Interagency Review of the Export Licensing Processes for Dual-Use Commodities and Munitions

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Volume I

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June 18, 1999

PREPARED BY THE

OFFICES OF THE INSPECTORS GENERAL
OF THE
DEPARTMENT OF COMMERCE
DEPARTMENT OF DEFENSE
DEPARTMENT OF ENERGY
DEPARTMENT OF STATE
DEPARTMENT OF THE TREASURY
CENTRAL INTELLIGENCE AGENCY
### Acronyms

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACDA</td>
<td>Arms Control and Disarmament Agency</td>
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<tr>
<td>ACEP</td>
<td>Advisory Committee on Export Policy</td>
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<td>AECA</td>
<td>Arms Export Control Act</td>
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<td>BXA</td>
<td>Bureau of Export Administration, Department of Commerce</td>
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<td>CIA</td>
<td>Central Intelligence Agency</td>
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<td>DTC</td>
<td>Office of Defense Trade Controls, Department of State</td>
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<td>DTRA</td>
<td>Defense Threat Reduction Agency, Department of Defense</td>
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<td>EAA</td>
<td>Export Administration Act</td>
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<td>EO</td>
<td>Executive Order</td>
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<td>OC</td>
<td>Operating Committee</td>
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<td>OIG</td>
<td>Office of the Inspector General</td>
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</tbody>
</table>
PREFACE

We are providing this report for information and use. This review was undertaken as a cooperative effort of the Inspectors General of the Departments of Commerce, Defense, Energy, State, and the Treasury and the Central Intelligence Agency in response to your August 26, 1998, letter. Our objective was to update and expand on the 1993 interagency report on export licensing processes and answer your specific questions.

This report addresses issues that affect more than one agency and includes separate appendixes that contain the agency-specific reports outlining the issues related to each agency. The report has three volumes. Volume I has the interagency and Department of Commerce reports. Volume II has the Departments of Defense, Energy, and State reports. Volume III has the Limited Official Use and For Official Use Only portions of the interagency report, For Official Use Only text from the Department of Commerce report, and the entire Department of the Treasury and Central Intelligence Agency reports.

Management comments were not obtained for this interagency report due to time constraints. However, management comments on our agency draft reports were obtained from the appropriate officials of each agency and were considered in the preparation of this report. Their comments on an individual agency report are included in those reports. Officials at the Departments of Commerce, Defense, Energy, State, and the Treasury and the Central Intelligence Agency generally agreed with the concerns we raised.

We hope that this joint report will be useful in shaping the future of the export licensing processes for dual-use commodities and munitions.

(Signed) Johnnie E. Frazier
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(Signed) Gregory H. Friedman
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(Signed) John C. Payne
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June 18, 1999
Executive Summary

Introduction. The Inspectors General of the Departments of Commerce, Defense, Energy, State, and the Treasury and the Central Intelligence Agency have completed an interagency review of the export licensing processes for dual-use commodities (goods and technologies that have military and commercial applications) and munitions. The review was undertaken as a joint project requested by Senator Fred Thompson, Chairman, Senate Governmental Affairs Committee, in his August 26, 1998, letter to the six Inspectors General.

Background. The primary legislative authority for controlling the export of dual-use commodities is the Export Administration Act of 1979, as amended. The act last expired in 1994, and its provisions are continued by Executive Order under the authority of the International Emergency Economic Powers Act. The export of goods and technologies that have only military use is controlled under the authority of the Arms Export Control Act.

The dual-use export licensing process is managed and enforced by the Department of Commerce, and the munitions export licensing process is managed by the Department of State. The Departments of Defense and Energy review export license applications and make recommendations to Commerce and State. The Central Intelligence Agency and the U.S. Customs Service (Department of the Treasury) provide relevant information to Commerce and State to assist them in the license review process. Customs also enforces licensing requirements on all U.S. export shipments except outbound mail, which is handled by the U.S. Postal Service. In FY 1998, the Department of Commerce received 10,696 dual-use export license applications, and the Department of State received 44,212 munitions export license applications.

Objectives. The overall objective of the interagency review was to evaluate the export licensing processes for dual-use commodities and munitions to determine whether current practices and procedures were consistent with established national security and foreign policy objectives. This report is organized around seven areas that update and expand on a previous interagency Inspectors General report, “The Federal Government’s Export Licensing Processes for Munitions and Dual-Use Commodities,” September 1993, and address the 14 questions posed by Senator Thompson in his August 1998 letter to the six Inspectors General.

Review Results.

Statutes and Executive Orders. In general, the provisions of the Export Administration Act, as clarified by Executive Order 12981, “Administration of Export Controls,” are consistent and unambiguous. However, Commerce and Defense OIGs...
determined that the dual-use licensing process would be best served if the Export Administration Act were reenacted. Overall, the Arms Export Control Act is also consistent and unambiguous. Executive Order 12981 is generally consistent with the Export Administration Act. However, the Executive Order needs modification to compensate for the merger of the Arms Control and Disarmament Agency with the Department of State and to clarify representation at the Advisory Committee on Export Policy. In addition, policy and regulations regarding the export licensing requirements for items and information “deemed to be exports” needs clarification, and the exporter appeals process should be formalized.

**Export License Review Processes.** The Departments of Commerce, Defense, Energy, and State, Offices of the Inspectors General, were satisfied with the overall referral of dual-use license applications and the interagency dispute resolution process. Officials from those Departments were generally satisfied with the 30-day time limit for agency reviews under Executive Order 12981; however, not every agency could meet that limit, and several Defense Components and the Central Intelligence Agency indicated they could benefit from additional time to review dual-use export license applications. The Departments of Defense and State, Offices of the Inspectors General, were satisfied with the referral of munitions licenses; however, the Department of Commerce, Office of the Inspector General, believed that the inclusion of the Department of Commerce in the munitions referral process should be considered. The Commerce commodity classification process could benefit from additional input on munitions-related items from the Departments of Defense and State. Also, Energy officials believed a more formal review process for munitions was needed, as the officials were unclear on Energy’s role in the current process.

**Cumulative Effect of Multiple Exports.** The U.S. Government lacked an overall mechanism for conducting cumulative effect analysis. However, some of the agencies involved in the export licensing process performed limited cumulative effect analyses, with the degree of analyses performed varying across the agencies. The Departments of Commerce, Defense, Energy, and State, Offices of the Inspectors General, concluded that additional cumulative effect analyses would benefit the license application review process.

**Information Management.** The Departments of Commerce, Defense, and State, Offices of the Inspectors General, each questioned the adequacy of its Department’s export licensing automated information systems in regard to the completeness and accuracy of certain data, system interfaces, or modernization efforts. The Department of Energy, Office of the Inspector General, did not identify any significant issues. With the exception of the Department of Defense, the audit trails for the respective export licensing automated systems were found to be adequate. Defense procedures did not ensure that final Defense positions were accurately recorded, and the Central Intelligence Agency reported unsatisfactory documentation of end-user checks on munitions license applications.

**Guidance, Training, and Undue Pressure.** Defense, Energy, and State licensing officials had adequate guidance to perform their mission; however, Department of Commerce licensing officers and Central Intelligence Agency licensing analysts could benefit from additional guidance. On-the-job training was the primary training available at the Departments of Commerce, Defense, Energy, and State for

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*Agencies in the report refer to the Departments of Commerce, Defense, Energy, State, and the Treasury and the Central Intelligence Agency.*
licensing officers. While the Department of Energy, Office of the Inspector General, concluded that the Department of Energy had an adequate training program, the Departments of Commerce, Defense, and State, Offices of the Inspectors General, identified a need for the establishment of a standardized training program. With very few exceptions, the Departments of Commerce and Defense licensing officials reported they were not improperly pressured to change recommendations on license applications. Energy and State export licensing officials reported they were not pressured regarding their recommendations.

Monitoring Compliance and End-Use Checks. The Department of Commerce did not adequately monitor reports from exporters on shipments made against licenses, and the Department of State’s Blue Lantern program could be improved. The Departments of Commerce and State still use foreign nationals to conduct an unknown number of end-use checks; however, the Department of Commerce, Office of the Inspector General, found that most end-use checks were being conducted by U.S. and Foreign Commercial Service officers or Department of Commerce enforcement agents, and the Department of State, Office of the Inspector General, concluded it may be appropriate to use foreign nationals to do the checks under certain conditions.

Export Enforcement. The Department of the Treasury, Office of the Inspector General, determined that although U.S. Customs Service export enforcement efforts have produced results, the U.S. Customs Service is hindered by current statutory and regulatory reporting provisions for exporters and carriers. The Department of the Treasury, Office of the Inspector General, also identified operational weaknesses in the U.S. Customs Service’s export enforcement efforts. Details of the Inspector General’s findings are contained in Volume III of this report. The U.S. Postal Service’s export enforcement efforts are also addressed in Volume III.

Recommendations, Management Comments, and Inspector General Responses. The participating Offices of the Inspectors General made specific recommendations relevant to their own agencies. Recommendations and management comments are included in the separate reports issued by each office, which are in Appendix C (Commerce), Appendix D (Defense), Appendix E (Energy), Appendix F (State), Appendix G (Treasury), and Appendix H (Central Intelligence Agency). Appendixes D, E, and F are in Volume II of this report. Appendixes G and H are in Volume III of this report. Because of time constraints, management was not asked to respond to this interagency report. Management comments discussed in this report are those provided in response to the individual reports of the participating Offices of the Inspectors General.
# Table of Contents

## Executive Summary

i

## Introduction

1

  - Background 1
  - Objectives 8

## Review Results

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Statutes and Executive Orders</td>
<td>9</td>
</tr>
<tr>
<td>B. Export License Review Processes</td>
<td>14</td>
</tr>
<tr>
<td>C. Cumulative Effect of Multiple Exports</td>
<td>24</td>
</tr>
<tr>
<td>D. Information Management</td>
<td>27</td>
</tr>
<tr>
<td>E. Guidance, Training, and Undue Pressure</td>
<td>33</td>
</tr>
<tr>
<td>F. Monitoring Compliance and End-Use Checks</td>
<td>36</td>
</tr>
<tr>
<td>G. Export Enforcement (Volume III)</td>
<td>3</td>
</tr>
</tbody>
</table>

## Appendixes

<table>
<thead>
<tr>
<th>Appendix</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Review Process</td>
<td></td>
</tr>
<tr>
<td>Scope</td>
<td>41</td>
</tr>
<tr>
<td>Methodology</td>
<td>41</td>
</tr>
<tr>
<td>B. Thompson Questions</td>
<td>43</td>
</tr>
<tr>
<td>C. Department of Commerce Report</td>
<td>C-1</td>
</tr>
<tr>
<td>D. Department of Defense Report (Volume II)</td>
<td>D-1</td>
</tr>
<tr>
<td>E. Department of Energy Report (Volume II)</td>
<td>E-1</td>
</tr>
<tr>
<td>F. Department of State Report (Volume II)</td>
<td>F-1</td>
</tr>
<tr>
<td>G. Department of the Treasury Report (Volume III)</td>
<td>G-1</td>
</tr>
<tr>
<td>H. Central Intelligence Agency Report (Volume III)</td>
<td>H-1</td>
</tr>
</tbody>
</table>
Introduction

On August 26, 1998, Senator Fred Thompson, Chairman, Senate Committee on Governmental Affairs, requested that the Inspectors General at the Departments of Commerce, Defense, Energy, State, and the Treasury and the Central Intelligence Agency (CIA) review the export licensing processes for munitions and dual-use commodities. Specifically, he requested that the Inspectors General update and expand on a previous interagency Inspectors General report, “The Federal Government’s Export Licensing Processes for Munitions and Dual-Use Commodities,” September 1993 (1993 Interagency Report), and answer 14 specific questions (listed in Appendix B) related to the interagency export licensing process. The questions related to legislative authorities; the licensing process; the cumulative effect of exports; the information systems used in the licensing process; guidance, training, and undue pressure; and monitoring compliance with export license conditions and end-use checks.

The dual-use export licensing process is managed by the Department of Commerce (Commerce), and the munitions export licensing process is managed by the Department of State (State). However, the Departments of Defense (Defense) and Energy (Energy) have a significant role through the use of their expertise in reviewing applications. The CIA principal role in the export licensing processes is to provide intelligence information on end users. The Department of the Treasury (Treasury) and its U. S. Customs Service (Customs) administer regulations that enforce U.S. export controls and restrict exports from the United States to certain countries.

Background

The United States controls the export of certain goods and technologies for national security, foreign policy, or nonproliferation reasons under the authority of several different laws. The primary legislative authority for controlling the export of dual-use commodities (goods and technologies that have civilian and military application) is the Export Administration Act (EAA) of 1979, as amended (Title 50, United States Code, Appendix 2401). The EAA gives authority to the Secretary of Commerce to issue rules and procedures for processing dual-use export license applications. The export of goods and technologies that have only military use is controlled under the authority of the Arms Export Control Act (AECA) (Title 22, United States Code, Section 2751). The AECA authorizes the President to control the export of items included on the U.S. Munitions List, which is maintained by State. State’s role in the munitions licensing process was recently expanded as a result of the National Defense Authorization Act for FY 1999. The authorization act requires all licenses associated with commercial satellites to be transferred from Commerce to State.

The Commerce Bureau of Export Administration (BXA) controls the export of dual-use commodities using the authority provided in the EAA. The EAA last expired in August 1994 and has not been reenacted. However, pursuant to Executive Order (EO) 12924, “Continuation of Export Control Regulations,” August 19, 1994, the President declared a national emergency and, under the authority of the International Emergency Economic Powers Act (Title 50,
United States Code, Section 1701), continued and amended the provisions of the EAA. Each year thereafter, and most recently on August 13, 1998, the President issued a notice, “Continuation of Emergency Regarding Export Control Regulations,” continuing the national emergency declared by EO 12924.

In December 1995, the President issued EO 12981, “Administration of Export Controls,” in response to the need for more transparency in the dual-use export licensing process. Specifically, it authorized Defense, Energy, State, and the Arms Control and Disarmament Agency (ACDA)\(^1\) to each have the authority to review any license application received by Commerce. In addition, EO 12981 established mandatory escalation procedures for all dual-use export license applications under interagency dispute and refined the timelines for both processes.

**Dual-Use Licensing Process**

BXA administers the U.S. Government’s export control licensing and enforcement system for dual-use commodities. BXA develops export control policies; issues export licenses; and enforces the laws and regulations for dual-use exports, including the Export Administration Regulations. BXA shares enforcement responsibilities with Customs.

BXA was established in 1987 in response to a congressional mandate to ensure adequate separation of the Department of Commerce’s export control and trade promotion roles and responsibilities. Before that time, Commerce’s export control functions were performed by the International Trade Administration, which continues to be responsible for Commerce’s trade promotion activities. The number of export license applications that BXA received decreased from 65,111 in FY 1990 to 10,696 in FY 1998, primarily due to the loosening of export controls at the end of the Cold War.

In FY 1998, BXA referred 85 percent of the licenses it processed to one or more of the four referral agencies.\(^2\) Although the referral agencies can review all export license applications, they have provided BXA with delegations of authority for certain types of applications based on the level of technology, the appropriateness of the item’s stated end use, and the country of destination. Even with the delegations of authority, Defense receives and reviews most export license applications. Applications that include items controlled for nuclear proliferation reasons are also referred to Energy, and applications involving foreign policy issues are referred to State. ACDA receives and reviews applications with items subject to “regional stability” and “terrorism” controls; applications with items subject to certain national security controls; and applications with items controlled by the Australia Group, the Missile

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\(^1\)On April 1, 1999, the ACDA was transferred to State. It was previously an independent agency.

\(^2\)The four referral agencies are Defense, Energy, State, and ACDA.
Technology Control Regime, and the Nuclear Suppliers Group. BXA also sends applications that have potential biological, chemical, missile, and nuclear proliferation concerns to the CIA Nonproliferation Center for an end-user review. In addition, since the transfer of jurisdiction of commercial encryption products from State to Commerce in November 1996, the Department of Justice has been included in the referral process for encryption products.

A license application may be approved, denied, or returned without action. Most license applications are issued with conditions that require the exporter to abide by certain restrictions. The referral agencies can also recommend that additional conditions be placed on the export license before it is issued.

If any agency disagrees with a license decision, it can escalate the application to the dispute resolution committees. There are four levels of escalation for dual-use cases: the Operating Committee (OC), the Advisory Committee on Export Policy (ACEP), the Export Administration Review Board, and the President. The first three groups are chaired by the Department of Commerce and the voting members include the Departments of Commerce, Defense, Energy, and State and ACDA. Nonvoting members include the intelligence community and the Joint Staff.

End-use checks help determine if the overseas parties or representatives of U.S. exporters are suitable for receiving sensitive U.S. items and technologies. End-use checks consist of pre-license checks, which are conducted before the approval of a license application to obtain information about a foreign end user or intermediate consignee, and post-shipment verifications, which are conducted after goods have been shipped to determine whether the licensed item or technology was received and is being used appropriately.

Pre-license checks and post-shipment verifications are conducted by U.S. and Foreign Commercial Service (Commerce) personnel stationed overseas or by BXA export enforcement agents under its Safeguard Verification Program. End-use checks can be initiated by any of the parties involved in the license review process. Figure 1 depicts the dual-use export licensing process.

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3The Australia Group helps control the proliferation of chemical weapons; the Missile Technology Control Regime, of ballistic missiles; and the Nuclear Suppliers Group, of nuclear weapons.

4The Department of Justice is included as a voting member on all encryption cases.
The AECA authorizes the President to control the export of defense-related articles and services and to designate which items appear on the U.S. Munitions List. The list includes those items, technologies, and services that are inherently military in character and could, if exported, jeopardize national security or foreign policy interests of the United States. In EO 11958, “Administration of Arms Export Controls,” January 18, 1977, the President delegated the responsibility for administering export functions associated with the AECA to the Secretary of State. Within State, that function is delegated to the Bureau of Political-Military Affairs, Office of Defense Trade Controls (DTC). That office carries out its responsibilities by registering persons or companies involved in defense trade, approving or denying export licenses, and ensuring compliance with the AECA and other applicable laws and regulations.

In FY 1998, approximately 27 percent of munitions license applications were referred to other agencies for review. State referred license applications to Defense, Energy, the National Aeronautics and Space Administration, and various bureaus within State. The reviewing office or agency can recommend that DTC issue, deny, or return the license application to the applicant without action. The reviewing agencies can also specify conditions with which the applicant must comply. DTC received 44,212 munitions license applications during FY 1998.
The AECA requires that no defense-related article or service be sold or leased by the U.S. Government to any country unless that country agrees not to transfer the article or service to another country. Recipient countries also agree not to use the item for purposes other than those for which it was furnished, unless such transfer or use is approved in advance by the U.S. Government. The AECA also requires the State Department to develop standards for identifying high-risk exports that should be monitored after they are exported. A key element of that effort is verification of end use through pre-license and post-shipment checks. The process for initiating and conducting the checks is known as the Blue Lantern program. Overseas posts conduct pre-license checks to determine if the stated recipient is eligible to receive U.S. Munitions List items, has ordered the items, and intends to use them as indicated on the license application. Overseas posts conduct post-shipment checks to verify that items have been received and are being used in accordance with the license terms and provisions. Figure 2 depicts the munitions export licensing process.

Figure 2. Munitions Export Licensing Process

Defense Involvement in the Processes

The Defense Threat Reduction Agency (DTRA) is the primary Defense agency that advises Commerce and State on export license applications, and the Technology Security Directorate, DTRA, performs that function. DTRA receives export license applications from Commerce and State, refers those

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Prior to October 1, 1998, the Technology Security Directorate was the Defense Technology Security Administration. Only the current name is used in this report.
applications to Defense Components\textsuperscript{6} and DTRA divisions, develops the final Defense position on the applications, and sends the Defense position back to Commerce and State; reviews selected dual-use and munitions license applications for compatibility with U.S. Government and Defense trade security policy; and provides technical input on all dual-use and munitions export license applications referred to Defense. DTRA also monitors foreign country satellite launches involving exported U.S. satellites or related items.

Energy Involvement in the Processes

The Nuclear Non-Proliferation Act of 1978 authorizes the U.S. Government to control the export of those products and technologies that could provide other countries with the capability to produce nuclear weapons. The act requires Commerce to consult with Energy on cases involving nuclear-related technologies that have a dual-use potential. In addition, the act requires Commerce to maintain controls over certain commodities that might be used for nuclear purposes. Energy’s analysts factor many criteria into their review of dual-use license applications, including those identified in Part 744 of the Export Administration Regulations; namely, end users of the commodity, technical significance of the commodity and stated end use, potential risk of diversion, and nonproliferation credentials of the importing country. Occasionally State receives requests for the export of items that could be used in the design, development, or fabrication of nuclear weapons or explosive devices. State refers such requests to Energy for review. Energy processes munitions license applications in the same manner as dual-use license applications.

Treasury Involvement in the Processes

Treasury is not a participant in the policymaking or technical review aspects of the dual-use and munitions export license review and approval processes. Treasury provides law enforcement support to the application screening process and is responsible for enforcing license controls at exportation. Treasury’s Office of Foreign Assets Control supplements Commerce and State’s watchlists\textsuperscript{7} with the names of specially designated nationals and persons that are barred from U.S. trade due to embargoes or economic sanctions. Customs, a Treasury bureau, also supports the application screening process by periodically providing BXA with the subjects of open Customs investigations of trade violators to update Commerce’s watchlist. In addition, two Customs employees are detailed to State to assist in munitions license registration and application screening efforts. More importantly, Customs is responsible for ensuring that all U.S. exports comply with licensing requirements, except for outbound mail. Also, Customs agents assigned to overseas posts assist in end-use checks when requested and coordinate foreign investigations. Treasury’s Bureau of Alcohol, 

\textsuperscript{6}The Army, the Navy, the Air Force, the Defense Intelligence Agency, the National Security Agency, and the Joint Staff are among the Defense Components that review dual-use and munitions export license applications.

\textsuperscript{7}The BXA and DTC watchlists contain the names of parties that have been identified as warranting increased scrutiny for licensing purposes. The watchlists also include parties prohibited from engaging in U.S. trade due to embargoes or economic trade sanctions.
Tobacco and Firearms issues export permits for certain firearms included in the National Firearms Registration and Transfer Registry that also require a munitions license. However, the purpose of such permits is to update the registry, not authorize the exportation.

CIA Involvement in the Processes

The CIA directly supports the export licensing processes for dual-use commodities and munitions by providing relevant intelligence information that is available within the CIA on the end users and intermediaries identified in export license applications. The CIA obtains the information in the normal conduct of intelligence collection and analysis concerning proliferation activity and programs of weapons of mass destruction. The CIA provides additional support to the licensing processes by preparing finished intelligence reports and briefings, based on the results of its collection and analysis efforts, and by its scientific experts and licensing analysts participating in the deliberations of the licensing advisory groups.

Recent Trends in Licensing Activity

The number of dual-use and munitions export license applications submitted to Commerce and State decreased between FY 1993 and FY 1998. The number of dual-use export license applications submitted to Commerce decreased 59 percent, from 26,125 in FY 1993 to 10,696 in FY 1998. The number of munitions export license applications submitted to State decreased 12 percent, from 50,413 in FY 1993 to 44,212 in FY 1998. Figure 3 shows the dual-use and munitions licensing trends from FY 1993 through FY 1998.
The 1993 Interagency Report, issued by the Inspectors General, Commerce, Defense, Energy, and State, stated that changes were needed in interagency referral procedures, computer systems were secure but data inconsistencies existed, and proprietary information was improperly disclosed. The report included as appendixes the four reports written by the four Inspectors General. All four Departments generally agreed with the issues raised in the report.

Objectives

The overall objective of this interagency review, conducted by the Offices of the Inspectors General (OIGs) at Commerce, Defense, Energy, State, Treasury, and the CIA, was to evaluate the export licensing processes for dual-use commodities and munitions to determine whether current practices and procedures were consistent with established national security and foreign policy objectives. The review was to update and expand on the 1993 Interagency Report and answer 14 questions posed by Senator Thompson in his August 1998 letter to the six Inspectors General. This report is organized around seven areas that address those questions.
Review Results

A. Statutes and Executive Orders

Obtain and evaluate appropriate background information, including legislation and executive orders.

Commerce, Defense, Energy, and State OIGs generally considered the provisions of the EAA as modified by EO 12981 to be consistent and unambiguous. The EO clearly defines the export license referral process and grants the four referral agencies the right to review any license application received by Commerce. Defense and State OIGs found no inconsistencies or ambiguities in the AECA. Commerce and Energy OIGs determined that the policy and regulations regarding the export licensing requirements for “deemed exports” were not well defined and needed to be clarified. Treasury OIG found differences between the EAA and the Export Administration Regulations regarding the period for detaining merchandise. In Volume III of this report, the CIA OIG addresses its concerns regarding the BXA interpretation of Section 12(c) of the EAA, pertaining to controls over the use or release of information contained in export license applications (Appendix H).

Consistency and Clarity of the EAA and AECA

The EAA. Commerce, Defense, Energy, and State OIGs considered the provisions of the EAA as modified by EO 12981 consistent and unambiguous. Defense determined that the general nature of the EAA created a broad framework, but found no inconsistencies or ambiguities in it. The EAA gave agencies’ flexibility to change details regarding the components of the dual-use commodities licensing process without requiring annual changes to legislation.

Although Commerce OIG considered the EAA to be generally clear, it did determine that the EAA contained ambiguous language concerning the extent to which Commerce must refer license applications to other agencies. However, EO 12981 mitigated that ambiguity in December 1995 by authorizing Defense, Energy, State, and the ACDA to review any license application received by Commerce. Each agency has an opportunity to provide its perspective, concerning national security or foreign policy issues, about a potential dual-use export transaction, thus making the licensing process more transparent. Commerce and Defense OIGs determined that the dual-use licensing process would be best served through reenactment of the EAA. The EAA last expired

8Deemed exports involve release to a foreign national of certain technology and software subject to the Export Administration Regulations.

9Agencies in this report refer to Commerce, Defense, Energy, State, Treasury, and the CIA.
in August 1994. Since then, the authority for imposing export controls has been derived from the International Emergency Economic Powers Act. However, that act gives Commerce less enforcement powers and penalty authority than the EAA. Commerce OIG observed that with no current dual-use export control legislation, the United States could be sending an ambiguous message to other countries, including U.S. allies, about the commitment of the United States to export controls. Reenacting the EAA would also update and strengthen enforcement provisions. Commerce OIG recommended that Congress reenact the EAA, retaining the provisions of EO 12981.

**The AECA.** Defense and State OIGs found no inconsistencies or ambiguities in the AECA. One senior State official noted that the AECA was extremely clear in delineating that State makes the final decision on whether an application will be approved or not, and State OIG came to a similar conclusion.

**Treasury Findings.** Although Treasury does not participate in the review of export license applications, it does have enforcement responsibilities under the EAA and the AECA. Treasury OIG found export control requirements for dual-use commodities under the EAA to be less stringent than those for munitions under the AECA. However, details regarding those differences are for “Limited Official Use” and are not included in this volume of the report. They are addressed in the Treasury report included in Volume III of this report (Appendix G).

### Clarity of Export Licensing Requirements for Foreign Nationals

According to the Export Administration Regulations, any release\(^ {10} \) to a foreign national of technology or software that is subject to the Export Administration Regulations is “deemed to be an export,” commonly referred to as a “deemed export,” to the home country of the foreign national. In such instances, the U.S. host(s) would generally be required to obtain an export license before providing the foreign national access to technology or software that may be subject to export controls. According to a BXA official, a deemed export license might also be required for a foreign visitor who is affiliated with an entity involved in proliferation activities, regardless of the technology or software that the visitor might access.

During this review, a BXA official expressed concern that Federal laboratories, including those at Energy, were not applying for export licenses for foreign nationals who might have access to export-controlled technology or software, or both, while visiting the laboratories. Commerce OIG noted that BXA had also not received any deemed export license applications from any other Federal laboratories, including those at Commerce’s National Institute of Standards and Technology; Defense institutions; and the Department of Health and Human Services’ Centers for Disease Control and Prevention. After examining the

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\(^ {10} \) Release includes, among other things, visual inspection by foreign nationals of U.S.-origin equipment and facilities, oral exchanges of information in the United States and abroad, and application to situations abroad of personal knowledge or technical experience acquired in the United States.
general provisions in the Export Administration Regulations and after discussions with BXA officials on the topic, Commerce OIG determined that not only were the licensing regulations on deemed exports not well defined, but also the export control policy concerning deemed exports itself was ambiguous. The lack of understanding regarding deemed exports could damage national security if sensitive technology is released to inappropriate end users.

Energy OIG reviewed a small sample of projects at the Energy laboratories in which foreign nationals had participated to determine whether some of the hosts of foreign nationals should have acquired deemed export licenses. Energy OIG found that both the guidance promulgated in the Export Administration Regulations and Energy guidance were not clear regarding when a deemed export license would be required for an assignment involving a foreign national. Energy OIG also found that the processes at Energy laboratories for reviewing foreign national assignees generally relied on the host of the assignee to determine whether there were export concerns associated with the assignment; several hosts were not aware of or did not understand the requirements for deemed export licenses; and several hosts did not appear to appropriately execute their host responsibilities. Energy OIG concluded that there were sufficient indicators of possible problems with Energy’s implementation of the deemed export licensing process to warrant a review by Energy officials.

Commerce OIG recommended that the Under Secretary for Export Administration coordinate with the National Security Council to clarify what the United States’ goal is with regard to requiring deemed export licenses and to revise the policy and regulations for deemed exports as necessary to make it clear who needs deemed export licenses. BXA management partially concurred, but stated that the Commerce OIG report ignored “the most serious aspect of the issue—the current standard being employed for triggering ‘deemed export’ license applications.” Commerce OIG also recommended that BXA implement an outreach program to explain and seek compliance with export license requirements. BXA management concurred.

Energy OIG recommended that the Assistant Secretary for Nonproliferation and National Security coordinate with BXA to obtain guidance regarding when a visit or assignment by a foreign national would require an export license. Energy management concurred, stating that it has formed a task force to coordinate this effort with Commerce.

Defense OIG did not perform any work on this issue during the interagency review. However, in March 1999, the Deputy Secretary of Defense initiated a study on counterintelligence and security issues at Defense laboratories. The Inspectors General of the Military Departments and DTRA are conducting the study, which will partially address the issue.

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11The Energy order defined “assignments” as visits by foreign nationals for more than 30 calendar days.

12BXA stated that the current standard requires an export license for hiring a foreign national when he or she will be exposed to technology in the United States that would require export authorization if it were transferred to his or her own country.
Consistency of EO 12981 With the EAA

Commerce, Defense, Energy, and State OIGs determined that EO 12981 is generally consistent with the objectives of the EAA. The EO more clearly defines the export licensing referral process by giving Defense, Energy, State, and the ACDA the right to review any dual-use license application received by Commerce. As a result, each agency has an opportunity to provide its perspective about a potential dual-use export.

Exporter Appeals Process

One area in which the EAA and EO 12981 have created confusion is the exporter appeals process. The EAA includes an exporter appeals process; the EO 12981 does not address exporter appeals. Although Commerce OIG determined that the Under Secretary for Export Administration had informally consulted with referral agencies on exporter appeals he overturned, it was noted that there is no requirement that he do so. Commerce OIG recommended that, for the sake of transparency in the export licensing process, the referral agencies should be formally included in the appeals process. DTRA officials stated that they would like exporter appeals to be treated like license applications.

EAA Section 10(j), “Appeals and Court Actions” (Title 50, United States Code, Appendix 2409[j]), establishes the right of exporters to appeal denied export license applications. When the U.S. Government formally denies an export license application, the exporter has the right to appeal to the Under Secretary for Export Administration, whose decision is considered final. Although BXA informally confers with the referral agencies on appeals, there is no requirement that the Under Secretary’s decision be made in consultation with the referral agencies involved in the export licensing process.

Process Concerns. DTRA officials would like exporter appeals treated in the same manner as dual-use license applications. The question was raised whether the exporter appeals process could be used to circumvent the interagency referral and escalation processes; that is, could a decision to deny an application be reversed without a formal interagency review? However, Commerce and Defense OIGs found no evidence that this had happened. A review by Commerce and Defense OIGs of 23 decisions on exporter appeals demonstrated that BXA had informally consulted with referral agencies before overturning a denial in all instances.

Review of Appeals Cases. From October 1, 1997, through December 31, 1998, the Under Secretary for Export Administration resolved 23 exporter appeals, reversing license application decisions in three instances. The Under Secretary referred the appeals to the Operating Committee (OC) or the Advisory Committee on Export Policy (ACEP) for advice in all three instances. DTRA participated in interagency discussions regarding two of the three appeals; it refused to participate in the third because DTRA officials thought the interagency escalation process in EO 12981 overturned the authority granted to the Under Secretary for Export Administration by the EAA.
DTRA officials questioned the authority for the exporter appeals process because the EAA has expired and EO 12981 makes no mention of the process. Commerce OIG, however, believed that there was ample authority for the appeals process and did not share the DTRA view that, because the EO fails to mention the exporter appeals process, the process is invalid.

Commerce OIG recommended that the Under Secretary for Export Administration work with the National Security Council to amend EO 12981 to establish formal procedures that include the referral agencies in the appeals process and encouraged Congress to address the issue when drafting new export control legislation. BXA management concurred.

**Representation at the ACEP**

Commerce and Energy OIGs determined that BXA and Energy licensing officials had different interpretations of the language in EO 12981 pertaining to representation at ACEP meetings. The EO states that the ACEP shall have as its members Assistant Secretary-level representatives from Defense, Energy, State, and the ACDA. It also provides for representatives to be of a lesser rank, such as a Deputy Assistant Secretary or equivalent. It further states that “regardless of the department or agency representative’s rank, such representative shall speak and vote at the ACEP on behalf of the appropriate Assistant Secretary or equivalent.”

An Energy official stated that the language in the EO gave agencies the flexibility to decide who should attend ACEP meetings. However, BXA officials disagreed with that interpretation and insisted that it was the intent of the drafters of the EO that representatives to the ACEP would be at the Assistant Secretary level or equivalent.

Energy OIG believed that although the language in the EO could be clearer regarding ACEP membership, the EO did not require that participation at ACEP meetings be limited to only Assistant Secretary-level officials. Energy OIG concluded that the agencies involved should jointly determine the level of representation at ACEP meetings.

Commerce OIG recommended that the Under Secretary for Export Administration request that the National Security Council clarify the issue in an amendment to the EO. BXA management agreed that the advisory agencies need to improve the level of representation at the ACEP and was working toward that end. However, BXA indicated that it does not believe that the issue should be referred to the National Security Council because the cited language that Energy relies on to send less than Assistant Secretary-level representation is taken out of context.
B. Export License Review Processes

Review and evaluate the interagency export license referral, review, and escalation processes for dual-use commodities and munitions to determine whether current practices and procedures are consistent with established national security and foreign policy objectives.

Commerce, Defense, Energy, and State participate in the review and approval of dual-use license applications. Defense, Energy, and State participate in the review and approval of munitions license applications. Treasury provides law enforcement information and the CIA provides intelligence information, when requested, for dual-use and munitions license applications. Commerce, Defense, and State OIGs concluded that the dual-use referral process had improved since 1993. All six OIGs expressed concern about some aspect of the export license review process.

- Commerce, Defense, and State OIGs identified opportunities to provide more transparency to the commodity classification process by BXA referring classification requests concerning agreed-upon commodities to referral agencies. BXA officials seldom refer commodity classification requests to Defense or State and, therefore, do not benefit from the perspective of Defense and State analysts.

- Commerce, Defense, Energy, and State OIGs were satisfied with the overall Commerce referral of dual-use license applications, although between them, Defense and Energy found that 6 of 60 non-referred dual-use license applications cases should have been referred to them by BXA.

- Although Commerce OIG believed that the National Security Council and Congress should consider opening up the munitions licensing process to include referral of some munitions13 license applications to BXA, State officials did not agree. Defense and State were satisfied with the overall State referral of munitions license applications. Energy OIG found that while procedures for processing dual-use license applications are clearly articulated in relevant regulations, there is no equivalent process for reviewing munitions applications. As a result, Energy’s role in reviewing munitions applications was unclear. In addition, there is no process for interagency meetings on munitions applications or for escalating disagreements over munitions applications.

- Commerce OIG identified opportunities to improve referrals to Treasury and CIA. Defense OIG determined that DTRA did not always appropriately refer license applications to Defense Components for review.

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13Those munitions that are controlled by multilateral regimes, such as the Australia Group, as dual-use but are licensed by the United States as munitions.
• Commerce, Defense, Energy, and State OIGs believed that the 30-day limit on dual-use license reviews contained in EO 12981 was appropriate; however, Defense Components stated they could use additional time. State OIG reported that one office in State was unable to meet the deadline in 27 percent of its FY 1998 dual-use reviews. However, that office reviewed each case for national security and foreign policy concerns, even though State did not enter an official position in many cases. State OIG determined the cause was inadequate resources. Commerce and CIA OIGs determined that CIA licensing analysts may need more than the currently provided 9 days to search for intelligence information on end users in certain countries.

• Commerce, Defense, Energy, and State OIGs were satisfied with the interagency dispute resolution process for dual-use license applications; however, the merger of ACDA and State could adversely affect ACEP operations because of the resulting even number of ACEP members and the possibility of a tie vote. In addition, the National Security Agency and the Department of Justice questioned the objectivity of the OC Chair.

Commodity Classification Process

BXA officials seldom refer commodity classification requests to Defense or State and, therefore, do not benefit from the perspective of Defense and State analysts. Commerce, Defense, and State OIGs identified opportunities to provide more transparency to the commodity classification process by BXA referring classification requests concerning agreed-upon commodities to referral agencies. BXA had not fully complied with the 1996 National Security Council guidance to refer all munitions-related commodity classification requests to State and Defense.14

Background. Exporters are responsible for determining whether an item requires an export license, but BXA will advise an exporter whether an item is subject to the Export Administration Regulations and, if applicable, identify the appropriate export control classification number. Exporters can verbally inquire about a commodity classification but only written inquiries result in a binding determination. While there are no general provisions for BXA to refer commodity classification requests to Defense or State, National Security Council guidelines instruct BXA to “share with State and Defense all commodity classification requests for items/technologies specifically designed, developed, configured, adapted and modified for a military application, or derived” from such items or technologies.

Concerns of Commerce, Defense, and State OIGs. In a 1996 letter to the Deputy Assistant Secretary for Export Administration, the Director, Technology

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14Commerce OIG noted that DTRA provided BXA a delegation of authority for munitions-related commodity classification requests. DTRA officials, however, stated that it was not a delegation of authority to Commerce for commodity classification requests, but a request for additional, summary information on commodity classification decisions.
Security Directorate, DTRA, requested that BXA provide, on a weekly basis, a copy of completed munitions-related commodity classification requests to Defense. However, during this review DTRA and DTC licensing officials indicated a need for more transparency in the commodity classification process, citing the example of a crash investigative report that BXA had mistakenly determined needed no license. The problem was revealed when BXA allowed the release of a 1995 investigative report on the crash of a Chinese rocket carrying the satellite. DTRA and DTC were concerned that BXA might be advising exporters that munitions-related items are licensable by BXA or require no license at all—without a DTRA and DTC review.

Joint Review of Commodity Classification Decisions. Commerce and Defense OIGs invited analysts from DTRA and DTC to review a sample of commodity line items whose original classification determinations were made by BXA. Of the 103 line items selected, DTRA identified 13 that merited discussion with BXA, and DTRA ultimately disagreed with the BXA decision on 5 classification determinations. In two of the five cases, DTRA argued that the items fell under the International Traffic in Arms Regulations, not under the Commerce Control List. Regardless of whether those items fell under the International Traffic in Arms Regulations or the Commerce Control List, Commerce OIG determined that BXA should have referred those commodity classification requests to State in accordance with the 1996 National Security Council guidance, especially since the manufacturers’ literature described the items as “militarized.” BXA disagreed, stating that BXA personnel had sufficient information to demonstrate that the items were not munitions. In the remaining three cases, DTRA agreed that the items fell under the Commerce Control List but disagreed with BXA over the export control classification number. BXA ultimately agreed with the DTRA decision for one of the three commodity classifications but maintained its original position on the other two.

Commerce OIG recommended that BXA, in conjunction with Defense and State, work with the National Security Council to develop specific criteria and procedures on how to implement the 1996 National Security Council guidance for the referral to Defense and State of munitions-related commodity classifications. BXA management concurred but stated that the crash investigative report was not a true commodity classification.

Defense OIG recommended that the Director, Technology Security Directorate, DTRA, work with the Assistant Secretary for Export Administration to develop additional guidance and procedures on how to implement the 1996 National Security Council guidance. Defense management concurred.

Referral of Dual-Use Export License Applications

Commerce, Defense, Energy, and State OIGs found that respective agency officials expressed overall satisfaction with the BXA referral of dual-use license applications and concluded that EO 12981 resolved most of the referral issues that were in the 1993 Interagency Report. The 1993 Interagency Report stated that there was not complete accord between BXA and most of the other agencies.

15Officials from State chose not to participate in the review.
regarding which dual-use license applications should be referred by BXA for review. However, with the issuance of EO 12981 in December 1995, the process for referring dual-use license applications became more transparent because EO 12981 allows each referral agency to determine the volume and type of applications it reviews. In FY 1998, BXA referred 85 percent of dual-use export license applications it processed to other agencies; in FY 1993, it referred 53 percent.

**Review of Non-Referred Applications.** Commerce, Defense, and Energy OIGs reviewed a randomly selected sample of 60 non-referred dual-use license applications to determine whether BXA had sufficient justification for not referring those applications to other agencies. BXA officials stated that the 60 applications had not been referred because those applications:

- lacked sufficient information to evaluate them and were returned to the exporter without action;
- were automatic denials; or
- were for commodities for which Defense, Energy, State, or ACDA had delegated their review authority to Commerce.

Defense officials concluded, however, that BXA should have referred 5 of the 60 non-referred export license applications to Defense, including 3 that BXA had denied because of Presidential sanctions against India and Pakistan. Two of the applications were amendments to previously approved applications, but Defense thought they should have been treated as new cases and referred accordingly. Energy officials concluded that BXA should have referred one of the applications to Energy because of the nuclear end user.

Commerce OIG recommended that BXA licensing officers should follow BXA referral procedures to ensure that all applicable export license applications are referred to the reviewing agencies, including amendments to existing licenses. Commerce management concurred; however, it asserted that it had made the correct decision in each of the 60 cases.

**License Application Referrals to Military Departments, the Intelligence Community, and Other Interested Organizations**

Commerce, Defense, and State OIGs addressed this question differently. Commerce OIG focused on referrals to the intelligence and law enforcement communities and identified opportunities to improve those referrals. Defense OIG focused on the referral of dual-use and munitions applications to Defense Components and identified opportunities to improve referrals to Defense Components. State OIG focused on the referral of munitions license applications outside the DTC.

Defense and State were satisfied with State’s overall referral of munitions license applications. However, Commerce OIG observed that the munitions licensing process did not benefit from BXA input on relevant applications.
Energy OIG found that while procedures for processing dual-use license applications are clearly articulated in relevant regulations, there is no equivalent process for reviewing munitions license applications. As a result, Energy’s role in reviewing munitions applications is not clear. In addition, there is no process for interagency meetings on munitions applications or for escalating disagreements over munitions applications.

**Referrals to the Intelligence Community.** Commerce OIG determined that the CIA and its Nonproliferation Center should play a larger role in the export licensing process. Commerce reported that a greater number of dual-use export license applications should be referred to the CIA for end-user reviews.

CIA OIG reported that, in 1998, approximately 10 percent of the dual-use license applications referred by BXA to the CIA were beyond the parameters established by an interagency agreement between Commerce and CIA. CIA considers the additional effort required to respond to such referrals to be an inefficient use of scarce resources. However, BXA officials stated that they would rather have BXA licensing officers be overly cautious and refer to the CIA license applications of concern.

Commerce OIG recommended that the Under Secretary for Export Administration engage in discussions with the Director of Central Intelligence to seek ways to strengthen the role of the intelligence community in reviewing export license applications. BXA management concurred.

**Referrals to the Law Enforcement Community.** A key element missing from the export licensing process is the routine screening of all license application data against the Treasury Enforcement Communication System during the initial phase of processing. That system contains information concerning trade law violators and was created to provide interagency access to a common database of sensitive information. Routine screening of license application data against the Treasury Enforcement Communication System would alert licensing and enforcement authorities of potential law enforcement concerns regarding applicants or parties involved in the export transaction. That is particularly applicable to State because Title 22, United States Code, Section 2778(g)(4), prohibits the issuance of munitions licenses to persons or parties involved in the export transaction who are under indictment or who have been convicted of trade law violations.

**Screening Dual-Use License Information.** Commerce’s license application data is not screened directly against the Treasury Enforcement Communication System. Instead, Commerce periodically updates its watchlist with data from the Treasury Enforcement Communication System regarding the subjects of ongoing Customs investigations. Such updates were not a routine occurrence and, consequently, did not ensure timely and comprehensive screening of license data against the Treasury Enforcement Communication System.

**Screening Munitions License Information.** Treasury is required to assist State in the screening of munitions license applications for law enforcement concerns. Customs detailed two employees to State to provide that support. Applicants for munitions licenses are required to register with State prior to applying for an export license. All registrants are routinely screened.
against the Treasury Enforcement Communication System. However, individual license applications are not routinely screened against the Treasury Enforcement Communication System. Treasury OIG determined that the reason that DTC licensing officers did not refer all applications to Customs was because the volume of applications and associated queries would slow down the review process. State OIG determined that the primary reason for not doing so was because of inadequate resources to adjudicate the results of the checks.

Treasury OIG tested a sample of 24 dual-use and munitions licenses selected from the interagency sampling data, plus 9 open Customs investigations involving licenses, to determine if the Treasury Enforcement Communication System had any significant derogatory information, such as indictments or convictions, on parties included on the license applications. No such information was found. The testing failed to substantiate that any of those licenses, including the nine under investigation, should have been disapproved, suspended, or revoked.

Commerce OIG recommended that BXA and Customs review the feasibility of updating a BXA-Customs Memorandum of Understanding to allow the screening of all dual-use license application data against the Treasury Enforcement Communication System. BXA management nonconcurred, stating that Customs had provided BXA with data to add to its watchlist and, therefore, the Memorandum of Understanding did not require updating. However, Commerce OIG had seen no real improvement in the screening process for 3 years since it first recommended such action and reaffirmed its recommendation.

Treasury OIG recommended that Customs work with Commerce and State to review the adequacy of Treasury Enforcement Communication System screening support and determine whether improvements could be made. Customs nonconcurred for a number of reasons, the most significant being the impact on resources. However, Customs indicated it would review the matter with Commerce and State.

**Referrals to Military Departments.** DTRA did not always appropriately refer license applications to Defense Components for review. Of the applications that Defense OIG reviewed, Defense Components considered that 12 percent of the dual-use and 24 percent of the munitions license applications were not properly referred. DTRA personnel stated that it is impossible for them to develop a formula or policy that would identify more specifically which cases need to be referred to each Defense Component.

DTRA provided Defense Components the capability to query a database of dual-use applications Commerce had referred to Defense, and DTRA issued to Defense Components a summary report of munitions applications State had referred to Defense. The query capability and summary report gave Defense Components the opportunity to identify and obtain the applications they were interested in reviewing. DTRA requested that Defense Components identify the types of dual-use and munitions license applications they would like to review, although not all Defense Components had responded to the DTRA request. Except for the Defense Intelligence Agency, Defense Components have been referred about the same number of cases annually over the past 8 years.
Defense OIG recommended that the Director, Technology Security Directorate, DTRA, reiterate his request that Defense Components identify the types of licenses they would like to review and request that Defense Components review available dual-use and munitions license application summaries to determine which cases they would like to review. Defense management concurred.

**Munitions Referral Process.** Overall, Defense and State were satisfied with State’s referral of munitions license applications. State OIG tested a random sample of 100 munitions license applications to determine whether they were properly referred. No cases were identified in the sample as having been improperly referred.

**Commerce Concerns.** Commerce OIG observed that although the other export licensing agencies have the opportunity to participate in the dual-use export licensing process, BXA lacks the same opportunity to participate in the munitions licensing process. State refers license applications to other agencies or bureaus for review because of concerns about technical or foreign policy issues related to the applications, but it does not refer any munitions license applications to BXA for review. However, because of the limited number of items subject to both the International Traffic in Arms Regulations and the Export Administration Regulations, Commerce and State could benefit from having a complete picture of what applications each agency is approving or denying. Although Commerce OIG did not suggest that BXA be consulted on export licenses for all munitions, it did recommend that Congress and the Administration evaluate the benefits of making the munitions licensing process more transparent with regard to those items that may be dual-use but fall under the International Traffic in Arms Regulations. BXA management concurred, stating that as Defense becomes increasingly dependent on commercial off-the-shelf procurement, the viability of the commercial sector (whose growth has been export driven) becomes a national security issue.

State OIG was not convinced that BXA should be involved in the munitions licensing process because it was uncertain as to what value a BXA review would add. DTC officials stated that they were adamantly opposed to BXA reviewing munitions applications. State OIG believes that if BXA feels strongly about participating in the munitions licensing process, it should discuss this with State.

**Energy Concerns.** Energy OIG found that while procedures for processing dual-use license applications are clearly articulated in relevant regulations, there is no equivalent process for reviewing munitions applications. As a result, the Energy role in reviewing munitions applications was not clear. In addition, there is no process for interagency meetings on munitions applications or for escalating disagreements.

**Time to Review Dual-Use Licenses**

Commerce, Defense, Energy, and State officials stated that the 30-day limit on dual-use license reviews contained in EO 12981 was appropriate; however, Defense Components stated they could use additional time. In addition, in FY 1998, one State office did not enter an official vote in roughly 27 percent of
the applications referred to it. Commerce and CIA OIGs determined that CIA licensing analysts may need more than 9 days currently allowed to provide intelligence information on end users in certain countries of concern.

**Background.** EO 12981 states that within 30 days of receipt of a referral and all required information, an agency shall provide the Secretary of Commerce with a recommendation to either approve or deny the license application. An agency that fails to provide a recommendation within 30 days shall be deemed to have no objection to the Secretary’s decision. When the referral agency does not respond to a license application in the specified time period, the application is automatically “pulled back” from the agency.

**Results.** Commerce, Defense, Energy, and State officials stated that the EO 12981 time limit was adequate for them to review dual-use export license applications. However, the CIA reported that it has difficulty meeting the 9-day requirement imposed by BXA for end-user reviews, especially in cases where multiple end users are involved, a large volume of requests are made simultaneously, or licensing analysts are otherwise not available to begin an immediate review of the license application. Commerce and CIA OIGs concluded that CIA analysts need more time to perform end-user reviews in certain countries of concern.

While senior DTRA officials stated 30 days were adequate to review dual-use license applications, three of seven DTRA dual-use licensing officers stated that they had insufficient time to review applications. In addition, Army, Navy, Air Force, and Joint Staff personnel stated that they could use additional time to review dual-use license applications, and Defense Intelligence Agency personnel stated that they limited their efforts to conducting end-user reviews.

**Pullbacks.** Based on a sample of 179 referred dual-use export licenses, Commerce OIG determined that Defense, Energy, and State experienced some “pullbacks.” State had the greatest number of pullbacks with 19 (12.4 percent) of 153 applications, Energy had 2 (3.6 percent) of 56, and Defense had 3 (2 percent) of 172. State OIG determined that 1 State office did not respond within 30 days for 1,244 (27 percent) of the 4,500 applications it reviewed. In each of the applications in question, the State office reviewed the application and consciously decided whether to enter a formal position, let the disposition of the application lapse to the Commerce position, or allow the application to be escalated by another agency. Consequently, every case was reviewed for national security and foreign policy concerns, even though in many cases State did not enter an official position. State OIG determined that there was only one person responsible for reviewing approximately 4,500 cases. That problem has been resolved through the merger of State and ACDA, as an additional person was assigned to review dual-use license applications. Commerce OIG recommended that BXA periodically review State’s pullback profile. BXA management concurred.

**CIA Reviews.** CIA OIG reported that from 1995 through 1998 the number of end-user reviews performed by the CIA more than doubled and that the increased work load was taxing the resources available. However, the CIA reported that BXA has insisted that the CIA complete its end-user reviews within 9 calendar days of receipt so that BXA can provide available intelligence
information to the reviewing agencies at the same time it refers license applications. The short time frame helps BXA meet the time frame requirements imposed by EO 12981.

**Interagency Dispute Resolution Process**

The interagency dispute resolution process for dual-use licenses provided Commerce, Defense, Energy, and State officials a meaningful opportunity to review and comment on applications. Commerce, Defense, Energy, and State officials did not hesitate to use the dispute resolution process and believed the process was working as intended. However, Commerce OIG was concerned that the merger of ACDA and State could adversely affect ACEP operations. In addition, officials at the National Security Agency and the Department of Justice questioned the objectivity of the OC Chair.

**Escalations Under EO 12981.** EO 12981 provides general guidance for resolving interagency concerns and differences over dual-use license applications. It further provides a process to escalate cases to a higher level of authority when the reviewing agencies are not in agreement. The process authorizes participating agencies to escalate applications to the OC at the office director level, to the ACEP at the Assistant Secretary level, and to the Export Administration Review Board at the Cabinet level. A participating agency may appeal a majority decision of the Export Administration Review Board to the President.

Since FY 1995, the number of applications reviewed by the OC had increased and the number of applications appealed to the ACEP had declined. The OC reviewed an average of 312 cases per year from FY 1993 through FY 1995, and an average of 662 cases per year from FY 1996 through FY 1998. The ACEP reviewed an average of 102 cases per year from FY 1993 through FY 1995, and an average of 48 cases per year from FY 1996 through FY 1998.

**Impact of ACDA and State Merger on ACEP Operations.** Although the interagency dispute resolution process appeared to be functioning properly, Commerce and State OIGs concluded that the April 1999 ACDA and State merger could adversely affect ACEP operations. Voting members of the ACEP included Commerce, Defense, Energy, State, and ACDA, and decisions were made by a majority vote. However, the merger of State and ACDA has decreased the number of voting members to four. The ACEP could have a problem if a vote resulted in a tie.

Commerce OIG recommended that the National Security Council review the issue and provide a procedure to follow in the event of a tie vote and that Congress consider the impact of the merger of ACDA and State when drafting new export control legislation. BXA management concurred.

**Objectivity of the OC Chair.** Although the OC Chair has the authority to decide all applications escalated to the OC without reflecting the recommendations of the majority of the participating agencies, the decisions of the Chair were usually based on interagency consensus. About 5 percent of the OC decisions made by the Chair were contrary to the majority decision, and nearly all of those decisions were escalated to the ACEP for a final decision.
According to National Security Agency and Department of Justice officials, the OC Chair informed the OC that BXA management had told her how to decide certain encryption and other dual-use cases. Commerce OIG and National Security Agency officials discussed six export license applications that the National Security Agency believed illustrated its concerns. Commerce OIG determined that the cases were handled properly.

The OC Chair stated that in certain cases management had told her how to decide a case. However, she also indicated that this was a rare occurrence and generally involved a situation where she believed more information about the transaction was needed before a final decision could be made, and not necessarily a decision that she would ultimately disagree with if she had more time to consider. National Security Agency officials later provided Commerce OIG with an example of such a case, but none of the agencies had escalated the case to the ACEP, even though at least one had concerns about two destination countries.

The Assistant Secretary for Export Administration and his deputy stated that they have never “told” the OC Chair how to vote on a particular case; however, in an effort to expedite the licensing decision, they might have instructed her or provided her guidance as to the applicable policy for a particular export transaction—especially since the export control policies for encryption items are constantly changing to reflect advancement in technologies. By doing so, they indicated that they wanted the other agencies to escalate the case to the ACEP in order to force a policy decision. In theory, policy decisions made at the ACEP were supposed to set precedents for similar export license applications.

Commerce OIG recognizes that the OC Chair is a BXA employee and that the EO recognizes an OC decision as a Commerce decision that can be escalated by a dissenting member agency. However, Commerce OIG noted that the OC review process worked particularly well when the OC Chair made decisions based on a consensus. Thus, Commerce OIG recommended that the Under Secretary for Export Administration avoid any action that would interfere with the OC Chair’s ability to render an independent licensing decision and use Commerce’s right to escalate cases to the ACEP when Commerce disagrees with the OC Chair’s decision on a case. BXA management did not address the recommendation; however, its response indicated that from time to time BXA management officials have instructed the OC Chair on the provisions of the regulations or on changes in U.S. licensing policy to ensure that her actions were consistent with U.S. Government rules and policies or to bring a case review to closure where the loss of a sale is imminent or a case has exceeded the EO time frames.

**Munitions Dispute Resolution Process.** Munitions license applications do not have a formal escalation process because the primary concern is to ensure national security.\(^\text{16}\) In EO 11958, the President delegated the final decisionmaking authority for issuing munitions licenses to the State Department.

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\(^\text{16}\)Commerce OIG noted that national security is also a concern in the dual-use application process.
C. Cumulative Effect of Multiple Exports

Review whether the current dual-use and munitions licensing processes adequately take into account the cumulative effect of technology transfers resulting from the export of dual-use and munitions items, and the decontrol of munitions commodities.

The U. S. Government lacks an overall mechanism for assessing the cumulative effect of past exports or technology transfers. There are no formal assessments of technology transferred to foreign countries; however, the agencies involved in the export licensing processes perform some limited cumulative effect assessments, with the degree of the assessment performed varying across the agencies.

Background. Although individual exports and technology transfers may appear benign, the acquisition of U.S. exports and transfers over a long period of time, when combined with exports from other countries and indigenous resources, may allow U.S. adversaries to build weapons of mass destruction or obtain other capabilities that could threaten U.S. national security. For purposes of this report, “cumulative effect assessments” refer to assessments of the impact resulting from a proposed export when added to other past exports or technology transfers to a particular country.

Cumulative Effect Assessments at Commerce. Commerce OIG reported that BXA licensing officers had some institutional knowledge about what goods and technologies specific end users or countries were receiving because they tended to process export license applications dealing with the same commodities, exporters, and end users over time. However, the licensing officers did not routinely analyze the cumulative effect of proposed exports during the license reviews. Commerce OIG noted that to fully analyze the cumulative effect would be very difficult because, in addition to knowing what U.S. exports have been received, one would have to know the internal capabilities a specific country had and what technology it had acquired from other countries. However, Commerce OIG believes that this type of cumulative effect assessment, while difficult to make, would still be valuable during the export license application decisionmaking process.

Commerce OIG recognized that Energy laboratories conducted limited cumulative effect assessments for nuclear dual-use license applications received by Energy, but noted that there was no coordinated effort among the agencies to conduct such an assessment for all commodities. Therefore, it recommended that BXA work with the intelligence community, including Defense, Energy, and the CIA, to determine the feasibility of developing a mechanism to better track and assess the cumulative effect of dual-use exports to a specific country or region and to make that information available as part of the licensing process. BXA management agreed that tracking and assessing the cumulative effect of dual-use exports is desirable, but difficult to do. However, since cumulative effect results not only from the transfer of items under approved licenses, but also from the provisions of items not requiring a license and shipments from
foreign suppliers that would not be captured by our own licensing system, BXA believes that the assessment should be made in the multilateral list review process (for example, the Australia Group) instead of during the review of each individual license application.

**Cumulative Effect Assessments at Defense.** DTRA occasionally takes into account the cumulative effect of technology transfers but participants in the licensing process did not routinely analyze the cumulative effect of proposed exports or receive assessments to use during license reviews. In addition, Defense organizations did not conduct internally required annual assessments of the impact of technology transfers that could provide information on the cumulative effect of proposed exports. Senior Defense managers determined that a comprehensive assessment program would be costly and too slow for the licensing process and specific proposals to conduct assessments lacked focus. Defense OIG recommended that the internal Defense directive requiring annual assessments be revised to clearly state responsibilities and procedures regarding the performance of assessments designed to analyze the cumulative effect of technology transfers. In addition, to ensure the success of initiatives begun by Defense management in March 1999, Defense OIG recommended and management agreed to develop an action plan to define a process for identifying, prioritizing, and obtaining assessments related to the cumulative effect of technology transfers. Defense management concurred, stating that guidance on technology transfer assessments would be issued by September 30, 1999.

**Cumulative Effect Assessments at Energy.** Energy OIG determined that the Energy licensing process included a review for proliferation concerns. Energy’s Proliferation Information Network System provided Energy analysts classified intelligence information on end users and suppliers. Energy analysts could use data stored in the system to provide a summary of license applications sorted by destination countries, by exporter, by equipment and commodities, by type or description, or by export commodity classification numbers. Energy’s system contained information on export license applications that had been reviewed by Energy as far back as 1978. However, Energy did not have the information that BXA had on whether a specific commodity was shipped, and it did not have the information that State had on the final disposition of munitions cases. Energy OIG believed that if Energy analysts had access to that information, their assessments would be more complete.

**Cumulative Effect Assessments at State.** State OIG reported that there is no straightforward, comprehensive assessment of the cumulative effect of technology transfers resulting from the export of munitions and dual-use items. State indirectly assesses the cumulative effect through a series of processes. These included licensing officer review of each application to establish whether the items are in the military inventory of the intended recipient, the referral process, managerial review of countries of concern, reporting to Congress, and trend analysis. State OIG stated that State could more fully assess the cumulative effect of technology transfers by expanding the use of trend analysis.

**Cumulative Effect Assessments at CIA.** The CIA does not perform any formal cumulative effect assessments in connection with its review of individual license applications. But the CIA does provide Congress with biannual reports on the acquisition by foreign countries of dual-use commodities and technologies useful for the development or production of weapons of mass destruction,
including nuclear, chemical, and biological weapons and advanced conventional munitions, and on the trends in the acquisition of such technologies by those countries. In addition, the CIA performs a variety of analyses on broad issues that are disseminated to the licensing agencies; information pertaining to specific commodities may or may not be included in those analyses.

**Conclusion.** Commerce, Defense, Energy, and State OIGs agreed that assessments of the cumulative effect resulting from a proposed export or category of exports, although difficult to undertake, would be valuable to have during the export licensing review process for certain countries of concern. However, Commerce, Defense and State licensing officials noted that to fully assess the cumulative effect would be difficult and resource-intensive. Such assessments would need to consider technology transfers resulting from dual-use and munitions exports, foreign military sales, and third-country sales to foreign countries, as well as the internal capabilities of a specific country. Consequently, the ability to completely assess the cumulative effect of exports and technology transfers would require resources and coordination from all agencies involved in the licensing process. Such an interagency effort would probably require congressional direction.
D. Information Management

Evaluate the adequacy of export licensing automated systems and the audit trail.

Each agency had functioning automated systems to use in the export licensing process. Commerce, Defense, and State OIGs expressed concerns about aspects of their respective export licensing automated systems. Energy OIG did not identify any significant issues. The objective was not relevant to Treasury. Concerns about the adequacy of the automated systems related to the completeness and accuracy of certain data, system interfaces, and modernization efforts. The audit trails for the respective export license automated systems, with the exception of Defense, were found to be adequate. However, Defense procedures were not effective to ensure that final Defense positions were accurately recorded, and CIA OIG reported unsatisfactory documentation of end-user reviews performed by CIA analysts on munitions licenses referred by State. Each agency can take unilateral action to correct deficiencies noted; however, interagency cooperation during the development of automated systems is essential to ensure successful information transfer and improve integration among the agencies during the export licensing process.

Background on Automated Systems

The agencies involved in the export license review process used unique automated systems to support their roles in the export licensing process.

**Commerce System.** Commerce used the Export Control Automated Support System, an unclassified automated system, to process, store, and transmit dual-use export license information throughout the Department and to other Government agencies involved in processing export license applications. Commerce did not have an automated system to maintain data on munitions applications because it did not conduct license reviews for munitions applications.

**Defense System.** Defense used the Foreign Disclosure and Technology Information System, a classified system, for coordination, analysis, review, and decisionmaking on license applications involving the export of dual-use commodities and munitions to other nations and international organizations.

**Energy System.** Energy used the Proliferation Information Network System, a classified system, to support Energy’s export license review activities for nuclear dual-use commodities and munitions and certain nonproliferation activities. Also, as of December 1998, the system was determined to be year 2000 compliant.
State System. State used the Defense Trade Application System for processing munitions license applications. The automated system is unclassified, but no other agencies had access to it. State did not have its own automated system for dual-use licenses but has direct access to the Commerce Export Control Automated Support System.

Treasury Systems. Although not involved in the export license review and approval process, Treasury maintained post-license munitions data in the Customs’ Automated Export System and dual-use data in the Treasury Enforcement Communication System. The Treasury Enforcement Communication System captures derogatory information concerning trade law and other violations. The other system enables advanced electronic filing of export reporting data. Both systems contain sensitive but unclassified data. Customs plans to transfer the dual-use license data to the Automated Export System to consolidate all export license data in one automated system.

CIA System. CIA used the Export Control system, a classified system, for managing requests from and responses to Commerce and State concerning end users on dual-use license applications referred by Commerce and satellite licenses and technology assistance agreements referred by State.

Adequacy of the Information Systems

Each agency had functioning automated systems to use in the export licensing process, and the OIGs identified positive aspects of those systems. However, Commerce, Defense, and State OIGs each expressed concern about the adequacy of various aspects of their respective export licensing automated systems. Issues identified related to the completeness and accuracy of certain data, system interfaces, and modernization efforts.

Commerce. Commerce OIG reported that the Export Control Automated Support System contained accurate, complete, consistent, and secure information on dual-use export license applications. Overall, Commerce OIG found that the system’s internal controls were generally adequate and that the data in the system was sufficiently reliable. However, although numerous controls were functioning, some controls needed strengthening or further implementation. For example, some changes were needed to improve internal control reviews, data input controls, and database security controls. Commerce OIG agreed with the BXA assertion that it needed a new automated export licensing system with better query and expanded text capabilities, modern interfaces, and on-line access to exporter technical specifications. Commerce OIG also stated that a classified system may be warranted for BXA.

Defense. Defense OIG reported that the Defense automated system provided a useful communication and coordination mechanism for Defense Components. However, Defense OIG also stated that limitations existed in the system that reduced the support provided to export licensing decisionmakers. The limitations included the necessity to retype previous positions when revised versions of dual-use applications were received from Commerce, lack of access to the system by certain officials, incomplete explanations in comments fields on
how consolidated Defense positions were developed, insufficient coordination of modernization efforts, cumbersome query capability, and inability to perform image processing of hard-copy documents.

**Energy.** The Energy OIG review of the accuracy, completeness, consistency, and security of the Energy automated system was limited to an analysis of the 60 interagency-referred cases. Based on that analysis, the OIG reported that the Proliferation Information Network System contained, for the most part, accurate, complete, consistent, and secure information. Only minor discrepancies were noted which were related to the data field in the system for “DOC Comments,” which is used by BXA licensing officers to provide comments to Energy. Energy OIG reported that for some cases, Energy did not receive the entire comments from BXA for this data field because the comments were “truncated” when received by Energy. According to Energy officials, this problem has been corrected.

**State.** State OIG found no problems with the dual-use licensing automated system. State OIG found two problems related to the munitions licensing automated system. The system did not accurately reflect whether a munitions license was referred to other agencies or bureaus within State for review and licensing officers could change data fields within a license application after a final decision on the license was made. State agreed with the recommendations but noted that the database is only used for tracking applications and is not the official record for the final licensing decision. The official record is maintained in hard copy.

**Treasury.** The objective did not apply to Treasury within the context of this review. License data from State and Commerce were downloaded to Treasury daily for administrative and enforcement purposes, and the data were not subject to further manipulation. Customs used State license data to monitor munitions exported under individual export licenses.

**CIA.** CIA OIG reported that the CIA Export Control database generally contained accurate, complete, consistent, and secure information regarding export license applications.

### Licensing Recommendations Changed in Information Systems

With the exception of Defense, licensing officers at the agencies did not report instances of changes in the license database without the licensing officer’s consent or knowledge after the case was closed, although certain automated systems did permit such changes. Defense reported instances where a licensing officer’s position was changed without his consent or knowledge. In Defense, changes in recommended positions occurred because, in some instances, the supervisor did not agree with the recommendation made by the licensing officer and the supervisor took authorized action to change the recommendation. In other instances, the administrative procedures established to record the final Defense positions on applications that were escalated through the interagency dispute process were not adequate. Commerce OIG reported that supervisors could not make changes to either open or closed licenses without the consent or
knowledge of the licensing officer. Energy OIG determined that although users of the Proliferation Information Network System were able to edit their own comments, they were not able to edit comments or recommendations of others.

Audit Trail

The audit trail for the export licensing process generally had adequate controls; however, Defense procedures were not effective to ensure that final Defense positions for dual-use licenses were accurately recorded within the automated information system and Defense OIG considered it a material weakness. The CIA reported unsatisfactory documentation of end-user reviews on munitions licenses referred by State. Commerce, Energy, and State OIGs found adequate audit trails for export license transactions in their Departments, although areas for improvement were noted by Commerce OIG.

Commerce Audit Trail. Commerce OIG found that the licensing process within BXA provided a fairly complete audit trail to reliably assess licensing performance. However, the Commerce audit trail was systemically limited. The automated system cannot combine key license elements into one automated file. For example, the license application; automated system updates and modifications; and exporter technical specifications, if applicable, are in separate systems. In addition, the automated system had no central repository that a user could go to directly to view all automated system updates and modifications. However, that limitation did not preclude BXA from having an adequate audit trail because the paper and electronic files were complementary. Commerce OIG recommended that BXA ensure that the electronic audit trail is more complete. BXA management concurred.

Defense Audit Trail. The Defense automated information system provided the only long-term audit trail for Defense positions, and the system did not always contain accurate and complete records of Defense and U.S. Government positions for dual-use and munitions applications. From among the sample of 60 dual-use and 20 munitions applications received from Commerce and State, respectively, the automated system did not contain the final U.S. Government position for 56 dual-use and 6 munitions applications. In addition, the final Defense positions on applications that were escalated to the OC or the ACEP were not accurately reflected in the automated system. From among the 31 applications sampled that went to the OC for resolution, in 8 instances the Defense recommendation field did not reflect the final Defense position. The audit trail for the sample reviewed generally agreed with the Commerce electronic records. However, in one instance the Commerce records showed a change to the conditional license approval from Defense that was not shown in the Defense system, and in another instance a conditional approval recommended by Defense for a license application was not included in the Commerce record. In addition, the audit trail provided by the Defense system did not include new information presented at interagency decision meetings or detailed results of those meetings, records of all applications, and key correspondence or technical data. Defense OIG recommended that the Director, Technology Security Directorate, DTRA, establish procedures to ensure that Foreign Disclosure and Technical Information System records include the correct Defense position, particularly when cases are escalated. Defense OIG also recommended that the information system include details on new
information presented at OC meetings, explanations of why Defense did not escalate cases on which Defense and the OC disagreed, records of encryption cases referred to the National Security Agency, and key correspondence and technical data. Defense management partially concurred, stating that while the recommendation has some merit, it also has resource implications.

**Energy Audit Trail.** Energy OIG determined that considerable information regarding each export case was retained in the Proliferation Information Network System. Further, the system provided an adequate audit trail by tracking nearly every action that was performed on a license application.

**State Audit Trail.** State OIG found a reliable and adequate audit trail for the processing of dual-use and munitions licenses. However, one weakness with the munitions audit trail was that all reviewing agencies were not provided with documentation of the final licensing decision. State OIG believed it is important for all reviewing organizations to receive formal feedback on the final licensing decisions. State management agreed with the recommendation.

**CIA Audit Trail.** CIA OIG found an adequate audit trail for assessing licensing performance and supporting the intelligence information presented in the end-user reports for dual-use commodities. However, CIA OIG reported insufficient documentation of end-user reviews by CIA analysts on munitions license applications referred by State. CIA OIG recommended maintaining adequate documentation to support the information presented in end-user reports. CIA management concurred.

### Interagency Concerns

Commerce, Defense, and Energy OIGs expressed concerns that involved one or more agencies. The Commerce OIG report discusses the advantages of a single automated licensing system that can be fully integrated with systems of other agencies. In addition, Commerce and Defense OIGs were concerned that modernization efforts for the automated information systems supporting the dual-use licensing process at the two Departments would not be successful without cooperation between the Departments involved. Energy OIG also raised a concern regarding the receipt from Commerce of supporting documentation and receipt from Commerce and State of application dispositions.

**Coordinating Modernization Efforts.** Commerce and Defense OIGs commented on the need to modernize existing automated systems and ensure that the two Departments cooperated and coordinated those efforts. The respective OIGs reported that BXA and Defense export licensing systems were independently undergoing modernization efforts to significantly improve the current systems.

**Commerce.** Commerce OIG agreed that BXA needed a new system to process export licenses more efficiently and effectively. A fully integrated Government export licensing system would provide user access to licensing subsystems and other support tools, while allowing agencies to maintain control of their respective databases. An integrated licensing system for dual-use
applications would implement common system architecture requirements, such as a database management system and a text management system. Commerce OIG stated that there were a number of benefits from an integrated licensing system, including standardized hardware and software, and reduced system support staff.

Commerce OIG recommended that BXA coordinate its system development efforts with those of the referral agencies to ensure that all of the systems are compatible and, at a minimum, are able to interact with each other. Commerce OIG emphasized that BXA should consider the best available options for a new system, including a classified system, and it encouraged BXA to establish an interagency steering committee to review the automation portion of the export licensing process. BXA management partially concurred.

Defense. Defense OIG reported that the Defense system was a useful tool for decisionmakers because it could obtain information from the Commerce export licensing automated system. However, the current dual-use database within Defense was undergoing significant modifications because the system did not fully support user requirements. Defense OIG concluded that Defense modernization efforts might not improve the current capabilities of the system if the efforts are not fully coordinated with Commerce. Defense recommended that the Deputy Under Secretary of Defense (Policy Support) monitor Commerce’s system modernization efforts to ensure that Defense can continue to obtain license information from the Commerce export licensing automated system. Defense management concurred.

Electronic Transfers, Energy and Commerce. Energy OIG reported that Commerce and Energy share export license information via electronic transfers. However, not all export license information can be electronically transmitted between the two Departments. Energy OIG reported that the process used by Commerce to provide Energy with supporting documents, such as technical specifications, may adversely impact the timeliness of Energy’s review and should be improved. Energy OIG recommended that the Assistant Secretary for Nonproliferation and National Security coordinate with Commerce to establish a more effective process to provide supporting documents and other information to Energy.

Final Disposition. Also, in the 1993 Interagency Report, Energy OIG found that Energy did not have access to information maintained by Commerce regarding the purchase or shipment of dual-use commodities or from State regarding final disposition of munitions export applications. That situation still existed at the time of this review. Such information aids Energy analysts in evaluating proliferation concerns. Energy OIG recommended that the Assistant Secretary for Nonproliferation and National Security coordinate with Commerce to obtain access to purchase and shipment information and with State to ensure access to information maintained by State regarding the final disposition of munitions applications. Energy management concurred, stating that it will work with Commerce and State to obtain the required information.
E. Guidance, Training, and Undue Pressure

Determine whether license review officials at each of the agencies are provided sufficient training and guidance relevant for reviewing license applications, and whether license review officials are being pressured improperly by their superiors to issue or change specific recommendations on license applications.

Defense, Energy, and State licensing officials had adequate guidance to perform their mission. Recent BXA initiatives should improve the guidance available for its licensing officers, and the CIA reported that its licensing analysts needed additional guidance for performing and documenting end-user checks. On-the-job training was the primary training available to Commerce, Defense, Energy, and State licensing officers. While Energy OIG concluded that Energy had an adequate training program, Commerce, Defense, and State OIGs identified a need for the establishment of a standardized training program. With few exceptions, Commerce and Defense licensing officers reported they were not improperly pressured to change recommendations on license applications. Energy and State export licensing officials reported they were not pressured regarding their recommendations.

Guidance and Training

Guidance. Defense, Energy, and State licensing officers felt they received sufficient guidance to execute their mission. However, Commerce licensing officers and CIA licensing analysts could benefit from additional guidance. Commerce, Defense, Energy, and State licensing officers received guidance from a wide range of sources. Guidance included, but was not limited to, the EAA, the AECA, Presidential directives, the Export Administration Regulations, the International Traffic in Arms Regulations, the National Disclosure Policy,\(^{17}\) and agency publications and internal policies and procedures.

Commerce Guidance. BXA licensing officers identified the lack of up-to-date guidelines as a major weakness. In an effort to improve licensing officer guidance, on March 31, 1999, BXA officials implemented new procedures that emphasized the importance of obtaining sufficient information before processing a case and documenting all relevant facts and details pertaining to the case. Currently, BXA is working on an electronic library to store its policies and procedures.

Commerce OIG recommended that the Under Secretary for Export Administration expand the new licensing officer case analysis guidance and require that the licensing officers include the dates of the most recent approvals or denials in the license history. The OIG also recommended that the Under Secretary for Export Administration expand the new licensing officer case analysis guidance and require that the licensing officers include the dates of the most recent approvals or denials in the license history.

\(^{17}\)The National Disclosure Policy is the U.S. Government policy on the release of classified information to foreign governments and international organizations.
Secretary ensure export licensing policies and procedures are updated on a regular basis to reflect current issues and new regulations, fully implement the BXA electronic library, and develop a long-term plan for maintaining the library. BXA management concurred.

**CIA Guidance.** CIA OIG determined that licensing analysts needed additional guidance for performing and documenting end-user reviews. Specifically, licensing analysts needed criteria for determining when a reasonable search of CIA records has been made. In addition, because the licensing analysts do not perform exhaustive searches on all end users, the licensing analysts should be instructed to disclose the scope of their review to the licensing agencies. CIA OIG recommended that criteria be developed for adjusting search strategies and levels of effort commensurate with the risk and consequences of diversion. CIA management generally concurred.

**Training.** On-the-job training and mentoring were the primary means by which Commerce, Defense, Energy, and State trained licensing officers. Licensing officers augmented on-the-job training with exporter seminars sponsored by BXA on regulations and technology, courses on technology familiarization, interagency working groups, and industry meetings; however, Commerce, Defense, Energy, and State had no standardized training programs.

Commerce, Defense, and State OIGs identified a need for a standardized training program for all licensing officials. Although Energy did not have a formal training program for licensing officials, Energy OIG found that the on-the-job training program supported by detailed reference material provided an adequate level of training.

**Commerce Training.** At BXA, training for licensing officers was inconsistent and often unresponsive to licensing officer needs. Most new employee training at BXA was left up to the individual divisions. Training generally consisted of reading the Export Administration Regulations and learning on the job from experienced staff. However, one BXA division had provided a comprehensive training program for its new analysts that included observing supervisors’ responses to exporter questions, attending regulation and technology seminars sponsored by BXA for exporters, attending courses on technology familiarization, and observing interagency working groups and industry meetings. Commerce OIG suggested that BXA consider using this type of comprehensive training for all of its new licensing officers. It also suggested a number of other ways that BXA could expand its licensing officer training, to include brief exchanges with personnel from the CIA Nonproliferation Center.

**Defense Training.** Defense licensing officers stated that they generally had sufficient training; however, some licensing officials stated that a classroom training program and training plan for personnel reviewing export license applications should be established.

**State Training.** State relies primarily on an apprenticeship approach to train its licensing officers. While this provides important hands-on training, there is no formalized training to provide a broad overview of the process. Although State OIG believes training can be improved, no specific problems were identified that resulted from a lack of training.
Commerce, Defense, and State OIGs recommended that their respective agencies establish standardized training programs. Commerce and Defense management concurred. State management responded that while a formal training program is desirable, it is not essential, and State does not currently have the financial and personnel resources to implement such a program.

**Pressure on Licensing Officers**

With few exceptions, the OIGs did not find any evidence of improper pressure nor did BXA and DTRA licensing officers report being improperly pressured by superiors to issue or change specific recommendations on license applications. Energy and State reported their licensing officers were not pressured regarding such recommendations. Treasury and CIA do not have licensing officers and do not make recommendations on license applications.

**Pressure at Commerce.** Most Commerce licensing officers said that the recommendations they entered into the Export Control Automated Support System were not changed without their consent or knowledge, and, more importantly, that they are not improperly pressured into changing specific positions on license recommendations. Of the 36 licensing officials\(^ {18}\) responding to this question on a Commerce OIG survey, 33 indicated that they were not improperly pressured into making changes to license recommendations; however, 3 of the 36 responses indicated that they had received pressure to change positions on recommendations.

One of the first respondents to the survey stated that he had been pressured but “not very often”; however, when interviewed by Commerce OIG staff, he could not remember which licenses were involved or provide any additional details. The second, anonymous, respondent stated that “there have been numerous instances of management at all levels putting pressure on licensing officers to approve applications over the years.” Commerce OIG attempted to substantiate the anonymous statement. However, the remaining officer responses to the survey, as well as Commerce OIG interviews with Commerce personnel, did not support the statement. The third respondent was the OC Chair, who stated that BXA management had instructed her to approve certain cases.\(^ {19}\)

**Pressure at Defense.** With one exception, Defense licensing officers did not report receiving any improper pressure to change specific recommendations on license applications. Other Defense staff who did not formulate proposed recommendations on license applications, but who were at times involved with reviewing or processing license applications, also did not report any improper pressure. However, several of the Defense staff members stated that management applied indirect pressure to encourage certain viewpoints.

\(^{18}\)Of the 36 licensing officials in the survey, 26 were licensing officers.

\(^{19}\)See review result B, page 22, “Export License Review Processes,” for more details.
F. Monitoring Compliance and End-Use Checks

Assess the adequacy of mechanisms designed to ensure that exporters comply with export license conditions and to evaluate the adequacy of end-use check guidelines, procedures, and practices—to include whether the U.S. Government continues to use foreign nationals to conduct end-use checks.

The mission of ensuring compliance with export license conditions falls primarily within the responsibilities of Commerce and State. Commerce OIG found that BXA did not adequately monitor reports on shipments made against licenses, and State OIG said that the Blue Lantern program could be improved. Commerce and State continue to use foreign nationals to conduct an unknown number of end-use checks; however, State OIG concluded that it may be appropriate to do so under certain conditions. In addition, Treasury ensures that export shipments comply with licensing requirements. On occasion, Defense assists Commerce and State with end-use checks and the monitoring of certain foreign space launches. This question is not applicable to Energy.

Monitoring Compliance With Export Licenses

Monitoring Compliance at Commerce. Commerce monitors compliance with export license conditions by tracking followup reporting from exporters on certain license conditions and by conducting post-shipment verifications. BXA Safeguard Verification teams or U.S. and Foreign Commercial Service personnel at overseas posts conduct post-shipment verifications.20

Monitoring Compliance at Commerce. Certain dual-use export license conditions require exporters to report on shipments made against a license. However, as reported in the 1993 Interagency Report, BXA continues to not adequately monitor those reports. As a result, BXA cannot assure itself that the exports were not diverted to an unauthorized end user, and exporters may receive new licenses even though they did not comply with conditions placed on previous licenses.

Commerce OIG recommended that steps taken by licensing officers in two BXA divisions should be used as best practice guidelines by the other licensing divisions. Specifically, the licensing officers in those divisions routinely monitor conditions by making followup telephone calls to exporters to remind them of their reporting requirements and also to inform the exporters of pending policy changes. BXA management concurred.

Monitoring Compliance at State. The primary program State used to ensure compliance with conditions placed on export licenses was the Blue Lantern program. The Blue Lantern program was designed to ensure that defense

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20End-use checks conducted by U.S. and Foreign Commercial Service personnel are discussed under the section, “End-Use Check Guidelines, Procedures, and Practices.”
exports of U.S. origin were sent only to the country of ultimate destination, for the specific end use and the specific end user stated on the export license. That is accomplished by conducting pre-license and post-shipment license checks. The checks are initiated by DTC and conducted by overseas posts.

Although the Blue Lantern program has been significantly improved in recent years and is working reasonably well, further improvements could be made to the program. State OIG recommended that the Blue Lantern program could be improved by monitoring more closely the status of end-use checks, placing more emphasis on the selection criteria used to initiate Blue Lantern checks, and providing overseas posts with appropriate technical expertise for end-use checks that require on-site inspections of a technical nature.

State management agreed that the Blue Lantern program would be enhanced by more closely monitoring the status of end-use checks. However, State management disagreed with the need to modify the selection criteria used to initiate Blue Lantern checks. State management also disagreed with the need to provide posts with technical expertise for conducting post-shipment verifications of a technical nature.

**Monitoring Compliance at Defense.** Defense supports the State monitoring of munitions license conditions by monitoring foreign space launch activities. Defense monitored 3 space launch missions in FY 1996, 9 in FY 1997, and 11 in FY 1998. Defense procedures for monitoring space launches were adequate, as was the Defense informal process for reporting potential violations of license conditions and technology assessment control plans to State. To meet additional mission requirements required by the National Defense Authorization Act for FY 1999, Defense will hire additional monitors. The increase in personnel and the number of launches to monitor could result in an increase in reports made to State. As a result, the informal reporting process could fail to ensure that State receives the highest standard of reporting from Defense.

Defense OIG recommended that the Director, DTRA, in coordination with State, develop and implement a memorandum of understanding outlining reporting requirements for the Space Launch Safeguards and Monitoring Program. Defense management concurred.

**Monitoring Compliance at Treasury.** As written, Question 14 (see Appendix B) did not apply to Treasury because it involved compliance with conditions placed on export licenses, which was the responsibility of the licensing agencies. However, interpretation of the question was expanded to include enforcement of licensing conditions at the point of exportation, which falls within Customs’ area of responsibility. Treasury OIG determined that although Customs’ export enforcement efforts have produced results, Customs’ ability to target certain exports for examination are hindered. This is primarily due to current statutory and regulatory reporting requirements for exporters and carriers. Operational weaknesses also exist in Customs’ Outbound enforcement programs. These weaknesses can impact Customs’ ability to ensure compliance with license provisions and to identify unlicensed shipments of munitions and dual-use items.
End-Use Check Guidelines, Procedures, and Practices

End-use checks are an important part of the license evaluation process and are used to verify the legitimacy of dual-use and munitions export transactions. A pre-license check is used to validate information on export license applications by determining if an overseas end-user or ultimate consignee is a suitable party to a transaction involving the export of controlled U.S.-origin goods, technical data, or technologies. Post-shipment verifications strengthen assurances that exporters, shippers, consignees, and end users comply with the terms of export licenses and license conditions by determining whether or not goods exported from the United States were actually received by the party named on the license and if those goods were being used in accordance with the provisions of that license.

End-Use Checks at Commerce. In FY 1998, Commerce conducted 629 pre-license and post-shipment checks. Of 283 pre-license checks conducted in FY 1998, approximately 91 percent were conducted by U.S. and Foreign Commercial Service overseas post personnel and approximately 9 percent were conducted by Export Enforcement Safeguard Verification teams. Of 346 post-shipment verifications conducted in FY 1998, approximately 17 percent were conducted by U.S. and Foreign Commercial Service personnel and approximately 83 percent were conducted by Safeguard Verification teams.

Commerce Safeguard Verification Program. Commerce uses the Safeguard Verification Program, operated by the BXA Office of Export Enforcement, to monitor compliance with export license conditions placed on many licenses. The program was originally developed in 1990 to ensure the legitimate use of strategic U.S. goods and technologies by the newly emerging democracies of Central Europe, which could serve as diversion points to the former Soviet Union. Since then, the program has been significantly expanded, and BXA export enforcement agents conduct pre-license checks and post-shipment verifications in countries worldwide, especially those of proliferation concern. Although Commerce OIG provided several suggestions to make the Safeguard Verification Program more effective, the OIG believes that the program is a valuable tool because of the enforcement element it brings to the end-use check process. Commerce OIG recommended that BXA provide clearer guidance for the planning and reporting of Safeguard trips. BXA management concurred.

With respect to end-use checks conducted by U.S. and Foreign Commercial Service personnel, Commerce OIG determined that some of the concerns identified in the 1993 Interagency Report still existed. Those concerns were that pre-license checks were not timely, some posts continued to use foreign service nationals to conduct checks, some posts did not perform on-site visits for all end-use checks, some posts kept inadequate records, and some U.S. and Foreign Commercial Service personnel needed to better coordinate their end-use checks with other offices in the U.S. embassies and host governments. Commerce OIG recommended that BXA seek to improve the timeliness and quality of end-use checks performed by U.S. and Foreign Commercial Service overseas posts. BXA management concurred.
End-Use Checks at State. The Blue Lantern program is the means by which State conducts end-use checks. In FY 1998, 418 Blue Lantern checks were conducted, and approximately 70 percent of them were pre-license checks. Thirty Blue Lantern responses were unfavorable and resulted in license denials.

End-Use Checks at Defense and Treasury. Although Defense Attaché Office personnel and Customs attachés at overseas posts assisted in Commerce and State end-use checks, it was mutually agreed that Defense and Treasury would not address this question because Commerce and State were reviewing the matter.

Using Foreign Nationals to Conduct Pre-License and Post-Shipment Checks

Commerce and State used foreign nationals to conduct some end-use checks. Commerce OIG believes that using foreign nationals to conduct either pre-license or post-shipment licensing activities at Commerce is not advisable. State OIG determined that the decision to use a foreign national should be determined on a case-by-case basis. Defense did not use foreign nationals to conduct end-use checks.

Commerce Use of Foreign Nationals. Commerce OIG determined that foreign nationals were occasionally used by the U.S. and Foreign Commercial Service, and it was not always clear from the posts’ reporting cables who conducted some of these pre-license checks and post-shipment verifications. Some response cables indicated that the “Commercial Attaché” had performed the pre-license check, but it was unclear whether that person was a U.S. officer or a personal services contractor because the latter often uses the title.

Based on BXA guidelines, Commerce OIG believes that using foreign nationals to conduct either pre-license or post-shipment licensing activities is not advisable. Disadvantages of using foreign nationals to conduct end-use checks included the credibility of the check, the possible reluctance of a foreign national to testify against a fellow citizen in a U.S. court, and the lack of access to classified material. Commerce OIG recommended that BXA provide clear and concise guidance to the U.S. and Foreign Commercial Service regarding the use of foreign nationals and personal services contractors on end-use checks. BXA management partially concurred, stating that it would reiterate BXA policy of having a U.S. citizen employee present at all end-use checks conducted by the U.S. and Foreign Commercial Service.

State Use of Foreign Nationals. State OIG found that U.S. personnel conducted most end-use checks. However, at one post visited, a foreign national played a major role in conducting end-use checks. In that particular case, State OIG concluded that there were no problems with the foreign national’s participation. It is uncertain to what extent foreign nationals were used at all overseas posts. State OIG concluded that the decision to use a foreign national should be made on a case-by-case basis, as there are numerous factors to be considered. Some of those factors included the U.S. Government’s relationship with a particular country, the level of the check being conducted, resource constraints at the post, the experience of the foreign national, and the extent of oversight and supervision by a U.S. employee.
Defense Use of Foreign Nationals. Based on information gathered during this review, it was determined that Defense had not used and does not plan to use foreign nationals to support Commerce or State pre-license and post-shipment licensing checks or to monitor space launches. Defense uses U.S. Air Force personnel to monitor space launches and plans to use only U.S. personnel in future monitoring operations. Defense Attaché Offices supporting Commerce or State use only U.S. personnel.
Appendix A. Review Process

Scope

The review was conducted at Federal agencies in Washington, D.C., including the U.S. Postal Service, and visits were made to U.S. embassies and consulates abroad for on-site evaluations of the Commerce and State end-use monitoring programs. The cities visited included Abu Dhabi, United Arab Emirates; Ankara, Turkey; Athens, Greece; Kuala Lumpur, Malaysia; Madrid, Spain; and Tel Aviv, Israel. Energy national laboratories located in Albuquerque and Los Alamos, New Mexico; Livermore, California; and Oak Ridge, Tennessee, were also visited. Treasury OIG performed on-site work at the seaports of Newark, New Jersey; Long Beach, California; and New Orleans, Louisiana. Work was also performed at John F. Kennedy International, Los Angeles International, and Memphis airports. Truck and rail exports were reviewed in El Paso, Texas. The review teams conducted numerous interviews with Federal agency personnel at all levels.

Methodology

The review focused on practices and procedures that were in effect at the time of this review, which occurred during the period September 1998 through June 1999. In October 1998, the OIGs developed and agreed to an interagency review plan for updating the 1993 report and answering the questions posed by Senator Thompson. Each of the OIGs also developed a specific work plan for its agency. To determine if license applications were being properly referred to other agencies for review, a statistical sample of dual-use and munitions license applications was selected from the period January 1 through June 30, 1998. The sample methodology was developed by the Quantitative Methods Division, Defense OIG, and was designed to ensure a 90 percent confidence level with a 10 percent error rate.

Universe and Sample. During our review, we tested records for seven different areas related to export licensing. Those areas were dual-use license applications, munitions license applications, appeals cases, commodity classification requests, applications escalated to the OC, applications escalated to the ACEP, and law enforcement checks. No Export Administration Review Board cases were reviewed during our review.

Dual-Use License Applications. We tested whether Commerce properly referred dual-use license applications to other agencies for review. The tests were based on the 5,411 dual-use license applications that Commerce received during the second and third quarters of FY 1998. Of the 5,411 applications Commerce received, it referred 4,830 cases to other agencies for review. State, Defense, and Energy OIGs reviewed a sample of 60 dual-use applications to determine whether Commerce was properly referring dual-use licenses to those agencies. Commerce OIG also reviewed 60 applications referred to Treasury.
Munitions License Applications. We tested whether State properly referred munitions license applications to Defense, Energy, National Aeronautics and Space Administration, and other offices within the State Department. We decided to concentrate on three categories of munitions: unclassified exports, classified exports, and technical agreements. The DTC received 16,700 applications for those categories during the sample period, January 1 through June 30, 1998. Of those, 4,714 were referred outside DTC. State and Defense reviewed a sample of 100 munitions applications, including 75 not referred outside DTC.

Exporter Appeals Cases. We reviewed all 23 appeals by exporters that were resolved during the period October 1997 through December 1998.

Commodity Classification Requests. We tested whether Commerce properly determined commodity classification requests. The tests were based on the 6,161 line items on 2,723 commodity classification requests that Commerce processed during FY 1998. We divided the items into four groups: items in export control classification number EAR99, items in other export control classification numbers, items that received a license exception, and items that Commerce was unable to classify. We randomly selected 100 classification requests. In addition, we selected three items that Commerce stated did not require a license.

OC Cases. We tested whether the OC properly handled dual-use applications that agencies escalated to the OC. The tests were based on the 266 dual-use license applications reviewed by the OC during the second and third quarters of FY 1998. Using a systematic sample, we selected 26 cases. Because the sample selection started with the first application listed, it was not a random sample.

ACEP Cases. We reviewed all eight applications that agencies escalated to the ACEP during the second and third quarters of FY 1998 to determine if the ACEP properly considered the applications escalated to it. Because we reviewed all eight cases, no sampling methodology was used.

Law Enforcement Checks. We randomly selected and tested 24 license applications (12 each from the dual-use and munitions statistical sampling lists) and 9 open Customs investigations involving export licenses. We did this to determine whether the Treasury law enforcement database contained any derogatory information on applicants or parties involved in the export transaction that might warrant disapproval, suspension, or revocation of a license.

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21EAR99 is a designation for items subject to the Export Administration Regulations but not specified on the Commerce Control List.
Appendix B. Thompson Questions

In a letter dated August 26, 1998, Senator Fred Thompson, Chairman of the Senate Committee on Governmental Affairs, requested that the Inspectors General from the Departments of Commerce, Defense, Energy, State, and the Treasury and the Central Intelligence Agency conduct an interagency review of the export licensing process for dual-use commodities and munitions. The Chairman specifically asked the six Inspectors General to update the 1993 Interagency Report and answer the following 14 specific questions.

1. Examine whether the current, relevant legislative authority contains inconsistencies or ambiguities regarding the licensing of dual-use and munitions commodities, and the effect of any such inconsistencies and ambiguities.

   See Consistency and Clarity of the EAA and AECA, page 9.

2. Examine whether Executive Order 12981 (1995) as implemented is consistent with the objectives of the Export Administration Act and other relevant legislative authority.

   See Consistency of EO 12981 With the EAA, page 12.

3. Determine whether there is a continued lack of interagency accord, as stated in the 1993 interagency report, regarding whether the Department of Commerce is properly referring export license applications (including supporting documentation) out for review by the other agencies.

   See Referral of Dual-Use Export License Applications, page 16.

4. Determine whether the interagency dispute resolution (or “escalation”) process for appealing disputed license applications allows officials from dissenting agencies a meaningful opportunity to seek review of such applications, and assess why this process is so seldom used.

   See Interagency Dispute Resolution Process, page 22.

5. Review whether the current dual-use licensing process adequately takes into account the cumulative effect of technology transfers resulting from the export of dual-use items, and the decontrol of munitions commodities.


6. Review whether the current munitions licensing process adequately takes into account the cumulative effect of technology transfers resulting from the export of dual-use items, and the decontrol of munitions commodities.

7. Determine whether license applications are being properly referred for comment (with sufficient time for responsible review) to the military services, the intelligence community, and other relevant groups (the “recipient groups”) by Defense and other agencies. Consider in particular numerical trends in the frequency of such referrals, trends in the types of applications referred, trends in the nature of the taskings made in connection with the referrals, and the perceptions of officials at the recipient groups.

See License Application Referrals to Military Departments, the Intelligence Community, and Other Interested Organizations, page 17.

8. Determine whether license review officials at each of the agencies are provided sufficient training and guidance relevant for reviewing license applications, and whether more formal training and guidance is warranted.

See Guidance and Training, page 33.

9. Review the adequacy of the databases used in the licensing process, such as the Defense Foreign Disclosure and Technical Information System, paying particular attention to whether such databases contain complete, accurate, consistent, and secure information about dual-use and munitions export applications.


10. In congressional testimony, a Defense licensing officer described instances where licensing recommendations he entered on the Foreign Disclosure and Technical Information System were later changed without his consent or knowledge. Examine those charges, and assess whether such problems exist at your agencies.


11. Determine whether license review officials are being pressured improperly by their superiors to issue or change specific recommendations on license applications.

See Pressure on Licensing Officers, page 35.

12. Determine whether our Government still uses foreign nationals to conduct pre-license or post-shipment licensing activities and whether such a practice is advisable.

See Using Foreign Nationals to Conduct Pre-License and Post-Shipment Checks, page 39.

13. Determine whether the agency licensing process leaves a reliable audit trail for assessing licensing performance.

See Audit Trail, page 30.
14. Describe the procedures used by agencies to ensure compliance with conditions placed on export licenses (for example, no retransfers without U.S. consent, no replications, and peaceful use assurances) and assess the adequacy and effectiveness of such procedures.

See Monitoring Compliance With Export Licenses, page 36.