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INSPECTION REPORT

THE DEPARTMENT OF ENERGY'S EXPORT LICENSING PROCESS FOR DUAL-USE AND MUNITIONS COMMODITIES

MAY 1999

U.S. DEPARTMENT OF ENERGY
OFFICE OF INSPECTOR GENERAL
OFFICE OF INSPECTIONS

May 28, 1999

MEMORANDUM FOR THE SECRETARY

FROM: Gregory H. Friedman /s/
Inspector General

SUBJECT: INFORMATION: Report on "Inspection of the Department of Energy's Export Licensing Process for Dual-Use and Munitions Commodities"

BACKGROUND

On August 26, 1998, the Chairman of the Senate Committee on Governmental Affairs requested that the Inspectors General from the Departments of Commerce, Defense, Energy, State, and Treasury, and the Central Intelligence Agency, update and expand on a 1993 interagency review of the export licensing processes for dual-use and munitions commodities. After consideration of the Chairman's request, the Inspectors General initiated an interagency review to evaluate the export licensing process for dual-use commodities and munitions to determine whether current practices and procedures are consistent with established national security and foreign policy objectives. In a joint letter dated September 2, 1998, the Chairman and the Ranking Minority Member of the House Select Committee on U.S. National Security and Military/Commercial Concerns with the People's Republic of China requested the interagency review of the export licensing process be expedited.

The objectives of our inspection were to: (1) determine the adequacy of the Department of Energy's (Energy's) process for reviewing export license applications; (2) address, where applicable to Energy, questions from the Senate Committee on Governmental Affairs; and (3) determine the adequacy of corrective actions that were implemented in response to the recommendations in our 1993 report on this subject.

RESULTS OF INSPECTION

Based on our review of Energy's process for reviewing export license applications for nuclear dual-use and munitions commodities, we determined that, for the most part, the process appeared adequate. However, we identified issues that required corrective actions by Energy, as well as issues that would best be addressed by other agencies or an interagency task force.

For example, a determination was needed by Energy regarding the adequacy of the staffing level for the Nuclear Transfer and Supplier Policy (NTSP) Division, which conducts reviews of export license applications. Also, Energy needed to resolve the issue of access by NTSP Division analysts to certain intelligence information required to support their export license activities.

Issues that would best be addressed by other agencies or an interagency task force included, among others, whether a process is needed for the escalation of munitions cases; the concern by

Commerce that several agencies, including Energy, did not always send the appropriate-level representative to meetings of the Advisory Committee on Export Policy; and the inability of the Commerce database to process image-type information, which prevents electronic transmittal of certain documents that support Energy's review of export license applications. This may adversely impact the timeliness of Energy's review process.

Also, we found that improvements are needed in the process for determining whether an export license is required in conjunction with assignments of foreign nationals to Energy laboratories. Specifically, guidance was not clear regarding when a "deemed" export license would be required for an assignment involving a foreign national. The term "deemed" export is defined as a release to a foreign national of technology or software that is subject to the Export Administration Regulations and, therefore, is "deemed to be an export" to the home country of the foreign national. The processes at the laboratories for reviewing assignments of foreign nationals generally rely on the host of the foreign national assignee to determine whether there are export concerns associated with the assignment. However, we found several hosts who were not aware of, or did not understand the requirements for, deemed export licenses and several hosts who did not appear to appropriately exercise their host responsibilities. Also, there does not appear to be an organization within Energy that has management responsibility for the deemed export license process.

We also reviewed the actions taken by Energy in response to recommendations in our 1993 report on Energy's export licensing process to determine the adequacy of the corrective actions. Although we found that Energy has implemented the corrective actions within its control regarding most recommendations, certain recommendations may require additional review and action by Energy, or interagency coordination.

Our report contains recommendations for actions to improve Energy's export licensing review process and to strengthen Energy's deemed export licensing process. Our report also contains recommendations for actions to address issues that remain from our 1993 inspection report.

MANAGEMENT REACTION

Management concurred with the findings and recommendations, indicating that it would initiate corrective actions. The Department promptly established an Export Control Task Force, formed by the Under Secretary, to review export control issues, including the Department's treatment of deemed exports. Management's comments are provided in their entirety at Appendix C of our report.

cc: Deputy Secretary
Under Secretary

THE DEPARTMENT OF ENERGY'S EXPORT LICENSING PROCESS FOR DUAL-USE AND MUNITIONS COMMODITIES

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Overview

INTRODUCTION AND OBJECTIVE

Export of commodities, encouraged by both the private sector and the Federal Government, helps to improve our position in the global economy and is in the national interest of the United States. However, exports of commodities or technologies, without regard to whether they may significantly contribute to the military potential of individual countries or combination of countries or enhance the proliferation of weapons of mass destruction, may adversely affect the national security of the United States. The Federal Government, therefore, implements several laws, Executive Orders, and regulations to control the export of certain commodities and technologies. These commodities and technologies require a license for export. Some of the controlled items are designated as "dual-use," that is, commodities and technologies that have both civilian and military application. Some dual-use commodities are designated as "nuclear dual-use" -- items controlled for nuclear nonproliferation purposes. Another group of controlled commodities is designated as munitions, which are goods and technologies that have solely military uses. The Department of Energy (Energy) conducts reviews of export license applications for nuclear dual-use items and certain munitions.

On August 26, 1998, the Chairman of the Senate Committee on Governmental Affairs requested that the Inspectors General from the Departments of Commerce, Defense, Energy, State, and Treasury, and the Central Intelligence Agency (CIA), update and expand on a 1993 interagency review conducted by the Inspectors General of the Departments of Commerce, Defense, Energy, and State of the export licensing processes for dual-use and munitions commodities. The Chairman provided a list of 14 questions relating to export licensing that he requested be addressed during the review. [See Appendix B.]

After consideration of the Chairman's request, a determination was made that an interagency review of the export licensing process would be appropriate. Accordingly, the Inspectors General of Commerce, Defense, Energy, State, Treasury and the CIA initiated an interagency review to evaluate the export licensing process for dual-use commodities and munitions to determine whether current practices and procedures are consistent with established national security and foreign policy objectives. In a joint letter dated September 2, 1998, the Chairman and the Ranking Minority member of the House Select Committee on U.S. National Security and Military/Commercial Concerns with the People's Republic of China requested the interagency review of the export licensing process be expedited.

The purpose of our inspection was to review Energy's export licensing process for dual-use items and munitions subject to nuclear nonproliferation controls. Our objectives were to: (1) determine the adequacy of Energy's process for reviewing export license applications referred to Energy for review; (2) address, where applicable to Energy, questions from the Senate Committee on Governmental Affairs; and (3) determine the adequacy of corrective actions that were implemented in response to the recommendations in our previous report on Energy's export licensing process, "Inspection of the Department's Export Licensing Process for Dual-use and Munitions Commodities," DOE/IG-0331, dated August 10, 1993.

OBSERVATIONS AND CONCLUSIONS

Energy's Export License Review Process

Based on our review of Energy's process for reviewing nuclear dual-use and munitions commodities, we determined that, for the most part, the process appears to be adequate. However, we identified several problem areas that require corrective action.

Our determination was based on our analysis of a random sample of 60 export license applications that were referred by the Department of Commerce (Commerce) and processed by Energy during the period January through June 1998 (hereafter, "60 referred cases"). Our determination was also based on a review by an analyst in Energy's Nuclear Transfer and Supplier Policy (NTSP) Division, which is in the Office of Nonproliferation and National Security, of an additional random sample of 60 cases provided by Commerce that had not been referred to Energy during the same period.

We determined that all of the 60 referred cases were appropriately referred by Commerce for Energy's review. We also determined that only two of the 60 referred cases, which were subject to the 30-day Executive Order requirement to review and recommend approval or denial to Commerce, were not processed by Energy within the required timeframe. In addition, we determined that, of the 60 cases that had not been referred to Energy because of Energy's delegation of authority to Commerce to review certain export cases, one of the cases should have been referred for Energy's review because of the nuclear end-user. As part of its implementation of the Government Performance and Results Act of 1993 (Results Act), Energy must, among other things, establish program goals and measure

performance against those goals. The timeliness of Energy's processing of export license applications is a performance-based measure that can be used to evaluate Energy's performance under the Results Act.

Our review of the completeness, accuracy, consistency, and security of the Energy database that supports Energy's export license review process was limited to an analysis of the 60 referred cases. We did not review the cases to determine the appropriateness of Energy's recommendations for the 60 referred cases. Based on our analysis, we did not identify problems with the Energy database. For example, we believe that the Energy database contains the required records concerning the factual and analytical bases for Energy's advice, recommendations and decisions on the 60 referred cases. We also determined that Energy has established detailed procedures to limit access to the Energy database and to protect the information contained in the database. Additionally, we determined that the Energy database retains considerable information on each export case and, therefore, provides a reliable audit trail regarding Energy's processing of the case. The minor discrepancies we found between information in the Energy and Commerce databases were caused by Energy not receiving all the comments of Commerce Licensing Officers on specific cases for input to the "DOC Comments" field. We concluded that, to ensure consistency of the information in the Energy and Commerce databases, the "DOC Comments" field in PINS should capture all of Commerce's comments.

We interviewed NTSP Division analysts to determine the adequacy of their training, their view of the adequacy of the interagency "escalation" process for appealing disputed recommendations, and whether they felt improperly pressured by their supervisors regarding their recommendations on license applications. Based on our interviews, we determined that, although a formal training program for NTSP Division analysts has not been established, the existence of an on-the-job training program, supported by detailed reference material, provides an adequate level of training. Also, we were told by the NTSP Division Director that she believes the escalation process works. Finally, we found no evidence that NTSP Division analysts are being pressured improperly by their superiors to issue or change specific recommendations on license applications.

Our review also disclosed several issues that would best be addressed by other agencies or an interagency task force. For example, we determined that there is no process for interagency meetings on munitions cases or for escalation of disagreements over munitions cases. We concluded that the issue of whether a process is needed regarding the escalation of munitions cases should be addressed.

Also, Commerce identified a concern regarding the level of agency representation at meetings of the Advisory Committee on Export Policy (ACEP). Commerce was concerned that several agencies, including Energy, did not always send an Assistant Secretary-level representative to the meetings. Although the language in the relevant Executive Order regarding the level of representation at meetings could be clearer, we do not believe the Executive Order limits participation at the meetings to only Assistant Secretary-level officials. Therefore, we believe that the agencies involved should jointly determine the appropriate level of representation at ACEP meetings.

In addition, we found that the Commerce database was unable to process image-type information, which prevents electronic transmittal of large diagrams and other oversized documents that support export license applications. This requires Energy to either request from Commerce the required documents or to contact the applicant directly. We concluded that the current process used by Commerce to provide supporting documents to Energy may adversely impact the timeliness of Energy's review process and should be improved.

Deemed Export License Process

During our review of Energy's export license review process, a Commerce official expressed concern about the apparent lack of export license applications submitted to Commerce by Energy for foreign visitors. According to the Export Administration Regulations (EAR), any release to a foreign national of technology or software that is subject to the EAR is "deemed to be an export" to the home country of the foreign national.[1] We found that improvements are needed in the process for determining whether an export license is required in conjunction with assignments of foreign nationals to Energy laboratories.

The focus of our review of the "deemed" export license process was to determine whether the hosts of the foreign assignees should have acquired deemed export licenses. We did not consider whether the foreign nationals should have been at the Energy laboratories. We limited our review to assignments (i.e., visits for more than 30 calendar days) of certain foreign visitors to four Energy

[1] For purposes of this review, we did not address the issue of whether U.S. scientists traveling abroad might require an export license under certain circumstances.

laboratories. As a part of this review, we looked at a small sample of projects at the Energy laboratories in which foreign assignees had participated to determine whether there were any export concerns.

During our visits to Energy laboratories, we were advised that each of the laboratories was taking initiatives regarding visits or assignments of foreign nationals. We had concerns, however, with several aspects of the deemed export license process. For example, we found that guidance was not clear regarding when a deemed export license would be required for an assignment involving a foreign national. We also found that additional guidance from Commerce may be required for an assignment involving a foreign national.

In addition, we found that the processes at the laboratories for reviewing assignments of foreign nationals generally rely on the host of the foreign national assignee to determine whether there are export concerns associated with the assignment. We believe that the reliance on the host to determine whether an export license is required for a foreign national assignment is problematic because we found several hosts who were not aware of, or did not understand, the requirements for deemed export licenses and several hosts who did not appear to appropriately exercise their host responsibilities.

As a result of our review, we are concerned that there does not appear to be an organization that has management responsibility for the deemed export license process within Energy.

We reviewed a small, judgmental sample of the documentation processed for proposed assignments to the laboratories of foreign nationals from certain countries. We found that, under the process existing at the time of our review, there were several cases in which export license applications were not submitted by hosts for certain foreign national assignments. However, an export license may have been required because of the information being accessed, the individual's citizenship, or the individual's employer.

Because we cannot determine the extent of the daily activities in which the foreign nationals have been involved, or the specific information and technologies to which they might have had access, we cannot definitively state that Energy should have obtained deemed export licenses for any of these foreign assignees. Additionally, we do not have any evidence that

any technology or information has been inappropriately exported, without an export license, to any country.

Based on the above, however, we concluded that there are sufficient indicators of possible problems with Energy's deemed export licensing process to warrant a review by Energy officials.

By memorandum dated March 16, 1999, the Inspector General advised the Under Secretary, who was the Acting Deputy Secretary, of our concerns regarding deemed exports. Based on direction from the Under Secretary, Energy officials requested a meeting on this subject, which was convened on April 2, 1999. The Energy officials indicated that actions would be initiated to address the concerns that we had identified.

Energy's Actions on Prior Recommendations

We reviewed the actions taken by Energy in response to recommendations in our 1993 report on Energy's export licensing process to determine the adequacy of the corrective actions. Energy officials had previously reported that corrective actions had been completed. Although we found that Energy has implemented the corrective actions within its control regarding most recommendations, certain recommendations may require additional review and action by Energy, or interagency coordination.

The following matters may best be addressed by an interagency task force. For example, we found that information available to Commerce regarding whether a commodity was purchased and/or shipped is not currently available to Energy. Also, we determined that the Department of State (State) does not notify Energy of the final disposition of munitions cases. Finally, we learned that Commerce was developing the Automated Export System (AES), which was intended to show the final disposition of exported commodities that were licensed by Commerce. We concluded that, to assist them in their review of export license applications, Energy officials should seek access to this information.

BACKGROUND

Legislative History

The principal authority governing the export control of nuclear dual-use commodities derives from the Export Administration Act of 1979, as amended (50 U.S.C. 2401 et seq.) (EAA) and the Nuclear Non-Proliferation Act of 1978, as amended (22 U.S.C. 3201 et seq.). The EAA expired in 1994 and has not been reauthorized. However, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), the President has continued and amended the provisions of the EAA through a number of Executive Orders (E.O.s). Most recently, on August 13, 1998, the President issued a notice "Continuation of Emergency Regarding Export Control Regulations" continuing E.O. 12924, dated June 30, 1994. (63 Fed. Reg. 44,119 (1998))

Commerce uses the Export Administration Regulations (15 C.F.R. Part 730 et seq.) to implement policies regarding the export of nuclear dual-use commodities. Items designated for nuclear nonproliferation controls constitute the Nuclear Referral List, a subset of the Commerce Control List. Although E.O. 12981, Administration of Export Controls, dated December 6, 1995, provides authority to Energy and several other Departments to review <u>any</u> export license applications submitted to Commerce, Energy generally reviews only those export license applications received by Commerce dealing with the export of certain nuclear-related dual-use commodities.

Section 38 of the Arms Export Control Act (22 U.S.C. 2778) authorizes the President to control the export and import of defense articles (munitions) and defense services. Commodities designated for such controls constitute the U.S. Munitions List. State administers export controls on all munitions pursuant to the International Traffic in Arms Regulations (22 C.F.R. Part 120 et seq.) and consults with Energy on export license applications for certain munitions commodities.

Energy's Export License Review Process

Energy's export licensing review activities for nuclear dual-use and munitions commodities are based on the provisions of the laws, Executive Orders, and regulations discussed above, which Energy has not supplemented with internal orders. The NTSP Division, within Energy's Office of Nonproliferation and National Security, plays a major role in the formulation of U.S. nuclear nonproliferation and export control policies and makes unique contributions to the implementation of these policies, nationally and internationally.

Energy's process for reviewing export license applications received from Commerce regarding dual-use commodities, which represent the majority of export license applications reviewed by Energy, is shown at Figure 1. Energy also processes export license applications for munitions commodities. These are provided by State in a manner similar to applications received from Commerce, except that they are not transmitted electronically.

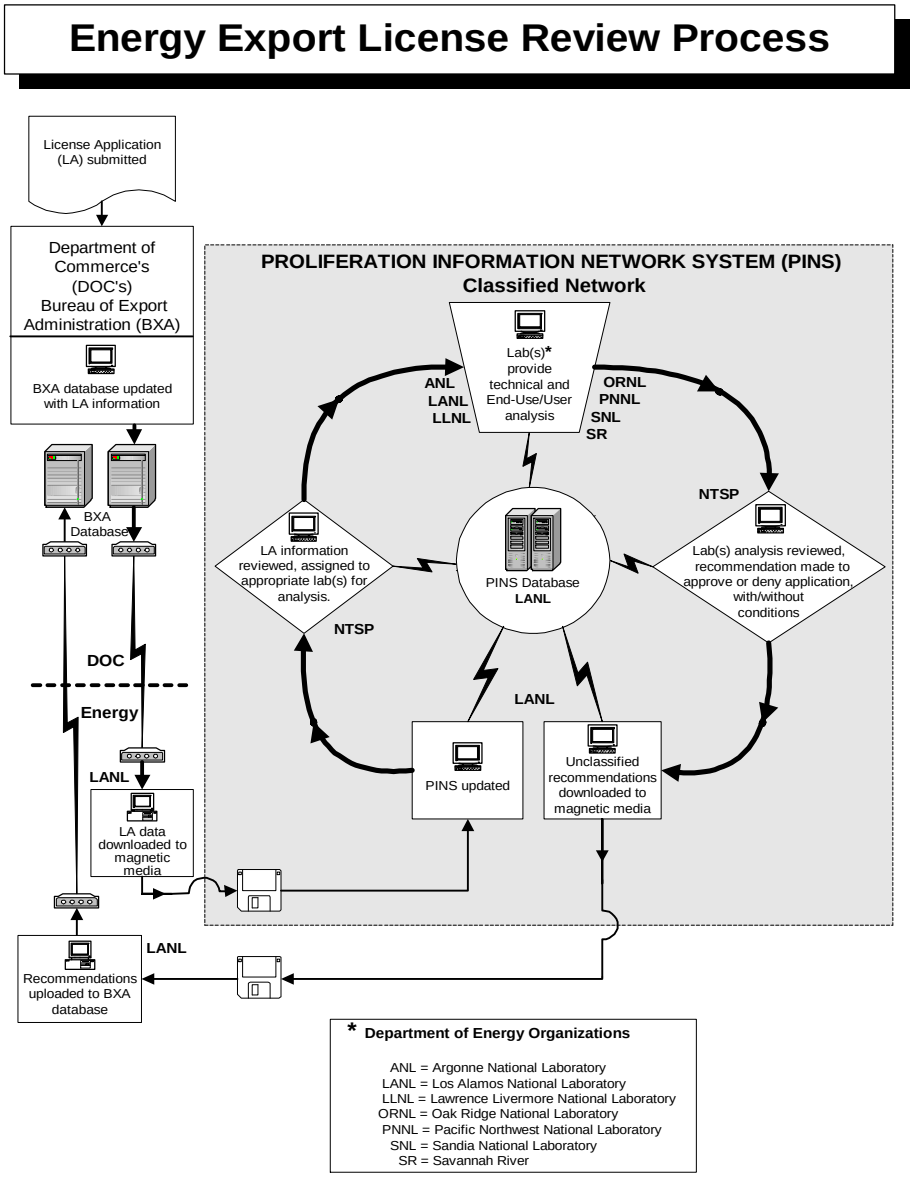

Figure 1 – Energy's Export License Application Review Process

Interface with Commerce

Commerce currently refers nuclear dual-use export license applications (cases) to Energy for review. These cases involve commodities on the Nuclear Referral List (NRL) or commodities that are intended for a nuclear end-use or a nuclear end-user. Commerce, however, does not refer all NRL cases to Energy. For some commodities on the NRL that are not intended for nuclear end-use or nuclear end-users, Energy has delegated to Commerce, through "Delegations of Authority" (DOAs), the authority to process these commodities without referring the cases to Energy. Energy has also given Commerce a DOA for commodities to Nuclear Suppliers Group members, because no license is required for items on the NRL to these countries.

Data concerning export license cases is contained in Commerce's Export Control Automated Support System (ECASS), which is an unclassified system. For cases referred to Energy, the data is electronically sent to Energy's Los Alamos National Laboratory (LANL), where it is downloaded and entered into Energy's Proliferation Information Network System (PINS), which is a classified system. Energy has 30 days from receipt of a referral and all required information to provide Commerce a recommendation regarding the license application.

Energy's NTSP Division is organized into regional and functional analysts who evaluate dual-use licenses with the knowledge and understanding of a particular country's potential nuclear weapons program, civilian nuclear programs, compliance with international nonproliferation or arms control treaties, as well as a familiarity with nuclear-related technologies. The Energy NTSP Division analyst assigned responsibility for the case will usually designate one of seven Energy laboratories and activities with access to PINS to conduct the primary analysis of the case. However, if they have an interest, any of the activities may provide input on the case to the NTSP Division analyst. The majority of cases are also referred to Energy's Lawrence Livermore National Laboratory (LLNL) for end-user analysis.

Energy's NTSP Division analysts factor many criteria into their review of dual-use license applications, including those embodied in EAR, 15 C.F.R. Part 744; namely, end-user of the commodity, technical significance of the commodity and stated end-use, potential risk of diversion, and nonproliferation credentials of the importing country. They also rely on intelligence information from Energy's Office of Intelligence and other segments of the U.S. Intelligence Community in their technical evaluation of nuclear dual-use and munitions license applications. After reviewing the laboratories' analyses, the NTSP Division analyst will make a

recommendation to his or her supervisor to deny, approve, or approve with conditions. When the supervisor approves the recommendation, Energy's unclassified recommendation and the conditions, if any, are downloaded from PINS and uploaded to ECASS. Comments from the Energy activities and NTSP Division analysts are not provided to Commerce.

Interface with State

Munitions commodities under the jurisdiction of State include items that could be used in the design, development, or fabrication of nuclear weapons or explosive devices. Historically, State has received few requests for the export of these types of commodities. However, when received, State usually refers munitions export cases involving commodities in Category V (Explosives, Propellants, Incendiary Agents), Category VI (Vessels of War Special Naval Equipment), and Category XVI (Nuclear Weapons Design and Test Equipment) of the U.S. Munitions List to Energy for review. State also refers export applications to Energy when a munitions commodity is to be used directly or indirectly in "nuclear explosive activities," or "unsafeguarded nuclear activities," and "safeguarded and unsafeguarded nuclear activities." Although State only referred a total of 10 cases to Energy for review during calendar years 1997 and 1998, State and Energy consult several times a month on cases other than those in Categories V, VI and XVI of the U.S. Munitions list. Export cases are transmitted between State and Energy via mail or fax because the agencies lack an electronic interface. However, the State munitions cases are entered into PINS and processed in the same manner as dual-use cases referred from Commerce.

Interagency Dispute Resolution Process

E.O. 12981 provides general guidance for resolving interagency concerns and differences over export license applications. E.O. 12981 further provides a mechanism to escalate cases to a higher level of authority when the reviewing departments or agencies are not in agreement. The escalation process includes, in ascending order, the Operating Committee (OC) of the Advisory Committee on Export Policy (ACEP), the ACEP, the Export Administration Review Board, and the President.

The OC, which has as its members representatives from Commerce, State, the Department of Defense (Defense), Energy, and the Arms Control and Disarmament Agency (ACDA), reviews all license applications on which the reviewing departments and agencies disagree. Representatives of the Joint Chiefs of Staff (JCS) and the Nonproliferation Center (NPC) of the Central Intelligence Agency (CIA) are nonvoting members. The Executive Order does not stipulate the level of representation for the OC. The Chair

of the OC, who is appointed by the Commerce Secretary, will consider the recommendations of the reviewing departments and agencies and issue a decision regarding the license application. If a department or agency disagrees with the decision of the OC Chair, it has five days to appeal the decision to the ACEP.

The ACEP is chaired by the Assistant Secretary of Commerce for Export Administration and has as its members Assistant Secretary-level representatives of State, Defense, Energy and ACDA. Representatives of the JCS and NPC are nonvoting members. However, the Executive Order also provides for an agency representative, regardless of rank, to speak and vote at the ACEP on behalf of the appropriate Assistant Secretary or equivalent. When a license application is appealed to the ACEP, the ACEP reviews all departments' and agencies' information and recommendations, and, by majority vote of the members, decides the appeal. Any dissenting department or agency has five days to appeal the decision to the Commerce Secretary in his or her role as the Chair of the Export Administration Review Board, which has as its members the Secretaries of Defense, Energy, and State, and the Director, ACDA. The JCS Chairman and the Director of Central Intelligence are nonvoting members. A decision by the Export Administration Review Board, which is based on a majority vote of the members, may be appealed within five days to the President.

Energy Export License Database

The Proliferation Information Network System (PINS) is a management information system that supports Energy's export license review activities for nuclear dual-use and munitions commodities and certain nonproliferation activities. The system, which contains data classified up to the SECRET/ RESTRICTED DATA level, can be accessed by NTSP Division analysts, as well as analysts at the Energy activities involved in the export license review process. PINS provides analysts with a multitude of reference material to assist in the review of export license applications, including technical information in the Nuclear Technology Reference Book and Military Critical Technology List; policy guidance, such as National Security Directives and Executive Orders; laws, treaties, and regulations; and classified intelligence information on end-users and suppliers. PINS also contains information on export cases currently under review by Energy, as well as export cases that Energy reviewed since 1978.

We obtained information regarding the Energy export license application review process, as well as information responsive to certain questions from the Senate Governmental Affairs Committee.

To assist the interagency review of the process for referring export cases between agencies, the Commerce Office of Inspector General (OIG) provided a random sample of 60 export license applications referred by Commerce and processed by Energy during the period January through June 1998 (hereafter, "60 referred cases"). Our analysis of these sample cases included a comparison of case information in the automated data bases maintained by Commerce (ECASS) and Energy (PINS). We also examined the timeliness and appropriateness of the referral to Energy of these 60 cases.

At our request, the Commerce OIG also provided an additional random sample of 60 cases that were not referred by Commerce to Energy during the period January through June 1998. We provided these additional 60 cases to an NTSP Division analyst and requested a determination whether, in his view, any of the cases should have been referred to Energy.

Based upon these reviews, we identified several issues concerning Energy's export license review process.

Inconsistency In Statutory and Regulatory Authorities

We reviewed whether current statutory and regulatory authorities contain inconsistencies or ambiguities regarding the licensing of dual-use and munitions commodities. NTSP Division officials identified what they believe is an inconsistency in current statutory and regulatory authorities. While procedures for processing dual-use license applications are clearly articulated in relevant regulations, there is no equivalent process for reviewing munitions cases. As a result, Energy's role in reviewing munitions cases is not clear. In addition, there is no process for inter-agency meetings on munitions cases or for escalation of disagreements over munitions cases. We concluded that the issue of whether a process is needed regarding the escalation of munitions cases is an interagency matter that should be addressed.

Executive Order Is Consistent With the EAA

We reviewed whether E.O. 12981, as implemented, is consistent with the objectives of the Export Administration Act and other relevant statutory and regulatory authorities. NTSP Division officials believe that the Executive Order is consistent with the objectives of the Export Administration Act and other relevant statutory and regulatory authorities.

Majority of Cases Properly Referred by Commerce

We reviewed whether there is a continued lack of interagency accord, as stated in the 1993 interagency report, concerning whether Commerce is properly referring export license applications (including supporting documentation) for review by other agencies. NTSP Division officials identified a small number of cases that should have been referred to Energy. Energy has identified certain commodities that it does not need to review and has delegated authority to Commerce for those cases under the DOAs. Approximately 1,000-1,500 cases per year are covered by the DOAs. Based on their review of these cases, NTSP Division officials found approximately one percent of the cases had been erroneously processed. The NTSP Division Director advised us that she plans to rescind the DOAs to Commerce for a period of time to determine whether they should be continued.

We asked NTSP Division officials to review the 60 randomly-selected export cases that had not been referred by Commerce to Energy to determine whether any of these cases should have been referred to Energy. According to an NTSP Division official, one of the 60 cases should have been referred to Energy because of the nuclear end-user. We learned that Commerce ultimately returned the application to the applicant without action.

Although Commerce and Energy share export license information via electronic transfers, not all export licensing information can be electronically transmitted between the agencies. For example, the inability of ECASS to process image-type information prevents transmittal of large diagrams and other oversized documents, such as technical specifications. When NTSP Division analysts require information in the supporting documents, the analysts either contact the applicant directly or request Commerce to provide the documents, usually by mail. We concluded that the current process used by Commerce to provide supporting documents to Energy may adversely impact the timeliness of Energy's review, and should be improved.

We recommend that the Assistant Secretary for Nonproliferation and National Security:

1. Coordinate with Commerce to establish a more effective process to provide supporting documents or information to Energy.

"Escalation" Process Is Adequate

We reviewed whether the interagency "escalation" process for appealing disputed recommendations relating to license applications allows officials from dissenting agencies a meaningful opportunity to seek review of such applications. The NTSP Division Director said that Energy objects to very few cases and she believes the escalation process works. For example, when Energy recommends denial of an application and another reviewing agency has recommended approval, the case is escalated. When Energy recommends denial, Energy's recommendation is almost always accepted. She said that almost all disputed cases are resolved at the ACEP.

We became aware of a potential issue identified by Commerce concerning the level of agency representation at the ACEP. The concern was that several agencies, including Energy, did not always send an Assistant Secretary-level representative to the meetings. Our review of E.O. 12981 determined that although the Executive Order states that the ACEP shall have as its members Assistant Secretary-level representatives from Defense, Energy, State, and the Arms Control and Disarmament Agency, the Executive Order also provides for representatives to be of a lesser rank, such as a Deputy Assistant Secretary or equivalent. The Executive Order 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 . . . ." Although the language in the Executive Order could be clearer regarding ACEP membership, we believe that the Executive Order does not require that participation at ACEP meetings be limited only to Assistant Secretary-level officials. We believe that the agencies involved should jointly determine the level of representation at ACEP meetings.

Energy Reviews For Proliferation Concerns

We reviewed whether the current dual-use licensing process adequately takes account of the cumulative affect of technology transfers resulting from the export of munitions and dual-use items. We determined that Energy's process includes a review for proliferation concerns. As discussed previously, PINS provides Energy analysts classified intelligence information on end-users and suppliers. Energy analysts can use data stored in PINS to provide a summary of license applications sorted by destination countries; by exporter; by equipment and commodities, by type or description; and by export commodity classification numbers. PINS also contains export case information on cases that were reviewed by Energy as far back as 1978. However, Energy does not have the information available to Commerce as to whether a specific commodity was shipped, and does not have information available to State on the final disposition of munitions cases. We believe that if Energy analysts had access to this information, their analyses would be more complete.

Training for NTSP Division Analysts Is Adequate

We reviewed whether license review officials at Energy are provided sufficient training and guidance relevant for reviewing license applications. We determined that, although a formal training program has not been established, the existence of an on-the-job training program, supported by detailed reference material, provides an adequate level of training. According to NTSP Division officials, Energy seldom hires new NTSP Division analysts, therefore there is no formal training program. When a new analyst is hired, however, the individual is assigned to work with a more experienced licensing officer. The new analyst, who would be given increasing responsibilities, would initially be tasked to review countries or technologies for which there are no significant proliferation concerns and would attend interagency meetings as an observer to learn about other agencies, national policies, and the nonproliferation environment. Continuing training is in the form of participation at Energy-sponsored nonproliferation workshops, attendance at trade shows, and attendance at seminars with Commerce, exporters or international delegations. NTSP Division officials said that new procedural manuals have been written that analysts can use for reference, including "A Guide to Nuclear Export Controls" and the "Inspection Guidebook for the Nuclear Suppliers Group Dual-Use Annex." We concluded that the training currently being provided to NTSP Division analysts appears to be adequate.

No Problems Identified With Energy's Database

We reviewed the adequacy of databases used in the export licensing process, and the completeness, accuracy, consistency and security of the databases. Our review of the Energy database, PINS, which was based on the 60 referred cases, did not identify any significant issues.

Minor data discrepancies identified

Our review of the data contained in PINS and the Commerce database (ECASS) for the 60 referred cases disclosed only minor discrepancies, which were related to the data field in PINS for "DOC Comments." This data field is used to record the Commerce Licensing Officer's comments to Energy. We learned that, for some cases, Energy did not receive the entire comments from Commerce for this data field because the comments were "truncated" when received by Energy. We concluded that, to ensure consistency of the information in PINS and ECASS, the "DOC Comments" field in PINS should capture all of the Commerce comments.

We recommend that the Assistant Secretary for Nonproliferation and National Security:

2. Coordinate with Commerce to ensure that Energy receives all Commerce comments concerning an export license application.

PINS contains required records

Based on our review of records maintained in PINS for the 60 referred cases, we believe that PINS contains the required records. Export control requirements provide for departments or agencies consulted in connection with a license application to keep records of their advice, recommendations or decisions, including the factual and analytical bases of the advice, recommendations or decisions. In our view, PINS contained the required records concerning the factual and analytical bases for Energy's advice, recommendations, and decisions for the 60 referred cases.

PINS access limited and data protected

We determined that Energy has established detailed procedures to limit access to the PINS classified databases and to protect the information contained in the databases. All communication lines between servers are protected with National Security Agency-approved Type I encryption units (STU-III and NES encryption units). Terminals are located in secure areas at Energy Headquarters and at the sites that participate in the review of export cases. Access to PINS requires presentation of a password and user identification. Audit trails are maintained of certain events, such as attempts to use an incorrect password more than five consecutive times, the receipt of a message from an unknown NES unit, or the inability to decrypt a message. These audit trails are restricted from access by any PINS user except the LANL System Manager. The NES audit logs from all laboratories accessing PINS are reviewed biweekly by LANL. Also, the server security log is monitored daily at LANL.

We reviewed data security, and whether comments or recommendations can be changed once entered into PINS. We determined that although PINS users are permitted to view, extract, and print information from the PINS server, users do not have the ability to change or delete data or recommendations. For example, NTSP Division analysts and Energy activity analysts enter their comments into PINS on each application they review. NTSP Division analysts said that, although they may disagree with an activity analyst's comments, they do not have the ability to overwrite the comments. They said they will, however, document in the

"Comment Section" of the particular case, their reasons for disagreement with the activity analyst. According to the NTSP Division analysts, there were two types of comments entered into PINS for each case; an "Active Comments" field, which can be accessed by the author and allows the author to edit his or her comments, and a "Frozen Comments" field, which can be reviewed by all PINS users, including the author, but which cannot be edited or changed. As of December 1998, PINS was determined to be "Y2K" compliant.

Analysts Not Pressured to Change Recommendations

We found no evidence that NTSP Division analysts are being pressured improperly by their superiors to issue or change specific recommendations on license applications. All NTSP Division analysts that we interviewed stated that they had never been pressured to change their recommendations regarding license applications.

PINS Provides Adequate Audit Trail

We reviewed whether Energy's licensing process leaves a reliable audit trail for addressing licensing performance. We determined that considerable information regarding each export case is retained in PINS. According to an NTSP Division analyst, PINS tracks virtually everything that is done to a license application, and therefore, the case history in PINS for each export case will show everything that has been done for a particular application. Our review of case histories in PINS for the 60 referred cases showed that the case histories contained the information regarding Energy's processing of the case. For example, among other things, each case history contained the dates that Energy received the case for review and subsequently provided its recommendation to Commerce; comments by Energy activity analysts who reviewed the case; comments by the NTSP Division analyst; and Energy's recommendation, including a description of any conditions on the license.

Referral of Sample Export Cases

As discussed previously, we reviewed two sets of sample export license application cases provided to us by the Commerce OIG. The results of our analyses follow.

Energy Review Timely

E.O. 12981 requires that, within 30 days of receipt of a referral, a department or agency provide Commerce with a recommendation either to approve or deny the license application. The results of our analysis of the timeliness of Energy's review of 51 of the 60 referred cases is shown in Figure 2 (see note). Energy provided comments to Commerce for 49 of the 51 cases within the 30-day requirement specified by E.O. 12981 and, on average, cases processed by Energy were completed well within the time requirements.

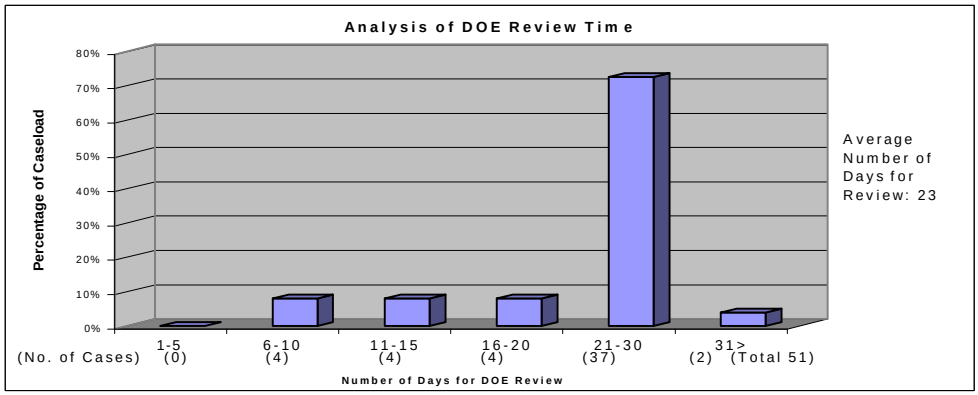

Figure 2 – Analysis of DOE Review Time[2]

Data generated from PINS showed that the average number of days for Energy to process the cases received from Commerce in calendar year 1998 was nine days. This excludes cases referred to Energy for review prior to OC meetings.

[2] Of the 60 referred cases, we only included 51 in our timeliness analysis. In one case, Energy was the applicant so Energy did not provide a response; four cases were cases sent to Energy for review for OC meetings; and four cases were National Defense Authorization Act cases, which have a ten-day response time and are not subject to the 30-day review requirement.

Majority of Cases Appropriately Referred

An analysis of the 60 referred cases indicated that all the cases were appropriately referred by Commerce.

Also, the analysis by an NTSP Division analyst of the 60 sample cases that had not been referred to Energy by Commerce showed that one of the 60 cases should have been referred to Energy for review because of the nuclear end-user. We learned that Commerce ultimately returned this case to the applicant without action.

PINS Contains Required Records

As discussed previously, based on our review of records maintained in PINS for the 60 referred cases, we believe that PINS contains the required records. We could not, however, make a determination regarding the appropriateness of Energy's recommendations on the 60 referred cases.

Adequacy of Database Information

Also, as discussed previously, our review of the data contained in ECASS and PINS for the 60 referred cases disclosed only minor discrepancies, which concerned the comments in the "DOC Comments" data field for some cases.

Improvements Needed In "Deemed" Export License Process

We found that Energy needs to clarify its policies with regard to deemed export licenses. When the policies are clarified, improvements should be made to the process for determining whether an export license is needed in conjunction with assignments of foreign nationals to Energy laboratories.

During our review of Energy's export license review process, a Commerce official expressed concern that Energy entities were not applying for export licenses for foreign nationals who might have access to export-controlled technology and/or software while visiting Energy laboratories. He based his concern on the large number of foreign visitors to Energy laboratories and the apparent lack of export license applications submitted to Commerce by Energy entities for foreign visitors. According to the EAR, any release to a foreign national of technology or software that is subject to the EAR is "deemed to be an export" to the home country of the foreign national. [3] These exports are commonly referred to as "deemed exports." 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 Commerce 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 this visitor might access.

We reviewed the requirements for deemed exports contained in the EAR, as well as relevant Energy guidance. We limited our review to four Energy laboratories: LANL, LLNL, Oak Ridge National Laboratory (ORNL) and Sandia National Laboratory (SNL)-Albuquerque. For each laboratory, we reviewed the process used for determining whether there are export issues related to assignments of foreign nationals to unclassified activities in the laboratory. Energy has defined "assignments" as visits by foreign nationals for more than 30 calendar days. Our review did not include visits by foreign nationals to the laboratories, which are 30 calendar days or less. We also reviewed a small sample of projects at each of the four Energy laboratories in which foreign assignees had participated. The review of these projects was to determine whether there were any export concerns. The focus of our review of "deemed" exports was to determine whether the

[3] Release includes, among other things, visual inspection by foreign nationals of U.S.-origin equipment and facilities, and oral exchanges of information.

hosts of the foreign assignees should have acquired deemed export licenses.[4] We did not consider whether the foreign nationals should have been at the Energy laboratories.

During our visits to the Energy laboratories, we were advised that each of the laboratories was taking initiatives regarding export controls for visits or assignments of foreign nationals. For example, SNL-Albuquerque, LANL and ORNL are making guidance available to employees via internal websites that addresses the need to consider export controls during visits or assignments by foreign nationals. LLNL anticipated making such guidance available electronically in May 1999.

We had concerns, however, with several aspects of the deemed export license process. For example, we found that neither Commerce guidance (as promulgated in the EAR) nor Energy guidance was clear regarding when a deemed export license would be required for an assignment involving a foreign national. We also found that: (1) the processes at the laboratories for reviewing foreign national assignees generally rely on the host of the foreign national assignee to determine whether there are export concerns associated with the assignment; (2) several hosts were not aware of, or did not understand, the requirements for deemed export licenses; and (3) several hosts did not appear to appropriately exercise their host responsibilities. In addition, as a result of our review, we are concerned that there does not appear to be an organization that has management responsibility for the deemed export license process within Energy.

By memorandum dated March 16, 1999, the Inspector General advised the Under Secretary, who was the Acting Deputy Secretary, of our concerns regarding deemed exports. Based on direction from the Under Secretary, Energy officials requested a meeting on this subject, which was convened on April 2, 1999. The Energy officials indicated that actions would be initiated to address the concerns that we had identified.

Our findings are consistent with the General Accounting Office (GAO), which in September 1997 concluded that Energy lacked clear criteria for identifying visits by foreign nationals that involve sensitive subjects. GAO did not specifically consider whether Energy should be obtaining export licenses for these visits. However, GAO recommended that Energy require

[4] For purposes of this review, we did not address the issue of whether U.S. scientists traveling abroad might require an export license under certain circumstances.

experts with appropriate technical backgrounds, such as laboratory individuals involved in export control issues, to independently review the subjects of visits by foreign nationals. Similarly, a July 1998 study conducted by Energy's Office of Counterintelligence (CN) reviewed the process used by Energy facilities to vet their foreign national visitors and assignees and reviewed the degree of counterintelligence involvement in this process. The CN study found that the lack of understanding regarding deemed exports had both legal and counterintelligence implications. According to the study, given the high number of foreign visitors to the laboratories, and the visitor's relatively free access to areas where high performance computers are located, one might expect that there would be a number of applications for deemed export licenses.

Guidance On Deemed Exports Not Clear

We found that the EAR, the relevant Energy order, and the guidance issued by the NTSP Division do not clearly explain when a deemed export license is required for a foreign national assignment. Also, based on our discussions with Energy officials and Energy laboratory personnel, it appeared to us that there is a lack of understanding regarding if and when deemed export licenses are required.

EAR Difficult to Interpret

The Energy officials who we interviewed contended that the deemed export provisions in the EAR are difficult to interpret. Our review and analysis of the EAR confirmed that, in our judgement, the EAR provisions lacked clarity. In our view, due to the ambiguity of the EAR language, a reader could conclude, for example, that an export license is not required for research conducted by Energy laboratories and Federally Funded Research and Development Centers (FFRDCs). Virtually all of the Energy laboratories have been designated as FFRDCs. However, we concluded that a blanket exemption for work at FFRDCs was probably not intended. In general, the restrictions in the EAR regarding deemed exports do not apply to publicly available technology and software that arise during, or result from, "fundamental research." Section 734.8 of the EAR defines fundamental research as basic or applied research in science and engineering, where the resulting information is ordinarily published and shared broadly within the scientific community. The EAR further states that research conducted by scientists or engineers working for a Federal agency or FFRDC may be designated as

"fundamental research" within any appropriate system devised by the agency or the FFRDC to control the release of information by such scientists and engineers.

Energy has not further defined fundamental research. Also, Energy scientists are expected to determine when to assert restrictions for proprietary or national security reasons, which is categorized as "a matter of judgment." The following examples illustrate the difficulties experienced by individuals in interpreting the deemed export requirements in the EAR.

- A contractor attorney at LLNL said that laboratory representatives might not be applying for many deemed export licenses because the EAR guidance is vague, especially where it interplays with notions of fundamental research and publicly available information. He said that their classification office and the laboratory employees routinely struggle to try to determine if and when a deemed export license might be required.

- An export compliance manager at ORNL said that he sends a letter to all hosts of foreign nationals. The letter contains the statement that "No license is required for a Federal agency or a Federally Funded Research and Development Center (FFRDC)," which reflects language in the EAR. When asked whether this statement meant that none of the scientists that worked at ORNL needed to apply for a deemed export license for foreign national assignments involving research activities, he said that he was not sure what the statement meant.

We believe that additional guidance from Commerce is required regarding the circumstances under which a foreign national's visit or assignment would require an export license.

We recommend that the Assistant Secretary for Nonproliferation and National Security:

3. Coordinate with Commerce to obtain guidance regarding when a visit or assignment by a foreign national would require an export license.

Energy Order Not Clear

We found that the Energy order regarding assignments of foreign nationals also is not clear on when an export license may be necessary in conjunction with a foreign national assignment. DOE Order 1240.2B, "UNCLASSIFIED VISITS AND ASSIGNMENTS BY FOREIGN NATIONALS," dated September 3, 1992, contains provisions for visits and assignments by foreign nationals to Energy facilities. The Order defines "Export Controlled Information (ECI)" and states that some sensitive subjects are controlled as ECI under U.S. laws and regulations. However, the Order does not explicitly state that the Energy host might be required to apply for a deemed export license in conjunction with a foreign national's assignment, nor does the Order prescribe circumstances that would exclude research activities from the requirements of the EAR.

Energy Guidelines Not Clear

We found that guidance issued by the NTSP Division does not clearly state the requirement for an export license for Energy-sponsored activities and, in our view, could give the impression that while a private sector entity would require an export license for certain activities, Energy may not.

In February 1997, the NTSP Division published a document titled "GUIDELINES ON EXPORT CONTROL AND NONPROLIFERATION." These guidelines establish policy and procedures for transfers by Energy of unclassified equipment, materials, and information that could adversely affect U.S. nuclear nonproliferation objectives or national security. According to an NTSP Division official, these guidelines have been widely distributed throughout Energy. However, the requirement for a deemed export license for Energy-sponsored activities is not clearly stated. Also, the language in the guidelines could give the impression that, while the private sector would need an export license, Energy would not. For example, the guidelines state that "DOE-sponsored activities often entail the transfer abroad of technical information, and sometimes equipment and materials. Private sector export of such items would be subject to U.S. Government export control review and approval; lack of an export control review and approval process for DOE-sponsored actions could defeat the intent of the NPT [Non-proliferation Treaty], U.S. laws and regulations, and U.S. international commitments."

Possible Management Control Weaknesses Identified

We found that the processes at the laboratories for reviewing assignments of foreign nationals generally rely on the host of the foreign national assignee to determine whether there are export concerns associated with the assignment. We believe that the reliance on the host to determine whether an export license is required for a foreign national assignment is problematic because we found several hosts who were not aware of, or did not understand the requirements for deemed export licenses and several hosts who did not appear to appropriately exercise their host responsibilities.

For example, the form used at ORNL for approval of foreign visits and assignments (DOE Form IA-473, "Request for Foreign National Unclassified Visit or Assignment") requires the applicant (host) to indicate whether the assignment will result in the disclosure of technical data other than that allowed by the general export license. We found, however, that 13 of the 17 hosts we interviewed said that they were not responsible for making this determination. In addition, when asked who certifies that no license is required, four of the 17 hosts said that they did not know or were not sure.

Also, five of the 17 hosts that we interviewed at ORNL said that the six foreign nationals they were hosting were affiliated with a nuclear facility or nuclear end-user in their home countries. However, none of these hosts had considered applying for deemed export licenses. A limited review of information on the DOE Form IA-473 by Energy contractor technical analysts, who review export license applications for Energy, indicated that export licenses might have been required for two of these foreign nationals because they were affiliated with nuclear end-users in their native countries.

Additionally, a security specialist at LANL said because no one is an expert in every technical area, LANL relies on the hosts to determine if a deemed export license is required for every foreign national visitor or assignee who comes to the laboratory. However, nine of the 14 hosts who we interviewed contended that they were not responsible for making this determination. We were not able to reconcile this inconsistency.

Hosts Did Not Understand Requirements

We found a lack of understanding by some hosts of the requirements for deemed export licenses. We also found that other hosts did not appear to appropriately exercise their host responsibilities.

For example, hosts at LLNL had received memoranda regarding their security responsibilities pertaining to foreign national assignments. The memoranda reminded the hosts that access to Export Controlled Information must be strictly controlled. However, two of the eight hosts we interviewed said that they never received guidance on possible export control issues relating to the foreign nationals they were hosting.

Also, a LANL security specialist said that hosts are made aware of their responsibilities to review possible export issues for every visitor or assignee. However, only seven of the 14 hosts that we interviewed said they had received guidance related to export controls in conjunction with hosting foreign nationals. An additional host said he had received export guidance twenty years ago.

In addition, one host at SNL-Albuquerque said that the request for the foreign national he hosted stated that the individual might have access to software that was export controlled. The host explained that counterintelligence representatives reviewed the request, but a determination was never made regarding whether the software was, in fact, controlled.

We reviewed whether hosts appropriately adhered to Energy's policies for hosting unclassified assignments by foreign nationals. One ORNL contractor said that he was listed as the host of a Chinese national assignee, but that another Chinese national was the actual host. The contractor said he was the host of record because of the requirement that the host should be a U.S. citizen.

Also, another ORNL contractor host said that his name is officially assigned as the host for many visitors. He said, however, that he does not actually know them all.

In addition, one LLNL contractor who hosted an Indian national assignee said that a revision to the laboratory's policy required the laboratory director to approve all requests to host Indian nationals. He said, therefore, that he asked the Indian national to leave. The Indian national returned to the U.S. university where he was employed. However, the host said that he planned to send a laboratory employee to the university to collaborate with the Indian national because this would be easier than trying to get approval for the Indian national to work at the laboratory.

Program Management Responsibility Not Clear

We could not determine which Energy organization, if any, has management responsibility for the deemed export licensing process.

DOE Order 1240.2B assigns several responsibilities in the area of export controls to the NTSP Division. For example, the NTSP Division has review and concurrence responsibility for visits by foreign nationals. However, the NTSP Division does not review and concur on visits and assignments to non-security areas that do not involve sensitive subjects. The NTSP Division also develops export control policy and guidance that is widely disseminated throughout Energy. In addition, the NTSP Division provides awareness seminars for Energy employees. In July 1996, the then Director, Office of Nonproliferation and National Security, issued guidance on access to export controlled information by foreign nationals that stated that personnel familiar with export control regulations should be consulted routinely when determining what access to technology can be afforded foreign visitors. However, the NTSP Division Director said that the NTSP Division does not have an oversight role to ensure that Energy sites and contractors are adhering to export control requirements.

Some Foreign National Assignments May Have Required an Export License

We found that, at the time of our review, export license applications were not submitted by hosts for certain foreign national assignments, even though an export license may have been required because of the information being accessed, the individual's citizenship, or the individual's employer.

We selected a small, judgmental sample of the documentation processed for proposed assignments of foreign nationals to LANL, LLNL, ORNL, and SNL-Albuquerque during calendar year 1998. We limited our sample to foreign nationals from China, India, Iran, Iraq and Russia. We then provided Energy analysts, who are involved in reviewing export license applications, with the documentation regarding these proposed assignments. The documentation included the citizenship of the foreign national assignee, the assignee's employer, and the purpose or justification for the assignment. The analysts concluded that export licenses might have been required by the Energy hosts for certain of the assignees.

For example, at ORNL, three of the 20 foreign nationals might have had access to technology that is covered under specific export commodity control numbers. Two other foreign nationals at ORNL had affiliations with nuclear end-users in their native country. Also, research activities by four other foreign nationals at ORNL might have involved more than basic research.

At LLNL, one of the foreign nationals was involved in two projects – a high-power laser for Extreme Ultraviolet Lithography, which has potential application to advances in the semiconductor industry, and the development of a high-energy laser for the U.S. Army's missile defense program. In addition, another foreign national at LLNL was involved in discussions about laser optics and development of solid state lasers, which might have exposed the individual to export-controlled technology.

At this time, Energy analysts have not completed their reviews of our samples from SNL-Albuquerque and LANL. However, we noted that export licenses might have been required for six foreign nationals in our sample at LANL because of their affiliations with nuclear end-users in their home country.

Based on the above, we concluded that there are sufficient indicators of possible problems with Energy's implementation of the deemed export licensing process to warrant a review by Energy officials.

We recommend that the Under Secretary:

4. Assure that the Energy task group established to review and resolve possible issues associated with Energy's deemed export process, addresses these issues as expeditiously as possible.

Additional Actions Needed on Prior Recommendations

In 1993, as part of the interagency export license process review by the Offices of Inspector General of Commerce, Defense, Energy and State, we issued a report on Energy's export licensing process for dual-use and munitions commodities subject to nuclear nonproliferation controls. The report, titled "Inspection of the Department's Export Licensing Process for Dual-use and Munitions Commodities," DOE/IG-0331, contained recommendations for corrective actions to improve Energy's process. As part of our current inspection, we reviewed the actions taken by Energy in response to our previous recommendations to determine the adequacy of the corrective actions. Energy officials had previously reported that corrective actions had been completed. We found that Energy has implemented the corrective actions within its control regarding most recommendations. However, certain recommendations may require additional review or action by Energy, or interagency coordination.

Several Prior Recommendations Resolved by PINS

Five recommendations were adequately resolved by the implementation of PINS:

Recommendation 1 (1993 Report): Review and update records maintained by the Export Control Operations Division (now the NTSP Division) to ensure compliance with Energy records management directives and provisions of the Export Administration Act of 1979, as amended.

Recommendation 2 (1993 Report): Ensure that the Records Inventory Disposition Schedule complies with the provisions of the Export Administration Act of 1979, as amended, regarding records retention.

Recommendation 3 (1993 Report): Ensure that records are developed and maintained to document the Export Control Operations Division's factual and analytical bases for providing Commerce advice, recommendations, and decisions on export cases.

Recommendation 6 (1993 Report): Ensure timely completion of the fielding of PINS at the Energy national laboratories to allow them access to export case information in order to assist in Energy's processing of export cases.

Recommendation 11 (1993 Report): Coordinate with Commerce to develop and implement procedures to ensure that export license application information in the ECASS data base maintained by Commerce and the Energy Information System data base (now a part of PINS) maintained by Energy are reconciled on a periodic basis.

One Recommendation Addressed By Other Action

One recommendation was adequately addressed by the development of procedural manuals.

Recommendation 4 (1993 Report): Update the procedures manual titled "Procedures/ Policies United States Nuclear Export Control," and ensure the manual is used by analysts when processing export cases.

This recommendation was addressed by the development of new procedural manuals that NTSP Division analysts can use for references. These include "A Guide to Nuclear Export Controls" and the "Inspection Guidebook for the Nuclear Suppliers Group Dual-Use Annex."

Several Recommendations Require Additional Actions

The remaining five recommendations require additional corrective actions. We recognize that certain of these recommendations will require interagency coordination to assure appropriate implementation of corrective actions. However, in view of the significance of these issues, Energy should initiate actions as soon as practicable for Recommendations 8, 9, and 10.

Recommendation 5 (1993 Report): Assess the adequacy of the staffing level in the Export Control Operations Division (ECOD) for processing nuclear dual-use export cases.

The NTSP Division (formerly the ECOD) has three analysts to process license applications. According to the Division Director, staffing is inadequate because her office has experienced an increase in tasks, and case levels have increased in the last few years, with most cases requiring significant analytical work. She said, for example, her staff has been receiving additional taskings regarding commercialization of technologies, which must be reviewed for any proliferation concerns before Energy releases the technologies. She also said that her staff has been working with property managers across the complex to ensure that export controls have been addressed before the property is processed as surplus property. She said that she will attempt to hire one additional analyst to process license applications. We concluded that a review of the NTSP Division workload should be conducted to determine the appropriate level of staffing.

We recommend that the Assistant Secretary for Nonproliferation and National Security:

5. Conduct a review, in coordination with the Director, Office of Management and Administration, of the NTSP Division workload to determine the appropriate staffing level.

6. Ensure that, if the workload review identifies a requirement for increased staffing, actions are initiated to provide the NTSP Division with the appropriate level of staff.

Recommendation 7 (1993 Report): Coordinate with the Office of Intelligence and the Energy National Laboratories to ensure that Energy's intelligence capability is being fully utilized in the processing of export cases.

Prior to initiating this review, it came to our attention that there was an unresolved issue regarding access to export-related information (referred to as 12(c) information). The NTSP Division Director said that the Office of Intelligence provides excellent support to the NTSP Division; however, the issue of access to 12(c) information remains unresolved. In a memorandum dated March 2, 1998, we requested the Office of General Counsel review the possible conflict between the requirements of E.O. 12333, "United States Intelligence Activities," and the requirements to protect 12(c) information. The Office of General Counsel has not yet issued a written legal opinion.

We recommend that the General Counsel:

7. Complete the review to determine whether a possible conflict exists between E.O. 12333 and the requirements to protect 12(c) information.

8. Issue a written legal opinion concerning whether Intelligence officials should have unrestricted access to 12(c) information maintained by Energy.

Another NTSP Division official was not satisfied with the support provided by the Office of Intelligence. He said that instead of providing the NTSP Division with "raw" intelligence data, the intelligence analysts routinely write an abstract from the raw intelligence data and provide the abstract to the NTSP Division

analysts. He said the access to raw intelligence data could enhance the work of the NTSP Division. For example, at interagency meetings, NTSP Division officials may take a position based on the intelligence abstract, while another agency may have more complete intelligence data supporting the opposing position. Also, the Office of Intelligence insistence on preparing an abstract of the raw intelligence delays the timeliness of the receipt of such data. Finally, he said that State, which chairs the Nuclear Export Violators Working Group, provides an agenda to Energy prior to scheduled meetings that cites relevant raw intelligence reports. According to the NTSP Division analyst, Office of Intelligence officials will not provide NTSP Division analysts with access to the raw intelligence reports, which are classified above the SECRET level. Therefore, an NTSP Division official must travel to State to review relevant intelligence information for the meetings. The then Deputy Director, Office of Intelligence, advised us that he believed that the Office of Intelligence is prohibited from releasing raw intelligence data due to CIA requirements to protect sources and methods.

We recommend that the Assistant Secretary for Nonproliferation and National Security:

9. In coordination with the Director, Office of Intelligence, ensure that the issue of access to intelligence information required to support NTSP Division export license activities is resolved.

Recommendation 8 (1993 Report): Coordinate with Commerce to ensure access by Energy to information within Commerce regarding the final disposition of export cases and to develop guidelines for Energy's access to the information, if possible.

In our 1993 report, we defined “final disposition” as approval or denial of license applications and the purchase and/or shipment of commodities. Energy currently receives information regarding the approval or denial of an export license application referred by Commerce to Energy. However, Energy does not receive information from Commerce regarding whether the commodity was actually purchased and/or shipped. The U.S. Customs Service (Customs) provides this information to Commerce, but Energy does not have access to the information. We concluded that Energy officials should initiate action to obtain this information from Commerce.

We recommend that the Assistant Secretary for Nonproliferation and National Security:

10. Coordinate with Commerce to ensure access by Energy to information within Commerce regarding the final disposition of export cases and develop guidelines for Energy's access to the information.

Recommendation 9 (1993 Report): Coordinate with State to ensure access by Energy to information maintained by State regarding final disposition of munitions export cases and develop guidelines for Energy's access to the information.

State currently only shares this type of information with Defense. Therefore, Energy is not notified of the final disposition of munitions cases and Energy NTSP Division analysts do not know whether the applications they review are approved or disapproved. We concluded that Energy officials should initiate action to obtain this information from State.

We recommend that the Assistant Secretary for Nonproliferation and National Security:

11. Coordinate with State to ensure access by Energy to information maintained by State regarding the final disposition of munitions cases and develop guidelines for Energy's access to the information.

Recommendation 10 (1993 Report): Ensure that Los Alamos National Laboratory completes its plan to obtain licensing decision information from Commerce.

As discussed above, Commerce does not provide the information it receives from Customs to Energy. An NTSP Division official said that Commerce was developing the Automated Export System (AES), which was intended to show the final disposition of exported commodities that were licensed by Commerce. However, the official did not know the status of this initiative. We concluded that Energy officials should seek access to the information in AES when the system becomes operational.

We recommend that the Assistant Secretary for Nonproliferation and National Security:

12. Coordinate with Commerce to obtain access for Energy to information in the AES when the system becomes operational.

MANAGEMENT COMMENTS

Management concurred with all recommendations in our report.

By memorandum dated May 6, 1999, the Assistant Secretary for Nonproliferation and National Security provided management's comments to our draft report. According to the Assistant Secretary, her comments included, as appropriate, comments by the Office of Defense Programs and the Office of Science.

The Assistant Secretary concurred with 11 of the 12 recommendations in our draft report and identified specific actions to implement the recommendations. However, she did not concur with Recommendation 2, which was to ensure that PINS is modified to permit the capture of all Commerce comments concerning an export license application. According to the Assistant Secretary, the problem was the receipt of truncated comments from Commerce. The PINS memory space for the "DOC Comments" field was modified in April 1998, and no comments have exceeded the current memory space. She stated that Energy believes that the problem of truncated comments has been corrected by Commerce.

By memorandum dated May 14, 1999, the Director, NTSP Division, suggested a revision to Recommendation 2 to address this matter. Therefore, we have revised Recommendation 2 in our final report.

The following is a summary of several key actions by the Department that were identified by the Assistant Secretary in her management comments. [See Appendix C for management's complete comments.]

- The Under Secretary formed an export control task force with representatives from the Secretary's office and the Offices of Nonproliferation and National Security, Counterintelligence, General Counsel, Defense Programs, and Science. The task force is reviewing export control issues relating to Energy facilities, including deemed exports.

- The Under Secretary raised the issue of deemed exports at a meeting with Energy laboratory directors.

- The task force has begun a dialogue with Commerce over the issue of deemed exports, received some limited additional guidance, and intends to use this mechanism to deal with issues as they arise.

- The February 1997 Guidelines on Export Control and Nonproliferation are being updated and will, among other things, clarify requirements on deemed exports.

- Energy is redrafting its policy with respect to unclassified foreign visits. The new policy will clarify where export control review responsibility lies between Headquarters and Energy facilities and ensure that consideration of export license requirements is part of the visits and assignments process.

- The Office of the Chief Financial Officer is examining its procedures for processing foreign travel applications. The procedures will provide that export license issues be considered as part of the application process.

- In addition to revising existing policies and procedures, a one page summary guide has been drafted for hosts of foreign nationals and for Energy foreign travelers.

- Energy plans additional efforts to educate Energy personnel on the issue of export control. These include bringing Commerce experts to the annual meeting of the Energy contractors' Export Control Coordinators Organization, participating in video conferences, and recommending that the Secretary and Under Secretary raise the level of awareness of this issue.

Management's comments have been incorporated into our report where appropriate.

INSPECTOR COMMENTS

We believe the actions by management are responsive to our recommendations.

Scope and Methodology

We conducted the field work portion of our review during the period October 1998 to April 1999, at the Department of Energy (Energy) Headquarters and four of the Department's laboratories; Lawrence Livermore National Laboratory (LLNL), Los Alamos National Laboratory (LANL), Oak Ridge National Laboratory (ORNL), and Sandia National Laboratory (SNL). At Energy Headquarters, we interviewed officials in the Nuclear Transfer and Supplier Policy Division, which was the principal office within the Department for export control activities, and officials in the Office of Intelligence. We also attended briefings provided by representatives from the Department's of Commerce, Defense, Energy, State, Treasury and the Central Intelligence Agency regarding their agencies' export license activities and we conducted interviews of officials at those agencies, as appropriate. We interviewed Energy Operations Office personnel and laboratory contractor officials who were involved in the review of export license applications and who were responsible for managing and operating the Energy's Proliferation Information Network System (PINS). We also interviewed hosts of foreign national assignees at Energy laboratories.

We reviewed the applicable laws, Executive orders, regulations and Departmental guidance regarding the export license process. We also reviewed files, both electronic and hardcopy, pertaining to the management and administration of the Department's export license activities.

In addition, we analyzed data from samples of export license cases and samples of applications for assignments of foreign nationals to selected Energy laboratories. These samples involved:

- A sample of 60 randomly selected export license cases that were referred by Commerce to Energy during the period January 1, 1998, to June 30, 1998. The cases were referred to Energy either because the commodity was designated as a nuclear dual-use item, the commodity was intended for a nuclear end-use or nuclear end-user, or the application was escalated to the Operating Committee.

- An additional sample of 60 randomly selected export license cases that were not referred by Commerce to DOE during the period January 1, 1998, to June 30, 1998.

- Samples from LANL, LLNL, ORNL, and SNL of applications for foreign nationals from sensitive countries for assignments to the laboratories.

This inspection was conducted in accordance with the Quality Standards for Inspections issued by the President's Council on Integrity and Efficiency.

QUESTIONS FROM THE SENATE GOVERNMENTAL AFFAIRS COMMITTEE CHAIRMAN

1. Please examine whether current, relevant statutory and regulatory authority contains inconsistencies or ambiguities regarding the licensing of dual-use and munitions commodities, and the effect of any such inconsistencies and ambiguities. (See page 12)

2. Please examine whether Executive Order 12981 (1995) as implemented is consistent with the objectives of the Export Administration Act and other relevant statutory and regulatory authority. (See page 12)

3. Please determine if there is a continued lack of interagency accord, as stated in your 1993 interagency report (at page 13), regarding whether the Commerce Department is properly referring export license applications (including supporting documentation) out for review by the other agencies. (See page 13)

4. Please determine if 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 page 14)

5. Please review whether the current dual-use licensing process adequately takes account of the cumulative affect of technology transfers resulting from the export of munitions and dual-use items, and the decontrol of munitions commodities. (See page 14)

6. Please review whether the current munitions licensing process adequately takes account of the cumulative affect of technology transfers resulting from the export of munitions and dual-use items, and the decontrol of munitions commodities. (See page 14)

7. Please 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 the Defense Department and other agencies. Please 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. (Not applicable to Energy)

8. Please 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 page 15)

9. Please review the adequacy of the databases used in the licensing process, such as the Defense Department's FORDTIS, paying particular attention to whether such databases contain complete, accurate, consistent, and secure information about dual-use and munitions export applications. (See page 15)

10. In his testimony, [a witness] described instances where licensing recommendations he entered on FORDTIS were later changed without his consent or knowledge. Please examine those charges, and assess whether such problems exist at your agencies. (See page 16)

11. Please determine whether license review officials are being pressured improperly by their superiors to issue or change specific recommendations on license applications. (See page 17)

12. Please determine whether our government still uses foreign nationals to conduct either pre-license or post-shipment licensing activities and whether such a practice is advisable. (Not applicable to Energy)

13. Please determine whether the agency licensing process leaves a reliable audit trail for assessing licensing performance. (See page 17)

14. Please describe the procedures used by agencies to ensure compliance with conditions placed on export licenses (e.g., no retransfers without U.S. consent, no replications, and peaceful use assurances), and assess the adequacy and effectiveness of such procedures. (Not applicable to Energy)

Department of Energy
Washington, DC 20585

May 6, 1999

MEMORANDUM FOR: SANDRA L. SCHNEIDER

FROM: ROSE GOTTEMOELLER
ASSISTANT SECRETARY FOR
NONPROLIFERATION AND NATIONAL SECURITY

SUBJECT: COMMENTS ON INSPECTOR GENERAL'S EXPORT LICENSING PROCESS DRAFT REPORT

The Office of the Assistant Secretary for Nonproliferation and National Security appreciates the opportunity to have reviewed the draft report on the export licensing process for dual-use and munitions commodities. The recommendations of the Inspector General will enhance the Department's export license processing as well as ensure that the Department's position on each license application is sound and defensible. Furthermore, the recommendations will ensure that the Department uses all its resources, including policy, technical, and intelligence efficiently and effectively. During our review of the draft report, we received comments from the Office of Defense Programs and the Office of Science and have addressed their comments as appropriate. Our general comments and the specific comments regarding the recommendations are attached.

Attachment

Comments on
IG Draft Report
Inspection of the Department of Energy's
Export Licensing Process For Dual-Use
and Munitions Commodities

General Comments

We appreciate the careful review the Inspector General (IG) has given to the Department of Energy (DOE) export control activities and are gratified by the findings indicating the strength of this program.

Your specific recommendations will be addressed in detail farther on but we would like to summarize some key actions that have been taken as follows:

- Formation of an Export Control Task Force. The Under Secretary formed an export control task force with representatives from the Secretary's office, and the Offices of Nonproliferation and National Security (NN), Counterintelligence (CN), General Counsel (GC), Defense Programs (DP) and Science (SC). This group is reviewing export control issues relating to DOE facilities, including deemed exports.

- Meeting with Lab Directors. Under Secretary Moniz raised the issue of deemed exports at a meeting with DOE Lab Directors and the Inspector General explained his concerns.

- Consultations with Commerce. The Task Force has begun a dialogue with the Department of Commerce (DOC) over the issue of deemed exports, received some limited additional guidance, and intends to use this mechanism to deal with issues as they arise.

- Attendance at ACEP. Since the end of 1998, a Deputy Assistant Secretary level representative has attended meetings of the Advisory Committee on Export Policy (ACEP). Assistant Secretary Gottemoeller has attended meetings for extremely sensitive export cases. In a April 21, 1999, letter, Under Secretary Moniz confirmed to DOC that this practice would continue. DOC has stated that it satisfied with this arrangement.

- Redrafting of Export Control Guidelines. NN is updating its February 1997 Guidelines on Export Control and Nonproliferation. A draft has been sent to all Secretarial Offices for concurrence and should be circulated to DOE facilities soon. The new guidelines will, among other things, clarify requirements on deemed exports.

- Redrafting of Foreign Visits and Assignments Policy. The Department is redrafting its policy with respect to unclassified foreign visits and assignments. The new policy will clarify where export control review responsibility lies between headquarters and DOE facilities and ensure that consideration of export license requirements is part of the visits and assignments process.

- Updating Foreign Travel Procedures. The Office of the Chief Financial Officer is examining its procedures for processing foreign travel applications. The procedures will provide that export license issues be considered as part of the application process.

- Drafting Additional Guidance. In addition to revisions of existing policies and procedures, NN has drafted one page summary guides for hosts of foreign nationals and for DOE foreign travelers. These will be circulated to DOE facilities at the same time that the revised Guidelines on Export Control and Nonproliferation are released.

- Additional Educational Efforts. The Department plans additional efforts to educate DOE personnel on the issue of export control. These include bringing DOC experts to the annual meeting of the DOE contractors' Export Control Coordinators Organization, participating in video conferences, and recommending Dr. Moniz and Secretary Richardson raise the level of awareness of this issue.

The recommendations of the IG will enhance export license processing at DOE and will ensure that DOE's position on each license application is sound and defensible. Furthermore, the recommendations will ensure that DOE has used all its resources, including policy, technical, and intelligence efficiently and effectively.

Many of the issues discussed in the report have been under review for several years, requiring effort on the part of DOE and incurring substantial costs. Resolving these issues would be beneficial in terms of allocation of overall resources. In many cases, the full support of senior management is necessary to achieve a successful resolution of issues identified in the report.

DOE is pleased that our automated export license processing system, the Proliferation Information Network System (PINS), is considered exemplary. Considerable resources have been allocated to this project, and most of the technical problems have been resolved. DOE continues to improve the system.

DOE is concerned about the issues raised by the IG regarding transfers of export-controlled technology to foreign nationals at DOE sites. As noted in the IG report and above, the Secretary of Energy has established a task force to address export control issues associated with transfer of technology to foreign nationals at DOE laboratories. The Nuclear Transfer and Supplier Policy Division (NTSP) has been an integral part of this group and has provided the group with extensive guidance on export control issues. However, DOE agrees with the IG that clear guidance from the Department of Commerce on the "deemed export" issue is essential.

On page 7 of the draft report, the IG notes, "For some commodities on the Nuclear Referral List [NRL], Energy has delegated to Commerce, through 'Delegations of Authority' (DOAs), the authority to process these commodities without referring the cases to Energy. These delegations generally pertain to commodities that Energy determined they no longer need to review because of recommendations that were made on previous similar export cases. The delegations are also based on guidelines from the international Nuclear Suppliers Group [NSG], which may recommend the easing of export controls on certain commodities." These statements are misleading. DOE has given DOC a DOA for commodities on the NRL not intended for a nuclear end-use or nuclear end-user. DOE also has given DOC a DOA for commodities to NSG members, because no license is required for items on the NRL to these countries. However, we would note that some six months ago, NTSP requested that the national laboratories review DOA cases to determine whether DOC was carrying out the delegations appropriately. We found inconsistencies and have drafted a revised DOA to be sent to DOC in the near future.

There is a minor error on page 13 regarding reviews of audit trails on the electronic license processing system. The IG report should clarify that the reviews occur at LANL. The Network Encryption Server (NES) audit logs from all laboratories are reviewed bi-weekly by Los Alamos National Laboratory (LANL). The NT server security log is monitored daily at LANL.

Finally, a seventh laboratory, Savannah River Site (SRS), has been added to the PINS network to provide technical reviews of license applications. SRS should be added to the diagram on page 6 of the IG draft report.

Comments on Recommendations

"We recommend that the Assistant Secretary for Nonproliferation and National Security..."

IG Recommendation 1.

> **Coordinate with Commerce to establish a more effective process to provide supporting documents or information to Energy.**

Management Position

> Concur.
>
> DOE's Nuclear Transfer and Supplier Policy Division (NTSP) has been working with the DOC on the issue of providing supporting documents for several years. The goal of NTSP is to have the supporting documents in our electronic case processing system so that the documents can be linked to the case throughout the case escalation process.

NTSP has held many discussions with DOC management and technical experts on the issue of scanning the supporting documents into an electronic database. Currently, DOC's electronic database of supporting documents is used for archival purposes only, and is maintained at an electronic bandwidth too narrow to allow DOE electronic systems to access the stored information. Therefore, NTSP has relied on DOC to send hardcopy documentation by courier to NTSP.

NTSP will develop an internal system to electronically store scanned images of the hardcopy information received from DOC. The hardcopy information will be accessible to all license reviewers through hyperlinks to the case file, which in turn will be archived in DOE electronic files. NTSP estimates that this system will take two to three months to implement.

DOE will request that DOC provide supporting documents to DOE on the same day that the case is electronically distributed, and to note in the case file that supporting documentation has been sent to DOE. We will strongly object to distribution of the case to the reviewing agencies prior to obtaining complete and full information from the applicant.

IG Recommendation 2.

Ensure that PINS is modified to permit the capture of all Commerce comments concerning an export license application.

Management Position

Non-concur.

The truncated DOC comments were incorrectly identified as a problem with the DOE system. Prior to the 1998 upgrade of the PINS system, memory space for the DOC comments was unlimited. In April 1998, PINS was modified to allow 4 Gigabytes of memory space for the "DOC Comments" field. To date, no comment has exceeded this length. Comments truncated before reaching the 4 Gigabyte limit were coming to DOE from DOC in that form, but DOE believes that DOC has corrected the problem. DOE encourages the IG to address any further concerns to DOC.

IG Recommendation 3.

Coordinate with Commerce to obtain guidance regarding when a visit or assignment by a foreign national would require an export license.

Management Position

Concur.

DOE has initiated discussions with DOC to obtain clear guidance on the need for export licenses for visits or assignments of foreign nationals to DOE laboratories. As a part of the previously-mentioned task force, DOE has undertaken discussions with both DOC legal and export licensing to ensure that DOE and all of its national laboratories and facilities are complying with all export laws and regulations, including the deemed export provisions. The Task Force dialogue with DOC has provided some limited additional guidance on the deemed exports issue thus far. The task force intends to use this mechanism to further address the deemed export issue.

As noted, we also have invited DOC to speak on the issue of deemed exports at the annual meeting of the DOE contractors' Export Control Coordinators Organization (ECCO) in June. This will ensure that most DOE site personnel with responsibility for exports will have an opportunity to engage in a fruitful discussion of the matter.

In addition, DOE will recommend to DOC that an interagency group be established to address this issue and to develop clear and comprehensive policy guidance regarding license requirements for use by U.S. industry, including U.S. Government laboratories and contractors. DOE also will recommend that the resulting guidance be reviewed and endorsed by the interagency Advisory Committee on Export Policy (ACEP).

IG Recommendation 4.

Assure that the Energy task group established to review and resolve possible issues associated with Energy's deemed export process, addresses these issues as expeditiously as possible.

Management Position

Concur.

Major steps have already been taken and others are in the immediate offing:

- As noted in the IG report, the Secretary of Energy has established a task force to address export control issues associated with transfer of technology to foreign nationals at DOE laboratories. On the task force are representatives from the Secretary's office, NN, CN, DP, SC, and GC. This group has reviewed, and will continue to review, export control issues relating to DOE facilities, including the issue of deemed exports.

- Under Secretary Moniz raised the issue of deemed exports with DOE Lab Directors at their last regularly scheduled meeting at headquarters. At Under Secretary Moniz' request, the Inspector General explained his concerns about deemed exports at this meeting.

- NN is redrafting its February 1997 Guidelines on Export Control and Nonproliferation. The new edition, among other things, will make clear that DOE is subject to DOC, Department of State (DOS), and Nuclear Regulatory Commission (NRC) export control regulations just as is the private sector; it also will clarify procedures with respect to deemed exports. A new draft has been sent to all Secretarial Offices for concurrence and should be circulated to DOE facilities soon.

- The Department is revising the DOE Order on visits and assignments of foreign nationals at DOE sites. NN has provided to Department officials preparing the revision extensive guidance regarding the protection of export controlled technology and has updated the Sensitive Subject List attached to the Order, and has stressed the need to obtain all required export licenses for foreign nationals at DOE sites. With respect to export controls, the new policy will clarify where responsibility lies between headquarters and DOE facilities, and ensure that the consideration of the need for an export license is part of the visits and assignments process.

- The Office of the Chief Financial Officer is examining its procedures for processing foreign travel applications. With respect to export controls, the process will require consideration of export licensing issues as part of the application procedure.

- In addition to revising the Guidelines on Export Control and Nonproliferation, NN has drafted brief one page summary guidance for hosts and others dealing with foreign nationals and for DOE personnel going abroad. These documents will be circulated to DOE facilities at the same time that the revised Guidelines on Export Control and Nonproliferation are released.

- The Department plans additional efforts to educate DOE personnel on export control issues. These include bringing Department of Commerce experts to the annual meeting in June of the DOE contractors' Export Control Coordinators Organization, participating in video conferences, and recommending Dr. Moniz and Secretary Richardson raise the level of awareness of this issue.

IG Recommendation 5.

Conduct a review, in coordination with the Director, Office of Management and Administration, of the NTSP Division workload to determine the appropriate staffing level.

Management Position

Concur.

Intensified DOE export licensing reviews will require increased resources. The Department is committed to providing the necessary funding and staff to ensure effective implementation of U.S. export control laws and regulations.

IG Recommendation 6.

Ensure that, if the workload review identifies a requirement for increased staffing, actions are initiated to provide the NTSP Division with the appropriate level of staff.

Management Position

Concur.

It is important that if the review identifies the need for additional staff, action is taken immediately to adjust staffing levels. This will reduce DOE's vulnerability across the board, including our ability to carry out essential international cooperative programs, such as those with Russia related to securing nuclear materials and reducing stockpiles of nuclear weapons

IG Recommendation 7 and 8. [We recommend that the General Counsel…]

7. Complete the review to determine whether a possible conflict exists between E.O. 12333 and the requirements to protect 12(c) information.

8. Issue a written legal opinion concerning whether Intelligence officials should have unrestricted access to 12(c) information maintained by Energy.

Management Position

Concur.

The Office of General Counsel plans to reexamine the questions raised in the recommendations to determine whether there is a conflict between Executive Order 12333 and the confidentiality provision of the Export Administration Act, and the need for issuance of a legal opinion on access to 12(c) information.

IG Recommendation 9.

In coordination with the Director, Office of Intelligence, ensure that the issue of access to intelligence information required to support NTSP Division export license activities is resolved.

Management Position

Concur.

Since the arrival of the current Director of the Office of Energy Intelligence (IN-1) in October 1998, intelligence support to NTSP has markedly improved. However, NN will continue to work with IN to improve further support to NTSP, including potential provision of an intelligence staff member devoted full-time to support NTSP functions.

IG Recommendation 10.

Coordinate with Commerce to ensure access by Energy to information within Commerce regarding the final disposition of export cases and develop guidelines for Energy's access to the information.

Management Position

Concur.

Information regarding final disposition of all cases from 1992 has been sent to DOE from DOC. When the latest update to the PINS system is on-line, this information will be entered into the archived case files. Thereafter, DOE will receive daily updates on final disposition of cases from DOC electronically. The update to PINS should be completed in May 1999.

IG Recommendation 11.

Coordinate with State to ensure access by Energy to information maintained by State regarding the final disposition of munitions cases and develop guidelines for Energy's access to the information.

Management Position

Concur.

Since all munitions cases are distributed for review by the Department of State (DOS) in hardcopy, and DOE has no access to the DOS electronic system, DOE will work with DOS to obtain the information via hardcopy. NN will address this issue with the appropriate management of DOS.

IG Recommendation 12.

Coordinate with Commerce to obtain access for Energy to provide information into the AES when the system becomes operational.

Management Position

Concur.

The U.S. Customs Service is the lead agency for the development of an automated information sharing system, the Automated Export System (AES), which will address these concerns. DOE is involved as an interagency partner to receive export data from the Customs AES when it is implemented. Progress has been slow due to lack of dedicated resources to the AES at Customs and support from U.S. industry. We are confident that DOE will receive the information when it is made available electronically to Customs from industry, and we will modify the Export Information System (EIS) database in PINS to record the information at that time.

Department of Energy
Washington, D.C. 20585

May 14, 1999

MEMORANDUM FOR SANDY SCHNEIDER
ASSISTANT INSPECTOR GENERAL FOR INSPECTIONS

FROM: TRISHA DEDIK
DIRECTOR
NUCLEAR TRANSFER AND SUPPLIER POLICY DIVISION
OFFICE OF ARMS CONTROL AND NONPROLIFERATION

SUBJECT: MODIFICATION ON RECOMMENDATION 2 OF THE INSPECTOR GENERAL'S EXPORT LICENSING PROCESS DRAFT REPORT

The truncated Department of Commerce (DOC) comments were incorrectly identified in the IG report on export licensing as a problem with the Department of Energy (DOE) computer, the Proliferation Information Network System (PINS). In fact, the problem was due to the file transfer process used by DOC in electronically transmitting export applications to DOE. Although the DOC export control computer system ECASS file contained the complete DOC comment, the entire DOC comment was not transferred to DOE. NN recommends that recommendation 2 be changed to :

IG Recommendation 2.

Assistant Secretary for NN coordinate with Commerce to ensure that DOE receives all Commerce comments concerning an export license application.

Management Position

Concur.

The truncated DOE comments were incorrectly identified as a problem with the DOE computer system. Around the April 1998 timeframe, DOC discovered that not all DOC comments were correctly being sent to DOE for uploading into PINS. Although the ECASS database contained the complete DOC comment, some comments were truncated by DOC during the data transfer process, which caused DOE to receive a truncated version of the comment. When DOC discovered the problem, they fixed it. In May 1998, DOE discovered that there was a new problem with the DOC comments. After discussions among the computer staffs, it was determined that the April DOC fix was causing a problem in PINS. DOE had been

unaware of the initial problem and fix that DOC had discovered and implemented. The two staffs resolved the new problem and no truncations have occurred since that time.

As a technical comment, PINS allows 2 gigabytes of storage for the "DOC Comments" field (equivalent to more than 3 encyclopedias of data). To date, no comment has exceeded this length. Previous to the new version of PINS, which was implemented in April 1998, the "DOC comments" field was virtually unlimited.

If you have any other further questions, please contact Toli Welihozkiy (6-2155) or Ed Fox (6-2144) of my staff.

IG Report No.__DOE/IG-0445__

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