laws



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technologies. The corrective action implements this recommendation.

**Recommendation 5.** We recommend that the Assistant Secretary, ICE, continue its efforts to implement standard operating procedures for special agents use when conducting PSA visits, and also include a standardized checklist of items to ensure that deemed exports are included in PSA presentations.

**Status: Closed.** Management concurred with this recommendation. A memorandum was issued to all Special Agents on July 28, 2004 from Office of Investigations, Deputy Assistant Director, National Security Investigations stating that all special agents are instructed to review and update all Project Shield America (PSA) presentations and briefing materials to include a section titled, "Deemed Exports." All agents were also instructed to update all handouts, PowerPoint presentations and checklists and include a section relating to "Deemed Exports" and ICE's investigative authority to investigate "Deemed Exports." The corrective action implements this recommendation.

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**Status of the Inspector General, Department of the Treasury, Report Number 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 the State to ascertain the feasibility of eliminating the paper Shipper's Export Declaration requirement.

**Status: Closed.** Customs concurred with this recommendation. In fact, this recommendation will be accomplished with the implementation of mandatory filing for U.S. Munitions List (USML) items via AES. (Mandatory filing requirements extend to commodities on the Bureau of Export Administration's Commerce Control List as well). The legislation (Part III, Department of Commerce, Bureau of Census, 15 Code of Federal Regulations (CFR) Part 30) will take effect date of August 18, 2003 with an implementation date of October 18, 2003. After meeting with CBP on October 21, 2004, information provided in support of the legislation was published in the Federal Register on July 17, 2003. The ruling was effective for implementation on August 18, 2003. Corrective actions implement this recommendation.

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

**Status: Closed.** Customs concurred with this recommendation. CBP provided documentation to show their initiative for encouraging other licensing agencies in January 2005. Corrective actions implement this recommendation.

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

**Recommendation.** 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 Office of the Assistant Director (Enforcement Programs and Services) has advised that, due to budgetary restrictions, work on ATF's Firearms Integrated Technology program has been held in abeyance. As a result, ATF cannot explore connectivity with any other agency's system. However, in the interim, ATF is participating in the United States Customs and Border Protection's (CBP) International Trade and Data System (ITDS) project. This project will allow importers and exporters to file permits electronically for a variety of commodities, including firearms. The timeline for connectivity is determined by CBP and the Commerce Department as part of the interdepartmental ITDS team. Implementation of the portion of the project involving export permits is scheduled for 2011.

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

**Recommendation.** Pursue a partnership agreement with Customs/Census that will provide direct access to the Automated Export System 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, U. S. Census Bureau 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.

**Status of the Inspector General, Department of the Treasury, Report  
Number OIG-03-069, "Numerous Factors Impaired Treasury's  
Ability To Effectively Enforce Export Controls," March 25, 2003**

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

**Recommendation 1.** Work with Census officials to: (1) request that additional fields be added to the Automated Export System (AES) to provide Customs with container numbers and house and master airway bill numbers; (2) request that additional fields be added to AES to indicate where cargo is physically located; (3) request that AES edits be improved; and (4) ensure that all Outbound inspectors receive adequate AES training.

**Status: Closed.** Customs concurred with this recommendation. Customs will meet with Census officials to make a proposal to add additional fields to AES and work to improve the edits within AES. On July 29, 2002, Customs' Office of Field Operations requested Census to modify "Customs-Outbound Revision to 15 CFR 30.63(b)(11), Transportation Reference Number " to read as follows: 1) vessel shipments report the booking number for all sea shipments; 2) Air shipments report the master air waybill numbers for all air shipments, 3) Rail shipments report the bill of lading (BOL) number for all rail shipments, 4) Truck shipments report the Freight or Pro Bill number for all track shipments. The final ruling was published in the federal register with an effective date of October 23, 2003. This action implements parts 1 through 3 of the recommendation. Customs is also planning to combine the EXODUS and AES classes at Federal Law Enforcement Training Center (FLETC) into a single two-week training class to cover both areas. These corrective actions implement the recommendation.

**Recommendation 2.** Work with Commerce officials to identify and correct problems that cause Commerce to process license determination referrals untimely.

**Status: Closed.** Customs stated they would meet with Commerce Officials to discuss this issue. Meeting was held on April 10, 2003.

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**Recommendation 3. Work with Commerce officials to ensure that the Exodus Command Center is notified on a timelier basis when additional specific technical information is needed from inspectors and agents regarding license determination referrals already submitted to Commerce.**

**Status: Closed.** Customs state they would meet with Commerce official to discuss this issue. Meeting was held on April 10, 2003.

**Recommendation 4. Meet with Commerce officials to discuss the possibility of amending Commerce regulations to require Customs to decrement Commerce export licenses.**

**Status: Closed.** Customs stated they would meet with Commerce official to discuss this issue. Meeting was held on April 10, 2003.

**Recommendation 5. Issue written guidance regarding its national policy on outbound cargo detentions to ensure uniformity at all ports.**

**Status: Closed.** Customs stated that they would issue a memorandum outlining the national policy regarding the outbound cargo detentions. Customs issued memorandum, ENF-13-OFO: OB RR, on "Detention Policy for shipments held for export licensing determinations", outlining the national policy regarding the outbound cargo detentions on June 11, 2003.

**Recommendation 6. Reevaluate its current rotation policies for Outbound inspectors to minimize the loss of experienced and trained staff.**

**Status: Closed.** Customs concurred with this recommendation. Customs will reiterate the rotation policy for EXODUS inspectors. The Customs survey on the rotation policies for Outbound cargo inspectors at major ports around the U.S. on November 27, 2002 and found that most Outbound inspectors normally stay in this position for two years or longer.

**Recommendation 7. Explore additional methods of providing EXODUS training to outbound inspectors to ensure they are adequately trained.**

**Status: Closed.** On January 4, 2005 OIG was provided with an Exodus Training Schedule for outbound inspectors with dates for FY 2004 and FY 2005. This implements the intent of our recommendation.

**Recommendation for Assistant Secretary, Immigration and Customs Enforcement, U. S. Department of Homeland Security**

**Recommendation 1. Develop a license determination tracking system that provides the Exodus Command Center management with meaningful, accurate information on the Exodus Command Center program results.**

**Status: Closed.** The new Exodus Accountability Referral System is now operational and, therefore, we consider this recommendation closed.

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**Recommendation 2.** The appropriate Customs’ official should ensure that periodic reports are provided to the Office of Foreign Assets Control regarding the status of referrals and Customs’ initiated investigations of Office of Foreign Assets Control violations.

**Status: Closed.** Customs concurred with this recommendation. ICE provides OFAC with periodic reports regarding the status of OFAC referrals and ICE initiated investigations of OFAC violations.

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

**Recommendation 1.** Coordinate with State Department officials to implement an automated process to allow both agencies to track the status of license determination referrals.

**Status: Closed.** OFAC concurred with this recommendation. OFAC established regular meetings with the State Department to review license determination referrals. An automated process to track the status of license determination referrals was not implemented due to cost.

**Recommendation 2.** Coordinate with Customs’ officials to ensure OFAC investigative referrals can be linked to Customs’ cases.

**Status: Closed.** OFAC concurred with this recommendation. OFAC has coordinated with ICE and held regular meetings to review the status of referrals. To link OFAC referrals to ICE cases, ICE uses OFAC case names in their active embargo reports.

**Recommendation 3.** The appropriate Customs’ officials should ensure that periodic reports are provided to OFAC regarding the status of OFAC referrals and Customs’ initiated investigations of OFAC violations.

**Status: Closed.** Customs concurred with this recommendation. ICE provides OFAC with periodic reports regarding the status of OFAC referrals and ICE initiated investigations of OFAC violations.

**Status of the Inspector General, Department of the Treasury, Report Number OIG-00-072, “Department of the Treasury Efforts to Prevent Illicit Transfers of U.S. Military Technologies,” March 23, 2000**

**Recommendation.** We recommend that the Committee of Foreign Investments in the United States (CFIUS) chairperson coordinate efforts with other Committee members to identify and evaluate all sources of available data that can assist in identifying Exon-Florio non-filers. Once data sources are identified, CFIUS needs to develop a methodology and establish procedures as to how these data sources can be effectively used to meet its responsibilities.

**Status: Closed.** The Treasury Under Secretary for International Affairs concurred with the recommendation and indicated that the CFIUS chairperson

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would initiate appropriate action to address the concern. CFIUS initiated a new procedure to assist in identifying non-filers in 2000.

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## United States Postal Service Recommendations

### Status of United States Postal Service OIG Report No. AO-MA-03-001(R), "Enforcement of Export Controls" April 2003

#### Recommendation for the vice president, Network Operations Management

**Recommendation 1. Finalize and implement an agreement allowing the Customs Service to expand and make permanent the** **USPS REDACTION** **program.**

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**Status: Closed.** The Postal Service worked with Customs to establish and finalize an outbound mail inspection program. In February 2003, Customs issued a memorandum in collaboration with the Postal Service that permitted each Customs port director to establish **USPS REDACTION** program based on that port's resources and threat assessment priorities. However, because of resource constraints, no programs were implemented at that time. In June 2006, both agencies implemented a **USPS REDACTION** program at the Postal Service's International Service Center in Chicago. Postal Service and Customs officials are working together to implement a nationwide program that will comply with export laws and regulations.

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#### Recommendation for the chief postal inspector

**Recommendation 2.** **USPS REDACTION**

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**Status: Closed.** **USPS REDACTION**

b(7)(E)

**Recommendation 3. To establish a liaison or working group to coordinate with the Department of Commerce, Office of Export Enforcement on export enforcement issues as they apply to the mail.**

**Status: Closed.** In January 2007, the Postal Inspection Service reestablished contact with the Department of Commerce, Office of Export Enforcement to provide a point of contact for coordination on export enforcement issues.

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## Acronyms

AES	Automated Export System
AG	Australia Group
APHIS	Animal and Plant Health Inspection Service
ATF	Bureau of Alcohol, Tobacco, Firearms and Explosives
AUSA	Assistant U.S. Attorneys
BIS	Bureau of Industry and Security
BOL	Bill of Lading
BPR	Business Process Reengineering
BTS	Border and Transportation Security
BXA	Bureau of Export Administration
CBC	Chemical and Biological Controls
CBCD	Chemical and Biological Controls Division
CBP	Bureau of Customs and Border Protection
CCATS	Commodity Classifications
CCL	Commerce Control List
CCP	Configuration Control Proposal
CDC	Centers for Disease Control and Prevention
CFR	Code of Federal Regulations
CIA	Central Intelligence Agency
CIFUS	Committee of Foreign Investments in the United States
CIO	Chief Information Officer
CIS	Citizenship and Immigration Services
CJ	Commodity Jurisdiction
CLAIMS	Computer Linked Application Information Management System
CWC	Chemical Weapons Convention
D.C.	District of Columbia
DAO	Department Administrative Order
DDR&E	Director, Defense Research and Engineering
DDTC	Directorate of Defense Trade Controls
DEAR	Department of Energy Acquisition Regulation
DFARS	Defense Federal Acquisition Regulation Supplement
DFO	Director Field Operations
DHS	Department of Homeland Security
DOC	Department of Commerce
DOD	Department of Defense
DOE	Department of Energy
D-Trade	Defense Trade
DTSA	Defense Technology Security Administration
DUSD(TSP&NDP)	Deputy Under Secretary of Defense (Technology Security Policy and National Disclosure Policy)
EAR	Export Administration Regulations
ECASS	Export Control Automated Support System
FACTS	Foreign Access Centralized Tracking System
FBI	Federal Bureau of Investigation
FLETC	Federal Law Enforcement Training Center
FN	Foreign National
FOUO	For Official Use Only
FY	Fiscal Year
GS	General Schedule

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HHS	Health and Human Services
HUMINT	Human Intelligence
IBIS	Interagency Border Inspection System
ICE	Immigrations and Customs Enforcement
IG	Inspector General
Intel	Intelligence
IT	Information Technology
ITA	International Trade Administration
ITAR	International Traffic in Arms Regulations
ITDS	International Trade and Data System
JTTF	Joint Terrorism Task Forces
LD	License Determination
LO	Licensing Officer
MD	Maryland
MOU	Memorandum of Understanding
CIA REDACTION	
NAO	National Oceanic and Atmospheric Administration Administrative Order
NDAA	National Defense Authorization Act
NIPRNET	Non-Classified Internet Protocol Router Network
NIST	National Institute of Standards and Technology
NNSA	National Nuclear Security Administration
NOAA	National Oceanic and Atmospheric Administration
NSC	National Security Council
NSPD	National Security Policy Directive
OEA	Office of Enforcement Analysis
OEE	Office of Export Enforcement
OExS	Office of Exporter Services
OFAC	Office of Foreign Assets Control
OIG	Office of Inspector General
OIRA	Office of International Regimes and Agreements
OMB	Office of Management and Budget
OSY	Office of Security
CIA REDACTION	
PCA	Planned Corrective Action
PLC	Pre-License Check
PM/DDTC	Political-Military Affairs, Directorate of Defense Trade Controls
PSA	Project Shield America
R&D	Research & Development
SAC	Special Agents-in-Charge
SAO	Security Advisory Opinion
SED	Shipper's Export Declaration
SEVIS	Student and Exchange Visitor Information System
SIPRNET	Secret Internet Protocol Router Network
SNAP	Simplified Network Application Process
TCD	Treaty Compliance Division
TSP&CP	Technology Security Policy and Counterproliferation
U.S.	United States
US&FCS	U.S. and Foreign Commercial Service
USCIS	U.S. Citizenship and Immigration Services
USDA	U.S. Department of Agriculture

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USD(AT&L)	Under Secretary of Defense for Acquisition, Technology, and Logistics
USD(P)	Under Secretary of Defense for Policy
USML	U.S. Munitions List
USPS	United States Postal Service
USXPORTS	U.S. Exports Systems

CIA REDACTION

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Offices of Inspector General  
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