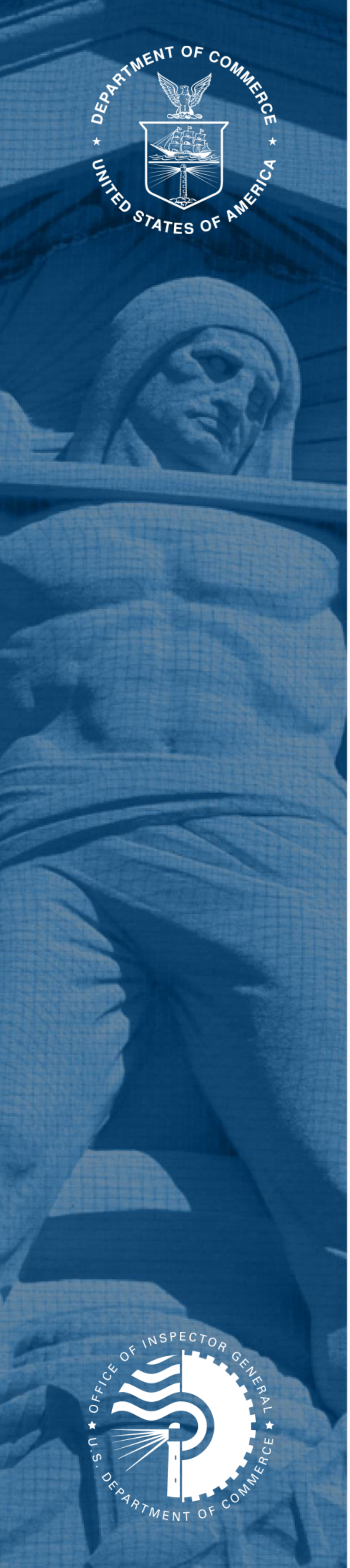


BUREAU OF INDUSTRY AND SECURITY

BIS' Implementation of Export Control Reform Requires Several Improvements to Address Challenges

FINAL REPORT NO. OIG-14-028-A

SEPTEMBER 4, 2014

U.S. Department of Commerce
Office of Inspector General
Office of Audit and Evaluation

FOR PUBLIC RELEASE

UNITED STATES DEPARTMENT OF COMMERCE
Office of Inspector General
Washington, D.C. 20230

September 4, 2014

MEMORANDUM FOR: Eric L. Hirschhorn
Under Secretary of Industry and Security

Carol N. Rice

FROM: Carol N. Rice
Assistant Inspector General for Economic and Statistical Program Assessment

SUBJECT: *BIS' Implementation of Export Control Reform Requires Several Improvements to Address Challenges*—Final Report No. OIG-14-028-A

Attached is the final report on the results of our audit of the Bureau of Industry and Security (BIS) to (1) review the adequacy of BIS program plans and budget requests to address the increased workloads for licensing, outreach, and enforcement activities in FY 2014 through FY 2016 and (2) evaluate existing BIS licensing, outreach, and enforcement activities and identify any areas for increased efficiencies.

In the area of export licensing, we found that BIS has adequate resources at this time to handle the gradually increasing licensing workload as a result of Export Control Reform Initiative (ECR) for new munitions and satellite items, but operational improvements are needed. Because we were unable to verify BIS' methodology for estimating initial staffing requirements, it is unclear whether BIS will require more or less staff once the transition of items from the United States Munitions List to the Commerce Control List is completed. We found weaknesses in the way BIS tracks the receipt and delivery of license determination requests from other U.S. government export enforcement agencies. Finally, we note that the migration to a new IT system to process licenses requires continued management attention and oversight.

In the area of outreach, BIS conducted a significant amount of ECR outreach—conducting events using a variety of media and targeting munitions exporters who would be affected by these changes.

In the area of export enforcement, we found that BIS' plans for increasing its enforcement capabilities and resources are reasonable and in line with increased performance goals. However, we found end-use check training for U.S. and Foreign Commercial Service officers could be enhanced.

In response to our draft report, the bureau agreed with all four recommendations. Where appropriate, we modified this final report based on the technical comments we received from your agency. Your formal response is included as appendix E. The final report will be posted on the OIG's website pursuant to section 8M of the Inspector General Act of 1978, as amended.

In accordance with Departmental Administrative Order 213-5, please submit to us within 60 calendar days of the date of this memorandum an action plan that responds to the recommendations in this report.

We thank BIS personnel for the assistance and courtesies extended to my staff during this audit. If you have any further questions or comments about the report, please contact Eleazar Velazquez, Supervisory Program Analyst and audit manager, at (202) 482-0744.

Attachment

cc: Daniel O. Hill, Deputy Under Secretary for Industry and Security
Kevin J. Wolf, Assistant Secretary for Export Administration
David W. Mills, Assistant Secretary for Export Enforcement
Kathryn Chantry, Chief Financial Officer and Director of Administration
John T. Masterson, Chief Counsel for Industry and Security
Steve Emme, Senior Advisor to the Assistant Secretary for Export Administration
Mark Crace, Audit Liaison

Report In Brief

SEPTEMBER 4, 2014

Background

The U.S. export control system is distributed among several different licensing and enforcement agencies. The two primary export licensing agencies are the Department of Commerce's Bureau of Industry and Security (BIS), which historically has licensed exports of dual-use items, and the Department of State, which has historically licensed munitions, satellites, and spacecraft items.

The Export Control Reform (ECR) Initiative, launched in April 2010, is a three-phase effort to streamline the nation's export control system by ultimately consolidating the export efforts of multiple federal agencies. It aims to create a single licensing agency, a single list of controlled items, a single information technology (IT) platform, and a single export enforcement coordination agency.

Why We Did This Review

We conducted this audit in response to a Congressional request and in conjunction with the Office of Inspector General's *Top Management Challenges* report for fiscal year (FY) 2013. We focused our analysis on areas of BIS most affected by ECR, namely its licensing divisions, outreach office, and enforcement offices (excluding antiboycott compliance).

Our objectives were to (1) review the adequacy of BIS' program plans and budget requests to address the increased workloads for licensing, outreach, and enforcement activities in FY 2014 through FY 2016 and (2) evaluate existing BIS licensing, outreach, and enforcement activities and identify any areas for increased efficiencies.

BUREAU OF INDUSTRY AND SECURITY

BIS' Implementation of Export Control Reform, Requires Several Improvements to Address Challenges

OIG-14-028-A

WHAT WE FOUND

Our audit found that

- *BIS currently has adequate licensing resources to handle the gradually increasing licensing workload for new munitions items, including satellite items, that is coming as a result of ECR.* Because we were unable to verify BIS' initial staffing requirements, however, it is unclear whether BIS will require more or less staff once the transition of items from the U.S. Munitions List (USML, administered by the Department of State) to the Commerce Control List (CCL, administered by BIS) is completed.
- *Average license determination processing times could not be fully calculated due to data errors.* We found weaknesses in the way BIS tracks the receipt and delivery of license determination requests from other U.S. government export enforcement agencies. According to the Department of Homeland Security, license determinations referred to BIS in calendar year 2013 had longer average processing times than those sent to either the Departments of State or Treasury. Our examination of spreadsheets found that, in FY 2013, 218 cases (or more than 10 percent of all cases) were missing data; 28 cases listed completion dates that occurred before the date of receipt
- *Delays in migrating to a new IT system, USXPORTS, now in its third year, may cost BIS $1.3 million per quarter in FY 2015 to continue operating its current antiquated system.* The migration to USXPORTS, the IT system used by the Departments of Defense and State to process export license applications, requires continued management attention and oversight.
- *BIS' plans for increasing enforcement capabilities and resources are reasonable, but end-use check training for commercial officers from the International Trade Administration's U.S. and Foreign Commercial Service (USFCS) could be enhanced.* BIS' plans for increasing its enforcement capabilities and resources are reasonable and in line with increased performance goals, but training of USFCS commercial officers on how to conduct end-use checks could be enhanced. Providing them with more robust, up-to-date online training materials would assist them in performing these enforcement activities.

WHAT WE RECOMMEND

We recommend that the Under Secretary for Industry and Security take the following actions:

1. Verify the appropriateness of staffing levels after the transfer of all USML items to the CCL is complete.
2. Improve the tracking of license determinations to ensure they are processed within established timeframes.
3. Develop a contingency plan for completing the migration to USXPORTS that includes any additional incurred costs and how BIS will absorb those costs.
4. Enhance end-use check training for USFCS officers.

Contents

COVER: Detail of fisheries pediment,
U.S. Department of Commerce headquarters,
by sculptor James Earle Fraser, 1934

Introduction

The U.S. export control system is distributed among several different licensing and enforcement agencies. The two primary export licensing agencies are the Department of Commerce, which has historically licensed exports of dual-use goods and technologies—that is, items with both civilian and military uses—and the Department of State, which has historically licensed munitions, satellites, and spacecraft items (see table 1). Additionally, the Department of the Treasury administers restrictions on exports based on U.S. sanctions. Other executive departments and agencies, such as the Department of Defense, recommend approval or denial of export license applications referred by State or Commerce. The Departments of Commerce, State, Homeland Security, and Justice enforce export controls.

Table 1. Primary Export Control Regulatory Agencies

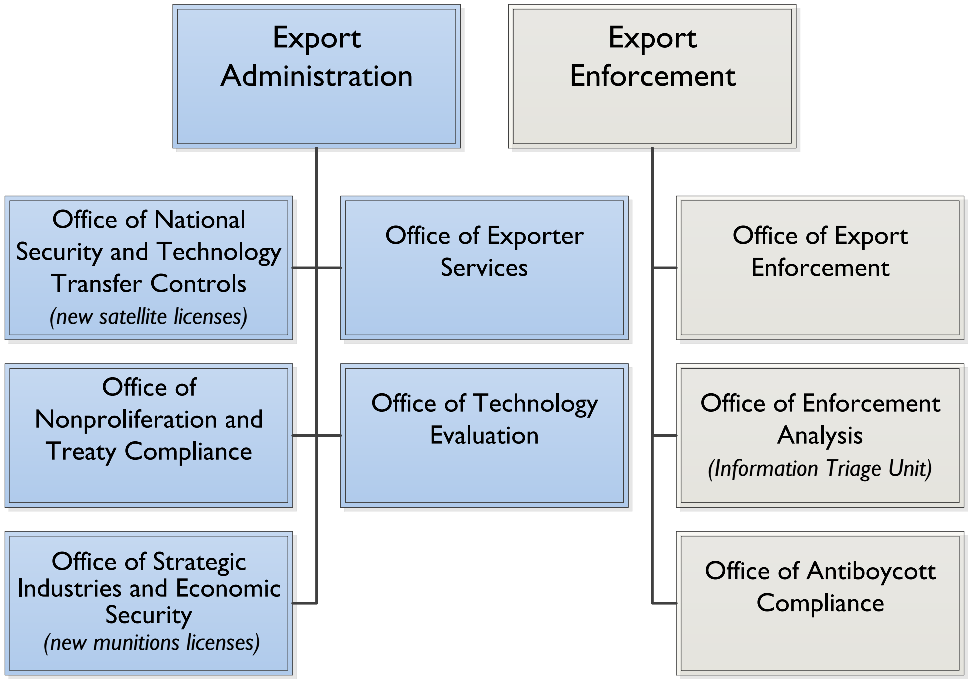
	Department of State	Department of Commerce
Legal Authority	Arms Export Control Act	Export Administration Act and International Emergency Economic Powers Act
Regulations	International Traffic in Arms Regulations	Export Administration Regulations
Control List	United States Munitions List	Commerce Control List

Source: Congressional Research Service

The Export Control Reform (ECR) Initiative, launched in April 2010, is a three-phase effort to streamline the nation's export control system by ultimately consolidating the export efforts of multiple federal agencies. It aims to create a single licensing agency, a single list of controlled items, a single information technology (IT) platform, and a single export enforcement coordination agency.

Within the Department of Commerce, the Bureau of Industry and Security (BIS) administers and enforces the Export Administration Regulations (EAR), which apply to dual-use and other items. These regulations serve to support and advance the national security, foreign policy, nonproliferation, and short supply interests of the United States. BIS' two primary functions, licensing and enforcement, are handled by Export Administration and Export Enforcement, respectively (see figure 1).

Figure 1. Bureau of Industry and Security's Primary Operating Units and Major New ECR Responsibilities[a]



Source: Department Organization Order 50-1
[a] New responsibilities are in parentheses.

Export Administration, with a staff of 217 and budget authority of nearly $58 million in FY 2013, comprises five offices, two of which—the Office of National Security and Technology Transfer Controls and the Office of Nonproliferation and Treaty Compliance—processed 24,782 dual-use export license applications in FY 2013.[1] In FY 2012 the Munitions Control Division (MCD) was created within the Office of Strategic Industries and Economic Security to process new munitions license applications. Export Administration's licensing offices work with three other federal agencies to review dual-use license applications: the State Department's Bureau of International Security and Nonproliferation, the Defense Department's Defense Technology Security Administration (hereafter "Defense Department"), and the Energy Department's National Nuclear Security Administration.

Unique among federal export control agencies, BIS has a program office dedicated to education and outreach, known as the Office of Exporter Services (OExS). In preparation for ECR, beginning in FY 2012 OExS significantly increased its outreach, education, and training activities for exporters and federal agency partners (see table 2).[2] According to OExS, BIS' outreach strategy for ECR is to first engage with industry groups, such as trade associations, then with large firms and related suppliers, and finally with small and medium-sized enterprises. To leverage its resources, OExS delivers the majority of outreach activities in partnership with

[1] The Office of National Security and Technology Transfer Controls and the Office of Nonproliferation and Treaty Compliance each have licensing divisions that process applications.
[2] These activities include briefings, broadcasts, conferences, discussions, exhibitions, meetings, receptions, seminars, teleconferences, trade shows, videoconferences, webinars, and workshops.

other Commerce bureaus and federal agencies, industry trade associations, and nonprofit institutions such as universities.

Table 2. Outreach Activities by BIS' Office of Exporter Services, FY 2011–FY 2013

	FY 2011	FY 2012	FY 2013
Activities	105	86	198
Locations	— [a]	33	72
Participants[b]	3,500	6,873	16,623

Source: BIS

[a] Data by location for FY 2011 were not available.

[b] "Participants" are defined as attendees at physical gatherings, such as conferences, seminars, and workshops, and at least one listener per line during teleconferences. In many instances involving teleconferences, there may be more than one listener per line, which may understate total participation for that teleconference.

OIG analysis found that in FY 2013 OExS conducted ECR outreach activities at locations in or near those states which generated the most license applications to the State Department's Directorate of Defense Trade Controls (hereafter "State Department"; see appendix B for a map of OExS outreach locations in FY 2013). The goal of these outreach activities was to ensure that exporters of items currently on the U.S. Munitions List (USML) that are due to move to the Commerce Control List (CCL, which is administered by BIS) are aware of the proposed licensing changes under ECR.[3]

Export Enforcement, which in FY 2013 had a staff of 171 and budget authority of more than $37 million, comprises three units: (1) the Office of Export Enforcement (OEE), which investigates export violations, (2) the Office of Enforcement Analysis (OEA), which provides analytical support to OEE and Export Administration, and (3) the Office of Antiboycott Compliance, which enforces the antiboycott provisions of the Export Administration Regulations.

Export Enforcement's mission is enforcing dual-use and other export controls subject to the EAR, in contrast to federal counterparts that have multiple enforcement missions of which export controls is one. Among Export Enforcement's activities, OEA analysts in the Information Triage Unit disseminate relevant all-source information (including intelligence information) to Export Administration and other federal export licensing agencies to assist in processing license applications. In addition to investigating possible violations, OEE special agents conduct preventive outreach to educate exporters on current dual-use export control regulations. They also travel overseas to conduct end-use checks to ensure that exports will be (and/or are being) used in accordance with their license conditions. Finally, as part of its authority Export Enforcement can pursue both criminal and administrative penalties against export violators as

[3] See The White House, Office of the Press Secretary, April 20, 2010, "Fact Sheet on the President's Export Control Reform Initiative," [online], www.whitehouse.gov/the-press-office/fact-sheet-presidents-export-control-reform-initiative (accessed March 21, 2014).

means to sanction them and to deter future violations. In FY 2013, nearly $2.7 million in criminal fines and more than $6.5 million in civil penalties were imposed as a result of these activities.

Using existing resources, the Departments of Commerce, Defense, and State have already achieved some successes by collaborating to make a number of administrative and regulatory changes. Accomplishments to date include:

- revising the two export control lists—the State Department's USML and the Commerce Department's CCL—through the federal rulemaking process, so that less-sensitive munitions items are moved to the CCL,[4]

- establishing the Export Enforcement Coordination Center with other agencies, a joint enforcement coordination center to share investigative information, and

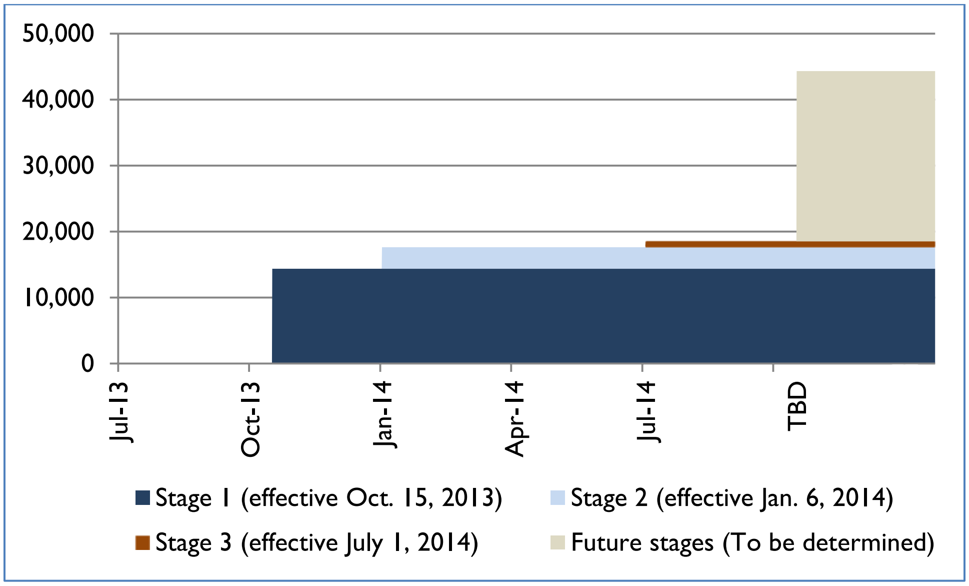
- migrating the State Department onto USXPORTS, the Defense Department's export license processing system.

Under changes called for by ECR, BIS' licensing workload would increase as a result of items moving from the USML to the CCL. According to data provided by BIS, jurisdiction for items that generated approximately 46,000 munitions and satellite license applications listed on the USML prior to October 15, 2013 (and therefore reviewed by the State Department) would be transferred to the CCL in several stages starting on that date and thus become the responsibility of BIS. Of them, nearly 16,000 would be eligible for license exceptions[5] and the remaining 30,000 would require export licenses. As shown in figure 2, jurisdiction of items that were estimated to generate over 17,000 State Department license applications annually had already been transferred to BIS as of January 6, 2014, under Stages 1 and 2. The remaining items that were estimated to generate 29,000 applications annually are scheduled to transfer to BIS in late FY 2014 and beyond.

[4] Section 38(f) of the Arms Export Control Act (Pub. L. No. 90-629, codified at 22 U.S.C. § 2778(f)) requires the President to "periodically review the items on the United States Munitions List to determine what items, if any, no longer warrant export controls under this section."

[5] A *license exception* is an authorization which allows the exporter to export or re-export, under conditions stated in the exception, items that would otherwise require a license, based on the reason for control and the country of destination (see 15 C.F.R. part 740 "License Exceptions").

Figure 2. Timeline for Transfer of USML License Applications to BIS



Source: BIS and State Department licensing data

ECR also involves export control changes for satellites and related components. In 1998, Congress passed legislation transferring jurisdiction over these items from the Commerce Department to the State Department.[6] As a result of this 1998 law, satellites were the only export items subject to the USML that would require Congressional, in addition to executive, action to be moved to the CCL as part of the ECR. In January 2013, in the National Defense Authorization Act of FY 2013, Congress restored the President's authority over export controls for satellites and related components.[7] An interim final rule for satellite items with two effective dates was published on May 13, 2014, returning certain satellites and related items to Commerce Department jurisdiction. This will result in new licensing and enforcement responsibilities for BIS. (For additional information on licensing and enforcement for satellite items, see appendix C.)

[6] Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, Pub. L. No. 105-261, § 1513, 112 Stat. 1920, 2174-75 (1998).
[7] Pub. L. No. 112-239, § 1261, 126 Stat. 1632, 2018-19 (2013).

Objectives, Findings, and Recommendations

We conducted this audit in response to a Congressional request and in conjunction with the OIG's *Top Management Challenges* report for FY 2013. Our objectives were to (1) review the adequacy of BIS' program plans and budget requests to address the increased workloads for licensing, outreach, and enforcement activities in FY 2014 through FY 2016 and (2) evaluate existing BIS licensing, outreach, and enforcement activities and identify any areas for increased efficiencies. We focused our analysis on areas of BIS most affected by ECR, namely its licensing divisions, outreach office, and enforcement offices (excluding antiboycott compliance).

We found that BIS currently has adequate licensing resources to handle the gradually increasing licensing workload for new munitions items, including satellite items, that is coming as a result of ECR. However, because we were unable to verify BIS' initial staffing requirements, it is unclear whether BIS will require more or less staff once the transition of items from the USML to the CCL is completed. We found weaknesses in the way BIS tracks the receipt and delivery of license determination requests from other U.S. government export enforcement agencies. Finally, the migration to a new IT system to process export licenses requires continued management attention and oversight. In the area of export enforcement, we found that BIS' plans for increasing its enforcement capabilities and resources are reasonable and in line with increased performance goals. However, we found that end-use check training for commercial officers could be enhanced.[8] Our report offers four recommendations to resolve these issues and improve BIS operations.

I. BIS Appears to Have Sufficient Resources to Process New Munitions Licenses, but Operational Improvements Are Needed

BIS appears to have adequate resources to handle the gradually increasing licensing workload as a result of ECR for new munitions items, including satellite items. BIS' licensing workload for munitions and satellite items is expected to increase by 29,000 and 1,500 applications, respectively. There are weaknesses in the way BIS tracks the receipt and delivery of license determination requests from other U.S. government export enforcement agencies. Finally, the migration to a new IT system to process licenses requires continued management attention and oversight.

A. Initial Staffing Requirements of 24 Employees for the Munitions Control Division Could Not Be Supported

Based on expected ECR licensing authority changes, BIS reviewed the State Department's licensing workload and concluded that approximately 43,000 USML license applications would become part of the new "600 series" of items on the CCL,[9] 29,000 of which would not be eligible for BIS license exceptions, thus requiring license applications. BIS' analysis, working with

[8] *Commercial officers* are employed by the International Trade Administration's U.S. and Foreign Commercial Service. Commercial officers stationed overseas perform end-use checks on behalf of BIS.

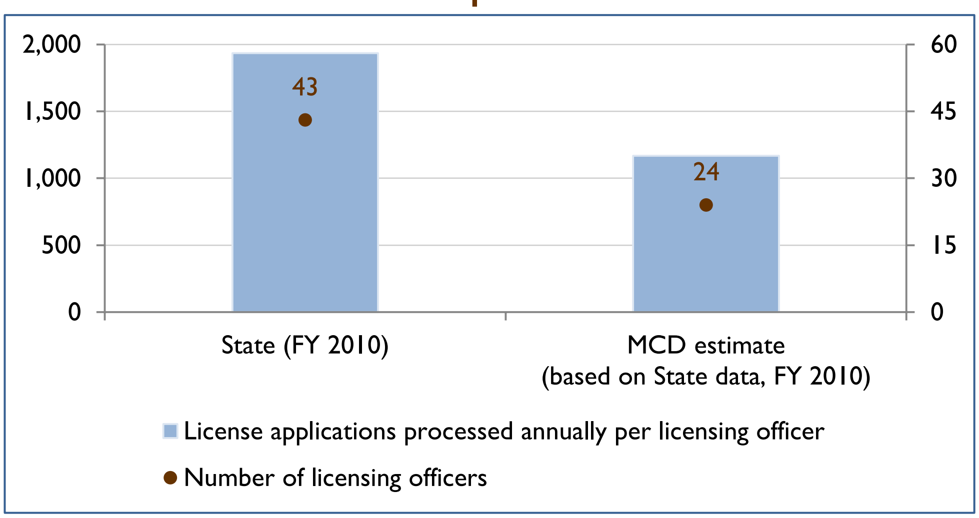
[9] The term "600 series" refers to CCL items that are controlled as former USML items and have the number "6" as the second digit of their Export Control Classification Numbers (for example, 0B606, 8B609, 9A610).

the State Department, was iterative: BIS developed preliminary estimates in 2011, revised them using license application data provided in 2012 by the State Department, and adjusted them to account for potential use of the Strategic Trade Authorization (STA) license exception. The STA license exception allows, under certain conditions, many items subject to the EAR to be shipped without a license to 36 countries.[10]

To accommodate the additional workload, BIS created MCD and, in an attempt to improve license processing, adopted best practices from the Defense and State Departments. For example, borrowing a concept from the Department of Defense, BIS established multidisciplinary groups of license examiners, called Tiger Teams. These teams conduct an initial review of each license application to ensure that it is appropriately vetted, as a way to shorten the initial license application review period. Although BIS developed adequate policies for the new division, we could not determine whether its staffing levels were appropriate.

In FY 2012, BIS initiated recruitment to hire 24 new employees (including a director) at a cost of $2.3 million to handle the incoming munitions workload. To arrive at that number, BIS managers stated that, using data provided by the State Department, they divided the number of estimated new munitions license applications (28,000)[11] by 1,200 (the average number of licenses processed annually by a State Department licensing officer). We were unable to verify the estimates because BIS could not provide OIG with supporting documentation, stating that the senior official at State's Directorate of Defense Trade Controls responsible for providing the data and conducting the analysis had retired. Thus, to verify the numbers, we requested licensing data directly from the State Department. Based upon the data we received from the State Department, each of its licensing officers reviews nearly 2,000 license applications annually (see figure 3); had BIS managers used those values, they would require 15, not 24, licensing

Figure 3. Application Processing Rates of Licensing Officers at the State Department and BIS



Source: BIS and State Department data

[10] For details regarding STA, see "License Exception Strategic Trade Authorization (STA)," 15 C.F.R. part 740.20 and "Supplement No. 1 to Part 740—Country Groups," 15 C.F.R. part 740, Supp. 1.
[11] This figure was a preliminary estimate from FY 2011 that was later revised in FY 2012 to 29,000.

officers to process munitions license applications. When asked to explain the difference, BIS managers were unable to provide documentation to support the analysis, whether conducted by the State Department, BIS, or both.

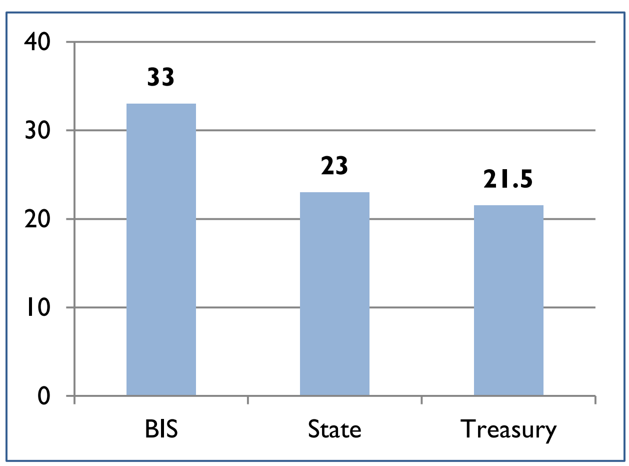
In addition to reviewing applications, BIS licensing officers perform duties that their State Department counterparts do not. Licensing officers who work for BIS' other licensing divisions—whose work is roughly comparable to that of the licensing officers in the Munitions Control Division—each review approximately 500 license applications annually. Additionally, various other factors—such as the rate at which companies use STA exceptions for eligible exports that are subject to the EAR and potential increases in export license applications—could result in substantial deviations from BIS' licensing estimates. USML items will transfer gradually to BIS' authority through FY 2015, giving BIS sufficient time to review and, if necessary, revise its staffing levels. BIS management stated that it plans to monitor staff workloads throughout the transition period in order to ensure that its licensing officers will be able to meet the demands of any increase in the number of license applications. Although we did not verify this during our audit, we will look for BIS' related plans in its post-audit resolution proposal.

BIS began hiring licensing officers for MCD in January 2012, but the first wave of USML items were not transferred to BIS' authority until October 15, 2013—nearly two years later. During this time, munitions licensing officers were trained and assisted other BIS licensing divisions with application reviews (completing 649 reviews from the establishment of the MCD to September 11, 2013) and performing outreach. After October 15, 2013, munitions licensing officers began working on the new munitions items that were transferred to the CCL. For example, between October 15, 2013, and November 15, 2013 (the first full month after the transition), MCD licensing officers processed 159 new 600-series applications.

B. Average License Determination Processing Times Could Not Be Fully Calculated Due to Data Errors

If, while enforcing export control regulations, a Department of Homeland Security Customs and Border Protection officer (hereafter, "Department of Homeland Security") at a U.S. port of entry is unsure whether an export requires a license or license exception, he or she requests a license determination from the relevant regulatory agency—typically BIS, the State Department, or the Department of the Treasury's Office of Foreign Assets Control (hereafter, "Treasury Department"). Until the officer receives the applicable license determination confirming a shipment's compliance with export regulations, the

Figure 4. Average License Determination Processing Times at BIS, State, and Treasury in CY 2013 (in days)



Source: Department of Homeland Security data goods are detained at the port at the exporter's expense. According to the Department of Homeland Security, license determinations referred to BIS in calendar year 2013 had longer average processing times than those sent to either the State or Treasury Departments (see figure 4).[12] (For this audit, we did not assess the accuracy of the data on processing times reported by the Department of Homeland Security.)

OEE receives license determination requests from the Department of Homeland Security, records the date of receipt on a spreadsheet, and then sends the referral to the license officers within Export Administration's licensing divisions. Once a BIS license determination is completed, Export Administration records the date of completion on a separate spreadsheet and sends the determination to the Department of Homeland Security. We merged the two spreadsheets to compare BIS' licensing processing times with the license determination processing times provided by the Department of Homeland Security, but found errors in BIS' data. In FY 2013, 218 cases, or more than 10 percent of all cases, were missing data from either OEE's spreadsheet (date received) or Export Administration's spreadsheet (date completed). Additionally, 28 cases listed completion dates that occurred before the date of receipt. Given these data errors, we did not calculate elapsed time because of data reliability concerns.

BIS estimated it would receive several thousand additional license determination requests as a result of ECR, an amount significantly greater than its FY 2013 workload of more than 1,400 determinations. In an attempt to better handle the anticipated increase and avoid export delays, BIS staff provided training about the items moving from the USML to the CCL to 189 Department of Homeland Security officers who are responsible for export enforcement at 62 ports of entry. They also provided these officers with contact information for BIS specialists who could answer general questions about specific commodities and stationed an MCD licensing officer with the Department of Homeland Security's EXODUS Command Center to provide in-person guidance on ECR. BIS funded and worked with Homeland Security to develop a training video to provide to Department of Homeland Security officers who did not receive in-person training or to be available for future refresher training.

Since BIS estimates that requests for license determinations will more than double as a result of ECR, data and tracking weaknesses pose a risk for future performance. BIS requires its licensing officers to complete license determinations within 35 days, but has an informal target of 20 days for Department of Homeland Security referrals that involve detained shipments. By improving the way it tracks license determinations, BIS can identify and address delays and performance problems. At the time of our audit, BIS informed us that it planned to automate this process.

C. Delays in Migrating to USXPORTS, Now into Its Third Year, May Cost BIS $1.3 Million per Quarter in FY 2015 to Continue Operating Its Current Antiquated Licensing System

Before ECR, agencies with licensing responsibilities—primarily BIS and the Departments of State and Defense—operated their own IT systems through which license applications and interagency referrals are processed. BIS uses an antiquated legacy system developed in 1984,

[12] The average processing time for BIS license determinations could have been impacted because BIS licensing officers were furloughed and unable to process license determinations during the federal government shutdown of October 1–16, 2013.

known as the Export Control Automated Support System (ECASS). ECR calls for these agencies to process license applications and referrals on a single IT platform. The chosen platform, known as USXPORTS, is currently operated by the Department of Defense. BIS has been working with its Defense counterpart to migrate its license processing and referral functions to that system. However because USXPORTS will only incorporate license processing and referrals, BIS has developed a separate new system, called the Commerce USXPORTS Export Support System (CUESS), to support other important export enforcement and technical licensing determination functions that historically resided on ECASS and to serve as a backup licensing system should USXPORTS fail.[13]

BIS originally planned on migrating to USXPORTS by May 2012, but repeated delays pushed back the migration date several times, most recently to June 16, 2014. In early June, the agency informed us that it would not meet this date, since end-to-end testing had not yet begun. Since that time, end-to-end testing was carried out and finished on August 8, 2014, uncovering several development and programming issues. The bureau will provide this information to Defense for it to resolve. Until that happens, BIS cannot provide a new date for its migration to USXPORTS. Separately, the bureau also informed us that development, testing, and implementation of CUESS finished ahead of its June 15, 2014, deadline with one exception: The capability to process licenses could not be implemented until USXPORTS end-to-end testing was completed (which has since happened) and any issues were resolved. In the meantime, CUESS is being used to handle other functions, such as license determinations and commodity classification determinations.

Departmental IT information showed that 26 of 56 project milestones for the migration to USXPORTS that had planned completion dates before January 14, 2014, were incomplete. Additionally, more than $3 million had been spent on now-suspended project milestones.[14] Given past schedule slippages and the current compressed completion schedule, full implementation of the CUESS project is uncertain as well. A June 2013 memo from the Department's Chief Information Officer to BIS stated, "The Department is very concerned by the current issues and status [with the migration]." Until CUESS and USXPORTS are fully operational, BIS will continue incurring costs to operate and maintain ECASS, which for FY 2014 are estimated at almost $5.3 million.[15] Funding for CUESS and USXPORTS since October 2012 has totaled $17.9 million. Once both systems are brought successfully online, BIS anticipates spending $1.2 million annually to operate CUESS and between $1.2 million and $2 million annually to use USXPORTS. If delays in migrating to USXPORTS continue into FY 2015 as a result of problems uncovered by end-to-end testing that need resolving, BIS informed us that it would not spend additional funds on USXPORTS—but would continue operating ECASS at a cost of $1.3 million per quarter.

We did not assess the reasons for the schedule slippage. BIS contends that the federal budget sequestration in 2013 and performance issues with the Defense Department's contractor

[13] For this audit, we did not assess the efficiency of developing and maintaining two systems (USXPORTS and CUESS) for export licensing or the degree to which the two systems are duplicative.

[14] Determining the appropriateness of these expenditures was outside of our audit scope.

[15] BIS will incur $118,000 in software maintenance fees per quarter to continue operating ECASS beyond June 30, 2014. If USXPORTS and CUESS are not available by December 31, 2014, BIS will have to pay nearly $1.2 million per quarter for ECASS mainframe maintenance (including contractor labor).

prevented migration to USXPORTS before the initial transfer of USML items on October 15, 2013. These issues may have been exacerbated by BIS' failure to complete risk registers for either IT project.[16] In our March 19, 2014, memorandum to the Under Secretary for Industry and Security and the Department's Chief Information Officer, written in response to an OIG hotline complaint about the migration to USXPORTS, we expressed concerns about BIS' inadequate performance in executing this project and its level of compliance with the Office of Management and Budget's directive to modernize its IT system.[17] On April 1, 2014, BIS provided us with a response detailing the specific actions it has taken in the last year to address the issues related to the two IT systems.

With the agency having missed the June 16, 2014, date to begin using USXPORTS to process export license applications, future schedule and cost implications are not clear. Given past schedule slippages, the migration to USXPORTS requires continued attention until its completion to avoid the costs that will be incurred because of the inability to fully implement USXPORTS and CUESS by December 31, 2014, and the continued need for and use of ECASS.

II. BIS' Plans for Increasing Enforcement Capabilities and Resources Are Reasonable, but End-Use Check Training for U.S. and Foreign Commercial Service Officers Could Be Enhanced

In the area of export enforcement, we found that BIS' plans in FY 2014 for increasing its enforcement capabilities and resources are reasonable and in line with increased performance goals. Export Enforcement aims to increase the number of enforcement actions by nearly 30 percent (to 1,100) and the number of end-use checks by more than 20 percent (to 1,030) by adding 22 FTEs at a cost of $2.2 million to its Information Triage Unit, Export Enforcement Coordination Center, Export Control Officer program, and OEE. However, we found that training of commercial officers of the U.S. and Foreign Commercial Service on how to conduct end-use checks could be enhanced.

BIS conducts end-use checks to determine the suitability of foreign end users and verify the legitimacy of export transactions. There are two types of end-use checks: pre-license checks and post-shipment verifications (see figure 5). They are performed by BIS export control officers and OEE special agents, or by commercial officers from the International Trade Administration's (ITA) U.S. and

Figure 5. End-use Checks

Pre-license checks are conducted while an export license application is being processed to obtain information about the foreign end user(s) and to help validate information on an application.

Post-shipment verifications are conducted after an item has been shipped to determine whether the licensed item was received by the end user and is being used in accordance with the license provisions.

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[16] A *risk register* is a document in which the results of risk analysis and risk response planning are recorded. Project Management Institute, *PMI Lexicon of Project Management Terms*, [online], www.pmi.org/PMBOK-Guide-and-Standards/PMI-lexicon.aspx (accessed May 12, 2014).

[17] Memorandum, "BIS Migration to USXPORTS," March 19, 2014, U.S. Department of Commerce Office of Inspector General to Under Secretary for Industry and Security.

Foreign Commercial Service (USFCS) on behalf of BIS.[18] Between FY 2010 and FY 2013, BIS conducted 3,626 end-use checks, of which 417 (11.5 percent) were performed by commercial officers stationed overseas.[19] For FY 2014, BIS plans on completing 850 end-use checks.

In our review of the end-use check program, we found that commercial officers could benefit from additional end-use check training. BIS provides training designed for new commercial officers on conducting end-use checks as part of their initial training. However, it may be years before a commercial officer conducts an end-use check, risking the possibility that the initial training may be outdated or not retained by the commercial officer. Since the content of the commercial officers' initial training is not available on the Commerce Learning Center nor on ITA's intranet, officers have to instead consult a manual that is posted on ITA's intranet to assist them in conducting end-use checks. Senior USFCS management stated that they need BIS' assistance to help define the agency's training needs involving end-use checks, because current BIS training is insufficient. Providing more robust, up-to-date online training materials for commercial officers to review would assist them in performing these important and time-sensitive enforcement activities.

Recommendations

We recommend the Under Secretary for Industry and Security take the following actions:

1. Verify the appropriateness of staffing levels after the transfer of all USML items to the CCL is complete.
2. Improve the tracking of license determinations to ensure they are processed within established timeframes.
3. Develop a contingency plan for completing the migration to USXPORTS that includes any additional incurred costs and how BIS will absorb those costs.
4. Enhance end-use check training for USFCS officers.

[18] BIS export control officers are stationed in Beijing, Dubai, Hong Kong, Moscow, New Delhi, and Singapore, and conduct end-use checks in their areas of responsibility. Through OEE's Sentinel Program, pairs of OEE special agents travel to regions of the world to conduct end-use checks selected under a set of criteria. Since 1988, BIS and the International Trade Administration have maintained an agreement (renewed in 2010 for another 5 years) stipulating that USFCS commercial officers may perform end-use checks on behalf of BIS.
[19] According to the USFCS, as of September 30, 2013, 191 commercial officers were stationed overseas. They would be available to conduct end-use checks.

Summary of Agency Response and OIG Comments

In response to our draft report, the Under Secretary for Industry and Security agreed with all of our recommendations and provided additional comments with respect to our findings. Regarding finding 1, BIS stated that it relied on the State Department for information and analysis on its future munitions workload and believes its forecasted staffing levels based on that analysis were accurate. Since the initial transfer of USML items in October 2013, BIS states that it monitors the average munitions license processing times (currently at 15 days) on a daily basis and will adjust staffing as needed as its workload increases. With respect to finding 2, BIS has automated the process for receiving and delivering license determinations to external enforcement agencies and believes this new process addresses our concerns.

In response to finding 3, BIS stated that it will not spend further budgetary resources on the development of USXPORTS until end-to-end testing is completed and any issues identified are resolved. Until USXPORTS is fully developed and meets all of BIS' requirements, BIS will only spend funds on operating and maintaining ECASS. Finally, with respect to finding 4, BIS stated that it will work with the USFCS to enhance end-use check training for commercial officers.

Prior to delivering its formal response, BIS submitted technical comments to the draft report. We made changes to the final report based on these comments and suggestions. BIS' formal response is presented in appendix E of this report.

We look forward to receiving BIS' action plan within 60 days of the date of this report.

Appendix A: Objectives, Scope, and Methodology

The objectives of this audit were to (1) review the adequacy of BIS program plans and budget requests to address the increased workloads for licensing, outreach, and enforcement activities in FY 2014 through FY 2016 and (2) evaluate existing BIS licensing, outreach, and enforcement activities and identify any areas for increased efficiencies.

We focused our analysis on areas of BIS most affected by ECR—namely its licensing divisions, outreach office, and enforcement offices (excluding antiboycott compliance)—and performed the following activities to accomplish our objectives:

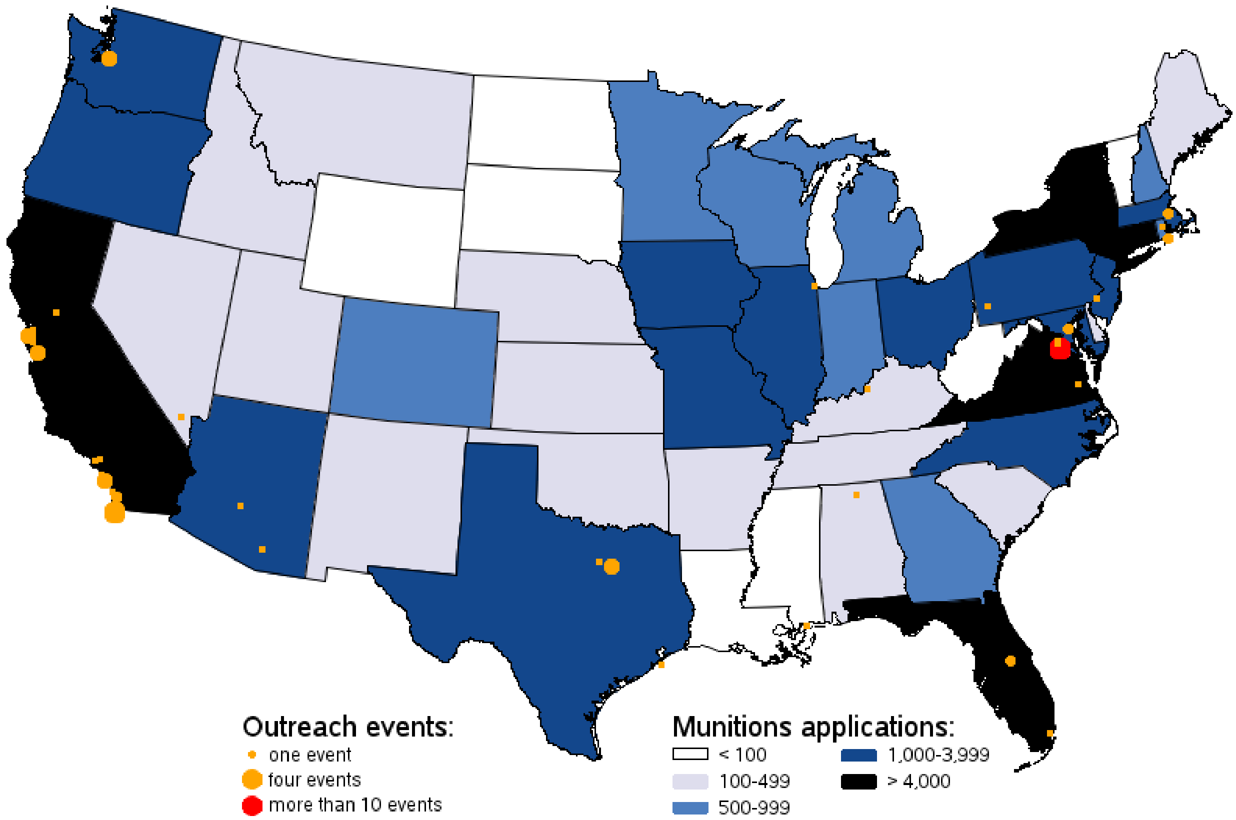
- Interviewed BIS managers to understand their plans for handling the increased licensing, outreach, and enforcement workloads due to ECR.
- Validated BIS' workload analyses for the increased licensing, outreach, and enforcement activities and assessed the adequacy of its FY 2014 budget request.
- Assessed whether BIS' performance targets adequately reflect its increased workloads and are consistent with accomplishing its mission.
- Obtained workload data from the State Department for processing license applications and enforcement activities on the items transferred from the USML to the CCL.
- Reviewed current BIS performance measures for licensing, outreach, and enforcement activities.
- Evaluated BIS activities with interagency partners to assess coordination and level of resources used.
- Interviewed BIS administrative and finance staff and Departmental officials to understand certain financial internal controls.
- Reviewed relevant laws and regulations for munitions and dual-use items to gain an understanding of export controls and the reform effort, including the Export Administration Act of 1979, the Arms Export Control Act of 1976, the Export Administration Regulations, the International Traffic in Arms Regulations, and Executive Orders 12981, 13026, and 13558, which address the administration and enforcement of export controls.

Further, we obtained an understanding of internal controls significant to our objectives, namely the processing of license applications for both items previously subject to the EAR and those items transitioning from the USML to the CCL, the collection of funds for BIS' Seminar Trust Fund, the payment of administrative penalties, and exporter use of the STA license exception through the Automated Export System. No instances of fraud, illegal acts, or abuse came to our attention during our audit.

To satisfy our audit objectives, we reviewed documentation provided by BIS, the Department, and other federal government agencies. We did not rely on computer-processed data and therefore did not carry out any data reliability testing.

We conducted this audit from May 2013 through June 2014 and performed fieldwork in Washington, DC. The audit was conducted under the authority of the Inspector General Act of 1978, as amended, and Department Organization Order 10-13, dated April 26, 2013. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions, based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Appendix B: ECR Outreach Events in Relation to USML Exporters, FY 2013



Source: BIS and Department of State data

Appendix C: BIS Licensing and Enforcement Resources for Satellite Items

Section 1248 of the National Defense Authorization Act for FY 2010[20] required the State and Defense Departments to conduct an assessment of the national security risks of removing satellites and related items from the USML. In March 2012, both Departments jointly issued a report recommending that the following items could be moved from the USML to the CCL without harming national security, provided the items on the CCL had adequate protections: (1) communications satellites that did not contain classified components, (2) remote sensing satellites with performance parameters under certain thresholds, and (3) associated parts and components for these satellites.[21] In early 2013, Congress removed the legislative barrier preventing export controls for commercial satellites from moving from the USML to the CCL as part the National Defense Authorization Act of FY 2013.[22]

BIS formulated a proposed rule containing four new Export Control Classification Numbers (ECCNs) to incorporate commercial satellites into the CCL.[23] The proposed rule was published on May 24, 2013, with a 45-day public comment period that ended on July 8, 2013.[24] An interim final rule was published on May 13, 2014, with an effective date of November 10, 2014, for most satellite items.[25] Allowing for a 180-day implementation period to allow exporters time to prepare for this change, the first dual-use satellite license applications for most satellite items will not be received and processed by BIS until mid-November 2014.

BIS anticipates that it will receive approximately 1,500 new license applications annually for satellite items. These applications will be processed by two licensing staff members—one licensing officer and one analyst—within the Office of National Security and Technology Transfer Controls. On the enforcement side, BIS formulated an end-use monitoring targeting plan for FY 2014. This plan incorporated the new munitions and satellite items scheduled to come under BIS jurisdiction. These items will be subject to both types of end-use checks, based on agency priorities and stringent criteria. As with other exports subject to the EAR, BIS will rely on export control officers, commercial officers, and OEE special agents to conduct checks as needed.

[20] Pub. L. No. 111-84, § 1248, 123 Stat. 2190, 2546-47 (2009).
[21] U.S. Department of Defense and U.S. Department of State, "Report to Congress: Section 1248 of the National Defense Authorization Act for Fiscal Year 2010," March 15, 2012 [online]. www.defense.gov/home/features/2011/0111_nsss/docs/1248_Report_Space_Export_Control.pdf (accessed March 26, 2014).
[22] Pub. L. No. 112-239, § 1261, 126 Stat. 1632, 2018-19 (2013).
[23] The four new ECCNs (9A515, 9B515, 9D515, and 9E515) fall under the CCL's Category 9, "Aerospace and Propulsion."
[24] Export Administration Regulations (EAR): Control of Spacecraft Systems and Related Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML), 78 Fed. Reg. 31431(May 24, 2013).
[25] Revisions to Export Administration Regulations (EAR): Control of Spacecraft Systems and Related Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML), 79 Fed. Reg. 27417 (May 13, 2014). Export control changes for radiation-hardened microelectronic microcircuits are effective June 27, 2014.

Appendix D: List of Acronyms

BIS	Bureau of Industry and Security
CCL	Commerce Control List
CUESS	Commerce USXPORTS Export Support System
CY	calendar year
EAR	Export Administration Regulations
ECASS	Export Control Automated Support System
ECR	Export Control Reform
FY	fiscal year
IT	information technology
ITA	International Trade Administration
MCD	Munitions Control Division
OEA	Office of Enforcement Analysis (BIS)
OEE	Office of Export Enforcement (BIS)
OExS	Office of Exporter Services (BIS)
STA	Strategic Trade Authorization
USFCS	U.S. and Foreign Commercial Service
USML	United States Munitions List

Appendix E: Agency Response

UNITED STATES DEPARTMENT OF COMMERCE
Under Secretary for Industry and Security
Washington, D.C. 20230

August 5, 2014

VIA ELECTRONIC MAIL

MEMORANDUM FOR: Ann C. Eilers
Acting Assistant Inspector General for Administration

FROM: Eric L. Hirschhorn
Under Secretary for Industry and Security

SUBJECT: BIS Response to OIG Draft Report on Export Control Reform Preparedness

Thank you for the opportunity to comment on the Office of Inspector General's (OIG's) draft report, *Several Improvements Are Needed to Help BIS Address Export Control Reform Challenges*. The Bureau of Industry and Security (BIS) agrees with OIG's four recommendations, and as noted in our attached response, we began addressing three of the recommendations prior to the audit. As Export Control Reform (ECR) progresses, it is vital that we continuously monitor our ability to expeditiously review license applications for items moving to BIS jurisdiction, educate the public and fellow government agencies on changes made by ECR, and effectively leverage the benefits of BIS's law enforcement resources.

Should you have any questions or require additional information, please contact Steven Emme in the Office of the Assistant Secretary for Export Administration, at 202-482-4159 or steven.emme@bis.doc.gov.

Attachment

cc: Carol Rice, Director for Statistical Programs
Eleazar Velazquez, Supervisory Program Analyst

Bureau of Industry and Security (BIS) Comments and Response to Office of Inspector General (OIG) Draft Report, *Several Improvements Are Needed to Help BIS Address Export Control Reform Challenges*

Comment

Page 9, last sentence of first paragraph:
With respect to the 28 license determination cases that had completion dates before a date of receipt, BIS believes that was caused by a change to procedure. Under the prior system of receiving and processing license determinations, the Department of Homeland Security (DHS) would generally send the license determination request to Export Enforcement (EE), EE would forward the request to Export Administration (EA), and then EA would respond after completing the license determination. However, for certain cases, DHS began to directly e-mail license determinations to EA rather than EE. EA would then complete the action and send emails to both DHS and EE. Because of this change in the process, EE would have had no record of receipt and would just have a completion date, as provided by EA.

Response to OIG Recommendations

Recommendation 1: Verify the appropriateness of staffing levels after the transfer of all USML items to the CCL is complete.

Response:

BIS agrees that is important to continue to monitor the progress of Export Control Reform (ECR), including evaluating staffing levels within BIS. BIS initially planned the staffing levels of the Munitions Control Division (MCD) based on licensing data and analysis on prior licensing practice and workload from the then-Managing Director of the Directorate of Defense Trade Controls (DDTC) at the Department of State. BIS, along with the DDTC Managing Director, continued to review the analysis as additional data became available to plan how best to handle the incoming licensing workload. BIS relied upon information and analysis provided by DDTC because DDTC, and not BIS, had exclusive access to and experience with such information.

Although we understand that OIG later requested and received different licensing data from DDTC following the retirement of the DDTC Managing Director, we do not believe this is unusual for data compiled by different people at different points in time. We haven't seen the data received by OIG, but it is very possible that different variables, such as whether supervisors were included as licensing officers and the impact of contractors on the analysis, were taken into account.

Since the first groups of items moved from the U.S. Munitions List (USML) to the Commerce Control List (CCL), BIS has reviewed average processing time of license applications on a daily basis. Currently, MCD's processing time for license applications is approximately 15 days, which is comparable to the average processing time at DDTC when such items were on the USML. We believe that this indicates that the data upon which BIS relied to make its staffing decisions was accurate. As more USML categories become effective that move items from the

USML to the CCL, BIS will continue to evaluate average processing times and staffing levels. Should that ongoing evaluation indicate a need for different staffing, BIS will not hesitate to seek it.

Recommendation 2: Improve the tracking of license determinations to ensure they are processed within established timeframes.

Response:

BIS agrees that improving the tracking of license determinations is warranted. As we discussed with OIG during its review, we began work on implementing changes to this area prior to OIG's audit of ECR preparedness. However, as also discussed with OIG during the audit, we doubt the accuracy of the 33-day average processing time for BIS that was provided by DHS. It is our understanding that the DHS system is manually populated with a request date, a date included in the specific referral number, and a date for completion. Based on our review, it is unclear which date DHS uses as the date submitted to BIS, especially when, as is often the case, the request date does not match the date in the referral number. Generally, BIS requires its licensing officers to complete license determinations within 35 days, with an informal target of 20 days for detained shipments. We believe that we have met these metrics.

As we informed OIG, BIS previously recognized that the internal tracking of license determinations could be improved. In mid-April 2014, BIS began implementation of the license determination module of the Commerce USXPORTS Export Support System (CUESS). In CUESS, external enforcement agencies, such as DHS or the Federal Bureau of Investigation, submit license determinations electronically through a web interface, and such license determinations are then processed by EA within BIS. During the first month after this new system was in place, the average time to complete a license determination requested by DHS was 14 days. This metric decreased to just under 10 days during the second month. We believe that these changes, which were in process during the time of OIG's review, adequately address OIG's concerns regarding tracking and processing of license determinations by BIS.

Recommendation 3: Develop a contingency plan for completing the migration to USXPORTS that includes any additional incurred costs and how BIS will absorb those costs.

Response:

It is important to note the development history thus far of USXPORTS and the importance of ensuring proper development so that there is no adverse impact to license processing and referrals. BIS originally planned on migrating to USXPORTS by May 2012, but the inability of Department of Defense contractors to fully integrate BIS licensing and business practices, as required by law, into USXPORTS prevented BIS from realizing that goal. During 2013, BIS hosted multiple sessions over the course of the year with Defense's contractors to discuss BIS's requirements and how these needed to be incorporated into USXPORTS. As a result of these sessions, BIS signed a new agreement with the Department of Defense on February 10, 2014 that reflected Defense's agreement to incorporate the BIS business practices requirements and established a schedule for final development work and final end-to-end testing. The Department of Defense has notified us that all development work has been completed, and accordingly, we initiated the process of conducting end-to-end testing with Defense. End-to-end testing is scheduled for completion by August 8, 2014. At that time, BIS will work with the Department of Defense, who is the owner of the USXPORTS licensing system, to fix issues that were uncovered during the testing period, so that BIS can transfer the BIS licensing process over to the USXPORTS licensing system.

BIS acknowledges that if delays in migrating to USXPORTS continue into FY 2015, BIS will need to continue to fund the continued operation of the current licensing system, ECASS, which continues to be our contingency plan. However, it is important to note that while USXPORTS is undergoing end-to-end testing and final development fixes, BIS will not be spending any funds on USXPORTS. Costs to continue the use of ECASS are those that are associated with operating and maintaining our current ECASS licensing system. In other words, to continue to process export licenses in a timely fashion, BIS will continue to spend funds on maintenance, repair and operating (MRO) costs for the current ECASS system with no funds being further spent on USXPORTS. When USXPORTS is fully developed with the required BIS business practices, BIS will cease spending funds on ECASS MRO costs and start paying those funds to USXPORTS for MRO work. Based on preliminary estimates from the Department of Defense, BIS expects the MRO costs for USXPORTS will be similar to the costs for ECASS.

Recommendation 4: Enhance end-use check training for USFCS officers.

Response:

BIS believes that outreach and training is crucial to an export control system that successfully protects U.S. national security, proliferation, and foreign policy concerns. This includes outreach for other government agencies, including the U.S. and Foreign Commercial Service (USFCS). Under ECR, the transfer of items from the USML to the CCL will result in enhanced enforcement focus as existing enforcement resources of the U.S. Government for munitions items will be augmented by the addition of dedicated law enforcement resources of EE, whose sole focus is enforcement of export controls. USFCS officers play an important role by conducting some end-use checks on behalf of EE.

BIS concurs with OIG's recommendation to enhance training for USFCS officers and will work with the International Trade Administration (ITA) on this effort. Since March 2013, BIS has participated in the Foreign Service Institute's Commercial Tradecraft Course for new USFCS officers five times and has provided specific training on ECR and regulations covering the munitions items that have been moved to the CCL. BIS will encourage ITA to make current BIS outreach materials available to USFCS officers on the ITA intranet. In addition, as we informed OIG, we will encourage ITA to once again include conduct of end-use checks in USFCS officers' performance plans.