

*U.S. DEPARTMENT OF COMMERCE
Office of Inspector General*



*BUREAU OF EXPORT
ADMINISTRATION*

*Annual Follow-Up Report on Previous Export
Control Recommendations, as Mandated
by the National Defense Authorization
Act for Fiscal Year 2000*

Final Inspection Report No. IPE-15290/September 2002

**PUBLIC
RELEASE**

Office of Inspections and Program Evaluations



September 30, 2002

MEMORANDUM FOR: Kenneth I. Juster
Under Secretary for Industry and Security

FROM:

Johnnie E. Fraz 

SUBJECT: *Annual Follow-Up Report on Previous Export Control
Recommendations, as Mandated by the National Defense
Authorization Act for Fiscal Year 2000, as Amended (IPE-15290)*

This is our report on the status of open recommendations from our (1) March 2000 report, *Improvements Are Needed in Programs Designed to Protect Against the Transfer of Sensitive Technologies to Countries of Concern* (IPE-12454-1), (2) March 2001 report, *Management of the Commerce Control List and Related Processes Should be Improved* (IPE-13744), and (3) February 2002 report, *BXA Needs to Strengthen its ECASS Modernization Efforts to Ensure Long-Term Success of the Project* (IPE-14270). This follow-up report is required by the National Defense Authorization Act (NDAA) for Fiscal Year 2000, as amended. The act directs us to report to the Congress annually on the status of recommendations made in earlier reports submitted in accordance with the act.

While the Bureau of Industry and Security¹ has taken corrective actions on some of the recommendations from our February 2002 report, many recommendations remain open from that report as well as from our March 2001 report. In addition, a few key recommendations from our March 2000 report still remain open. Furthermore, during the course of our work on this follow-up report, we learned that the Central Intelligence Agency is no longer reviewing deemed export license applications. While we understand that BIS has made other arrangements for dealing with this setback, we believe BIS should work with the referral agencies to determine if these alternative steps are adequate. As a part of this effort, we also encourage BIS to open up discussions about the limited analysis the agency performs on other license applications.

We request that BIS officials provide an updated response and action plan within 60 calendar days for those recommendations that we still consider to be open. If you would like to discuss this report, please call me at (202) 482-4661, or Jill Gross, Assistant Inspector General for Inspections and Program Evaluations, at (202) 482-2754.

¹ The Bureau of Industry and Security was formerly known as the Bureau of Export Administration.

INTRODUCTION

The House and Senate Armed Services Committees, through the NDAA for Fiscal Year 2000, as amended, directed the Inspectors General of the Departments of Commerce, Defense, Energy, State, and the Treasury, in consultation with the Director of Central Intelligence and the Director of the Federal Bureau of Investigation, to conduct an annual assessment of the adequacy of current export controls and counterintelligence measures to prevent the acquisition of sensitive U.S. technology and technical information by countries and entities of concern.² The Offices of Inspector General (OIGs) are required to report to the Congress no later than March 30 of each year from 2000 to 2007. In addition, the legislation requires the OIGs to include in their annual report the status or disposition of recommendations made in earlier reports submitted in accordance with the act. This report presents the status of recommendations made in our February 2002 report, as well as those that remain open from our March 2000 and 2001 reports.

Program evaluations are special reviews that the OIG undertakes to provide agency managers with timely information about operations, including current and foreseeable problems. By highlighting problems, the OIG hopes to help managers move quickly to address them and to avoid similar problems in the future. The evaluations are also conducted to encourage effective, efficient, and economical operations and to detect and prevent fraud, waste, and abuse. Program evaluations may also highlight effective programs or operations, particularly if they may be useful or adaptable for agency managers or program operations elsewhere.

This evaluation was conducted in accordance with the *Quality Standards for Inspections* issued by the President's Council on Integrity and Efficiency, and was performed under the authority of the Inspector General Act of 1978, as amended, and Department Organization Order 10-13, dated May 22, 1980, as amended.

OBJECTIVES, SCOPE, AND METHODOLOGY

The primary objective of our review was to follow up on actions taken by BIS, and other applicable Commerce bureaus, to implement the open recommendations contained in our 2000, 2001, and 2002 export control reports. To meet our objective, we spoke with various BIS officials, including senior managers, licensing officials, and enforcement agents, as well as officials from the National Oceanic and Atmospheric Administration. We also reviewed supporting documentation to verify that the actions reportedly taken by BIS and NOAA were sufficient to implement our recommendations.

²Public Law 106-65, October 5, 1999.

BACKGROUND

The United States controls the export of dual-use commodities for national security and foreign policy (including antiterrorism) reasons under the authority of several different laws. Dual-use commodities are goods and technologies determined to have both civilian and military uses. The primary legislative authority for controlling the export of dual-use commodities is the Export Administration Act of 1979, as amended. Under the act, BIS administers the Export Administration Regulations (EAR) by developing export control policies, issuing export licenses, and enforcing the laws and regulations for dual-use exports. Although the act expired on August 20, 2001, the President extended existing export regulations under Executive Order 13222, dated August 17, 2001, invoking emergency authority contained in the International Emergency Economic Powers Act (IEEPA). However, it should be noted that under IEEPA, BIS has less authority than under the Export Administration Act. For example, BIS's penalty authorities, both criminal and civil, are substantially lower under IEEPA than those for violations that occur under the Export Administration Act.

To comply with the first-year requirement of the NDAA for Fiscal Year 2000, the OIGs agreed to conduct an interagency review of selected aspects of (1) federal agencies' (including research facilities') compliance with the "deemed export"³ regulations and (2) U.S. government efforts to help prevent the illicit transfer of U.S. technology and technical information through select intelligence, counterintelligence, foreign investment reporting, and enforcement activities.⁴ The specific objectives of our March 2000 report were to (1) examine the deemed export regulations, including their implementation and enforcement by BIS, as well as compliance with the regulations by industry⁵ and other federal agencies; (2) determine the effectiveness of BIS's Visa Application Review Program in preventing the illicit transfer of U.S. technology to countries and entities of concern; and (3) survey selected aspects of the efforts of the Committee on Foreign Investment in the United States (CFIUS).

³According to the EAR, any release to a foreign national of technology or software subject to the regulations is deemed to be an export to the home country of the foreign national. These exports are commonly referred to as "deemed exports," and may involve the transfer of sensitive technology to foreign visitors or workers at U.S. research laboratories and private companies.

⁴Because the NDAA was not enacted until October 1999, we were not able to conduct a comprehensive assessment of BIS's export enforcement activities by the March 30, 2000, deadline. However, as a part of the current interagency OIG review, we are reviewing BIS's export enforcement activities.

⁵As a part of the interagency OIG multi-year review plan, we anticipate conducting a comprehensive assessment of industry's compliance with the deemed export regulations before the end of 2007.

Some of our specific observations and conclusions from the March 2000 review are as follows:

- ❖ Export control policy and regulations for foreign nationals need to be clarified. In addition, BIS needs to do more outreach to industry and federal agencies to improve compliance with the regulations (only two federal agencies had applied for a total of five deemed export licenses in 1999).
- ❖ BIS's visa application review program shows potential for helping achieve the agency's export enforcement mission. However, we recommended some improvements in the way BIS handles the review of visa applications and in the coordination between the various agencies involved in the overall Visas Mantis program run by the State Department.
- ❖ We raised concerns about the overall effectiveness of CFIUS, including (1) the lack of mandatory foreign investment reporting, (2) the low number of investigations conducted on company filings, (3) the role of Treasury in overseeing the program, and (4) the division of responsibilities between BIS and the International Trade Administration for the program within Commerce.

To meet the act's second-year requirement, the OIGs focused on the Commerce Control List (CCL),⁶ which is maintained by BIS, and the U.S. Munitions List, which is maintained by the State Department. Our review looked at BIS's policies and procedures for the design, maintenance, and application of the CCL. Specifically, our objectives were to (1) examine how the CCL is managed, including whether it is user-friendly and how commodities and technologies are added to or removed from it; (2) determine whether there is still a need for greater transparency in BIS's commodity classification process, as stated in our June 1999 export control report; and (3) determine whether there is a need for more transparency in State's commodity jurisdiction (CJ) process.

Some of our observations and conclusions from the March 2001 review are as follows:

- ❖ Exporters generally think the CCL is easier to understand than the U.S. Munitions List. However, some improvements are needed in the management of the CCL, including (1) exploring additional ways to make the list more user-friendly (2) improving the timeliness of implementing agreed-upon multilateral changes to the list, and (3) correcting the inappropriate use of national security controls on some items.

⁶ The CCL contains items subject to control under the EAR. The CCL specifies the commodities, software, and technology that are subject to the regulations, as well as what controls are placed on these items, depending on the country to which the items are to be exported.

- ❖ There is a continuing need for improvements in the commodity classification process. Again, we found that the processing of commodity classifications is untimely, resulting in unnecessary delays for exporters. More importantly, we determined that the commodity classification process is not transparent because BIS is still not referring all munitions-related classifications to Defense and State for review, as directed by the 1996 National Security Council (NSC) guidelines. This creates the potential for incorrect classifications.
- ❖ The commodity jurisdiction (CJ) process needs improvement. CJ determination requests are not being processed in a timely manner by any of the involved agencies, including Commerce, Defense, and State. In addition, determination requests are currently being processed manually. Under such a manual system, documents can be lost, misplaced, or misdirected resulting in unnecessary delays. Furthermore, none of the agencies involved in the process are always fully informed about the jurisdiction opinions provided by the other agencies. Finally, there are concerns that State may be making incorrect CJ determinations because it does not always consult with BIS or Defense. We found two instances where this had occurred, causing inconvenience and expense to the exporters involved.
- ❖ There is a breakdown in the interagency process for resolving jurisdictional disputes between Commerce, Defense, and State licensing offices (also called government jurisdictions) with regard to both night vision technology and space-qualified items.

For 2002, the OIGs agreed to conduct an interagency review of the various automated export licensing systems maintained or under development by the federal licensing agencies—to determine how the systems interact and whether it is feasible to develop a single federal automated export licensing network or other alternatives to facilitate systems integration. Each OIG also looked at its own agency's efforts to modernize its export licensing system. As such, our overall objective was to assess BIS's efforts to modernize its Export Control Automated Support System (ECASS). In particular, we sought to determine whether BIS had (1) adequately considered business process changes and appropriate resources for the life of the project; (2) established an infrastructure capable of monitoring project costs, schedule, and deliverables; (3) developed a realistic, achievable system-design schedule; and (4) implemented previous OIG recommendations pertaining to modernization of the export licensing system and other internal control issues.

Some of our observations and conclusions from the February 2002 review are as follows:

- ❖ BIS made some progress on its redesign effort. Specifically, BIS is developing, in conjunction with Defense, a "front-end" licensing subsystem, known as the Simplified Network Application Processing /Electronic Support Documentation (SNAP/ESD) system, that will allow exporters to submit all types of license applications as well as the corresponding supporting documentation on-line. In addition, BIS selected software for its new Export Enforcement Investigative Tracking System. Both components of the system are expected to be ready for implementation in fiscal year 2003.

- ❖ BIS needs better planning to ensure long-term success of the project. Specifically, BIS needs to determine what business process reengineering recommendations need to be implemented, prepare a revised cost estimate for its system redesign, and determine all of the ECASS 2000+ requirements, including user and security requirements.
- ❖ BIS needs to strengthen its modernization effort by implementing established IT management best practices. Specifically, at the time our fieldwork was completed, the ECASS 2000+ project lacked adequate management tools, including (1) a project management plan, (2) target architecture, (3) a software acquisition training program, and (4) configuration and risk management processes.
- ❖ Interagency cooperation on planning, design, and development has been mixed because BIS has not involved the other licensing agencies in its own redesign effort beyond SNAP/ESD. For example, BIS is developing ECASS licensing requirements without input or validation from the current review agency users (State and Justice) or potential review agency users (Defense). Both State and Justice currently use ECASS to process license applications referred to them, and Defense could use ECASS in the future. As such, the other licensing agencies should be included in the development of licensing requirements for any new system.

SOME SIGNIFICANT RECOMMENDATIONS FROM THE FEBRUARY 2002 REPORT HAVE NOT BEEN FULLY IMPLEMENTED

Our February 2002 report on BIS's efforts to modernize its dual-use export licensing system contained 13 recommendations to improve BIS's and the U.S. government's export licensing automated systems. While BIS agreed or partially agreed with all of our recommendations, only four have been fully implemented. (See page 1 of the attachment to this memorandum report for a detailed description of the status of our February 2002 recommendations.) Again, we want to emphasize that as the federal agency charged with administering the dual-use export control process, we believe that it is especially important for BIS to better coordinate its ECASS modernization efforts with the interagency export licensing community.

MANY RECOMMENDATIONS FROM THE MARCH 2001 REPORT STILL HAVE NOT BEEN FULLY IMPLEMENTED

Our March 2001 export control report on BIS's policies and procedures for the design, maintenance, and application of the CCL contained 14 recommendations to protect against the illicit export or transfer of militarily sensitive technologies and commodities. While BIS agreed with most of our recommendations, it has only taken action to fully implement five of them. As such, nine recommendations remain open. (See page 5 of the attachment to this report for a detailed description of the status of our March 2001 recommendations.) Given BIS's key role in

administering the dual-use export control process, we believe that action should be taken to implement the open recommendations as expeditiously as possible.

A FEW KEY RECOMMENDATIONS FROM THE MARCH 2000 REPORT REMAIN OPEN

Our March 2000 export control report on programs designed to protect against the transfer of sensitive technologies to countries of concern contained 24 recommendations to several Commerce bureaus (BIS, NOAA, ITA, and the National Institute of Standards and Technology) to help the government's efforts in protecting against illicit technology transfer.⁷ While BIS's actions for 19 of the recommendations met the intent of our recommendations, its actions for four, relating to deemed export controls and the visa application review program, did not. In addition, NOAA's actions on our recommendation to ensure that the transfer of controlled technical information is not inadvertently released to foreign nationals have not fully met the intent of our recommendation (see page 10 of the attachment to this report for a detailed description of the status of open recommendations from our March 2000 report). Again, given BIS's important role in administering the dual-use export control process, we believe that action should be taken to implement the open recommendations as quickly as possible.

Attachment

cc: Conrad C. Lautenbacher, Jr., Under Secretary for Oceans and Atmosphere

⁷Because some of the original 20 recommendations are broken down into specific action items, the total number of open and closed recommendations equals 24.

ATTACHMENT

STATUS OF RECOMMENDATIONS IN
OIG 2000-2002 REPORTS ON EXPORT CONTROLS

FEBRUARY 2002 REPORT

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

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

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

Status: Open. BIS received an independent cost estimate in June 2002 for the completion of its redesign effort for calendar years 2002 through 2006.¹ According to the estimate, it will cost BIS \$3.75 million in addition to the \$3.75 million it has already spent to complete ECASS 2000+. While the cost estimate does not include security costs and is based on certain system enhancements and assumptions that may possibly change, we believe that BXA has adequately identified its overall potential costs for ECASS 2000+ (see recommendation 4 below for more information on ECASS 2000+ security costs). However, at our suggestion, BIS has just recently provided its independent cost estimate to the Department's budget office. As such, while BIS's actions partially meet the intent of our recommendation, until the Department has agreed with BIS's analysis that additional funding is needed to complete ECASS 2000+ and BIS has a plan to secure the funding, this recommendation will remain open.

¹ While BIS anticipates ECASS 2000+ to be completed by September 2005, the transition period from ECASS to ECASS 2000+ is expected to take until the spring of 2006.

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

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

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

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

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

Status: Closed. BIS's IT Steering Committee, which is chaired by the Deputy Under Secretary and comprised of BIS senior managers including the CIO, has held two meetings since issuance of our final report. In addition, the CIO 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's actions meet the intent of our recommendation.

6. **Implement the ECASS 2000+ configuration management process during the second quarter of fiscal year 2002.**

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

7. Implement the ECASS 2000+ risk management process during the second quarter of fiscal year 2002.

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

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

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

9. Revise and approve the project management plan during the second quarter of fiscal year 2002.

Status: Open. The ECASS 2000+ project manager completed the project management plan in August 2002. While the plan documents all of the tasks that must be completed for ECASS 2000+ to be implemented in fiscal year 2005,² we are concerned that the planned milestones could still change because BIS management has not approved the plan. Until the plan has been approved by BIS management, this recommendation will remain open.

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

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

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

Status: Open. Prior to March 2002 and at the time we were completing our ECASS 2000+ review, Defense was leaning towards developing an unclassified system for all unclassified data, including dual-use license application data that is primarily unclassified. This proposal to move to an unclassified system was based, in part, on the results of a security review that concluded that Defense could migrate its dual-use licensing data to an unclassified

² While BIS anticipates ECASS 2000+ will be completed by September 2005, the transition period from ECASS 2000 to ECASS 2000+ is expected to take until the spring of 2006.

environment. However, BIS never fully engaged Defense in discussions of the possibility of it using ECASS 2000+, although BIS indicated in its response to our report that it would continue to share its development efforts with Defense. Defense has now decided to retain its classified licensing system, which utilizes a different server platform than does the ECASS 2000+ redesign. Given that decision, we believe that BIS should still engage Defense in a discussion about its use of ECASS 2000+ and its reasons for wanting to keep unclassified data in a classified system and what, if any, implications this may have on BIS maintaining this same type of unclassified data in an unclassified system. Until BIS senior managers discuss this matter with Defense, this recommendation will remain open.

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

Status: Open. BIS contends that ECASS (and the new ECASS 2000+) is a central repository but due to different classification schemes, certain agencies do not choose to directly access ECASS. However, BIS informed us that that it will continue to work with its interagency partners to improve its system at the appropriate time. While we are encouraged by Commerce's and Defense's efforts to jointly create SNAP/ESD,³ which will essentially be a repository for all supporting documentation for a license application and will be available to all referral agencies to use, we believe further steps are needed. Of the three major referral agencies (Defense, Energy, and State), only State has the ability to centrally view all application data, agency comments and the final disposition on cases that are referred to it. As such, we encourage BIS to work closely with the referral agencies to ensure ECASS 2000+ has the appropriate access controls, security measures, and interfaces so that the system can be used by all of the agencies, including Defense, Energy, and the Central Intelligence Agency, given their individual classification issues. Until the above stated actions are taken on this matter, this recommendation will remain open.

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: Open. While BIS and USXPORTS⁴ informed us they concur with this recommendation, a written agreement has not yet been drafted between the license referral

³ SNAP/ESD is the Simplified Network Application Processing (SNAP) system and the Electronic Support Documentation (ESD) system.

⁴ In May 2000, Defense announced the start of a new interagency automation effort designed to improve the U.S. government's export license review process. The USXPORTS Interagency Program Management Office was established to oversee this initiative.

agencies. As such, this recommendation will remain open until a written agreement has been drafted and approved by BIS and all of the license referral agencies.

MARCH 2001 REPORT

Commerce Control List

- 1. Review BIS's 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 NSG plenary session and the October 1999 MTCR plenary session.**

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

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

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

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

3. **Convene a working group of business and government representatives, under the auspices of the Regulations and Procedures Technical Advisory Committee, to improve the user-friendliness of the CCL. In addition, work with State to (1) eliminate the current overlap of items and make sure that it is very clear on which list an item falls, and (2) create a user-friendly consolidated index of the items on the CCL and USML. To ensure that this happens, work with the applicable congressional committees, that are considering new legislation for dual-use exports, to ensure that any new 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: Open. The Regulations and Procedures Technical Advisory Committee presented BIS with its findings on how to improve the CCL in November 2001. BIS indicated that it is still reviewing the document, but believes the study contains several valid suggestions that it will implement. With regard to our recommendation that BIS work with State to eliminate the overlap of items on both the CCL and USML, BIS indicated that as a part of the five-part “scrub” of the USML under the Defense Trade Security Initiative Number 17, review of categories I, V, XIV, and XVI from year one is complete. In addition, review of categories II, III, and XVIII from year two are also complete. The categories currently under review include categories VIII (remaining from year one) VI, XX, XV, and XI, and XII. However, while one of the goals of this initiative is the identification of USML items that are more appropriately controlled by the CCL, the initiative does not specifically address the overlap problem we identified. Therefore, relying on Defense’s effort will not resolve the overlap issue.

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

Commodity Classifications

4. **Review Export Administration priorities and staffing levels and make adjustments to improve BIS’s timeliness on CCATS requests.**

Status: Open. Although Section 10(l)(1) of the EAA specifies that BIS has 10 working days to provide an exporter with a commodity classification, BIS reported that the average number of days to process CCATS in fiscal year 2001 was 48 days compared to 50 days in

fiscal year 2000. However, the average number of days to process CCATS in fiscal year 2002, to date, actually increased to 55 days. The Deputy Assistant Secretary for Export Administration informed us that the CCATS issue is a high priority for Export Administration and as such they anticipate hiring additional technical personnel in fiscal year 2003 to improve the timeliness of commodity classification requests, among other activities. We verified that BIS requested additional funding for hiring technical personnel in its 2003 budget requests. While BIS's actions partially meet the intent of our recommendation, this recommendation will remain open until BIS implements the necessary actions to improve its timeliness on CCATS.

5. Program ECASS to allow for the "hold without action" feature to help Export Administration managers keep better track of licensing officer performance on CCATS.

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

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

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

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

Status: Open. BIS is not providing State copies of the final determinations for CCATS it reviews. Specifically, BIS indicated that it was not practical to do so under the current export licensing system. According to BIS, its new ECASS 2000+ will have an automatic tickler requirement notifying BIS when a commodity classification has been reviewed by

State. This feature will enable BIS to better identify those CCATS reviewed by State. BIS needs to use this new system capability to provide these final CCATS determinations to State. This will help make the CCATS process more transparent. Until the commodity classification module of ECASS 2000+ is operational and BIS provides State copies of the final determinations for CCATS it reviews, this recommendation will remain open.

Commodity Jurisdictions

9. Review Export Administration priorities and staffing levels, as appropriate, and make adjustments to improve BIS's timeliness on CJ determination requests.

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

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

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

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

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

Licensing of Night Vision Technology

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

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

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

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

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Recommendations for the Bureau of Industry and Security

3. **Expand outreach efforts with federal agencies (including the Departments of Commerce, Defense, Energy, and Transportation, and the National Aeronautics and Space Administration) to ensure that these agencies fully understand the deemed export control 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**
 - (c) **Engage in discussions with the NOAA Administrator, as well as the Assistant Administrators of its line offices and in particular NESDIS, to discuss deemed export regulations and their potential applicability to NOAA.**

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

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 Export Administration Regulations (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 its biannual Update Conferences it holds on the east and west coasts as well as through its various outreach visits with U.S. businesses. We encourage BIS to continue these efforts to clarify the deemed export regulations, including the fundamental research exemption. We also encourage BIS to expand its outreach visits to target key research institutes and universities that work with high technology and employ or sponsor foreign nationals to work in their research facilities. BIS's actions and planned activities have met the intent of our recommendation.

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

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

We understand that BIS established an internal deemed export task force late in fiscal year 2001 to review the current deemed export control policy and process. While these efforts were put on hold for most of fiscal year 2002, BIS informed us that the Under Secretary has recently requested that the task force put together an internal report assessing whether there is a need for a fundamental change in the deemed export control policy or how to make the current process work. We encourage the task force to address the above issues, including the fundamental research and other exemptions in the deemed export regulation. We look forward to seeing the task force's internal report on deemed export controls when it is completed. Accordingly, this recommendation will remain open.

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

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

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

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

Over the next six months, BIS reported that it will conduct an assessment of all referral case dispositions, including visa referrals, for fiscal years 1999 thru 2001 in an effort to further measure the referral process' success. This assessment will include the identification of criminal and administrative actions and other outcomes, such as the issuance of warning and outreach letters and detentions and seizures resulting from OEE investigations. BIS hopes this assessment will enable OEA to narrow its focus and fine tune this program to maximize its effectiveness.

While we understand that BIS's managers are convinced of the value of the visa application referral program, we are taking a closer look at this program as a part of our current review of BIS's export enforcement activities. We still maintain that BIS might be better able to measure the outcome of the visa referrals by creating a new performance measure, such as the number of significant cases resulting from visa referrals. We recognize that cases take a number of years of work before they can be termed "significant," but since such cases are at the heart of BIS's investigative mission, we believe it might be a good measure of the program's success to determine how many referrals actually end up as significant cases. This recommendation will remain open until BIS formally assesses the visa application review program and determines whether the resources dedicated to the program justify the results.

Recommendation for the National Oceanic and Atmospheric Administration

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