
March, 30, 2005



Export Controls

Controls Over the Export Licensing
Process for Chemical and Biological
Items

(D-2005-042)

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Acronyms

AECA	Arms Export Control Act
CCL	Commerce Control List
DTSA	Defense Technology Security Administration
EAA	Export Administration Act
EAR	Export Administration Regulations
HHS	Department of Health and Human Services
ITAR	International Traffic in Arms Regulations
TPS	Technology Protection System
USDA	U.S. Department of Agriculture
USML	U.S. Munitions List
USXPORTS	U.S. Export System



INSPECTOR GENERAL
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March 30, 2005

MEMORANDUM FOR DEPUTY UNDER SECRETARY OF DEFENSE
(TECHNOLOGY SECURITY POLICY AND
COUNTERPROLIFERATION)

SUBJECT: Report on Controls Over the Export Licensing Process for Chemical
and Biological Items (Report No. D-2005-042)

We are providing this report for information and use. We conducted the audit in response to Public Law 106-65, "National Defense Authorization Act for Fiscal Year 2000," Section 1402, "Annual Report on Transfers of Militarily Sensitive Technology to Countries and Entities of Concern." We considered management comments on a draft of this report in preparing the final report. The complete text of the comments is in the Management Comments section of the report.

Comments on the draft of this report conformed to the requirements of DoD Directive 7650.3 and left no unresolved issues. Therefore, no additional comments are required.

We appreciate the courtesies extended to the staff. Questions should be directed to Mr. Robert F. Prinzbach at (703) 604-8907 (DSN 664-8907) or to Mr. Brett A. Mansfield at (703) 604-9646 (DSN 664-9646). See Appendix D for the report distribution. The team members are listed inside the back cover.

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Department of Defense Office of Inspector General

Report Number D-2005-042

March 30, 2005

(Project No. D2004-D000LG-0232)

Controls Over the Export Licensing Process for Chemical and Biological Items

Executive Summary

Who Should Read This Report and Why? Civil service employees and uniformed officers responsible for controlling the release of chemical and biological items for reasons of national security or U.S. foreign policy should read this report. The report discusses the effectiveness of the DoD review process for export license applications and updates to Federal export regulations to prevent the proliferation of items that could pose a threat to public health and safety.

Background. Public Law 106-65, “National Defense Authorization Act for FY 2000,” section 1402, “Annual Report on Transfers of Militarily Sensitive Technology to Countries and Entities of Concern,” October 5, 1999, requires that the Inspectors General of the Departments of Commerce, Defense, Energy, and State, in consultation with the Director of Central Intelligence and the Director of the Federal Bureau of Investigation, conduct annual reviews of controls over the transfer of militarily sensitive technology to countries and entities of concern. These annual reviews are summarized in an interagency report to Congress.

The U.S. Government restricts the export of chemical and biological items to foreign entities through the Department of Commerce’s Export Administration Regulations and the Department of State’s International Traffic in Arms Regulations (the Federal export regulations). Both the Department of Commerce and the Department of State consult with other Federal agencies, including DoD, during the review of export license applications. Within DoD, the Deputy Under Secretary of Defense (Technology Security Policy and Counterproliferation) is responsible for export control and nonproliferation policies and, as the Director of the Defense Technology Security Administration, is responsible for coordinating license application reviews and providing the overall DoD position on export license applications to Commerce and State, as appropriate.

The United States unilaterally controls biological items through the Bioterrorism Act, which directs the Departments of Agriculture and Health and Human Services to identify biological agents and toxins that could be used in acts of terrorism or other illegal acts and to establish and enforce safeguards and security measures to restrict access to those agents and toxins. These controls apply to the importation, use, and transfer of those items within the United States. They do not control the export of such items.

Results. DoD had an effective process to review export license applications for chemical and biological items. DoD management controls over the licensing process were adequate in that DoD consistently reviewed applications in a timely manner and the controls were in compliance with applicable requirements (see finding A).

DoD uses the Federal export regulations to determine which chemical and biological items require a license for export (export-controlled items). However, the Commerce Control List does not contain 20 biological agents and toxins identified on the U.S. Department of Agriculture and the Department of Health and Human Services lists that have the potential to pose a threat to animal, plant, and public health and safety. The Department of Commerce is currently considering whether the items contained in the U.S. Department of Agriculture and Department of Health and Human Services lists should be export controlled. We recommend that the Deputy Under Secretary of Defense (Technology Security Policy and Counterproliferation), together with the Department of Commerce, undertake an assessment of items on the U.S. Department of Agriculture List of Biological Agents and Toxins and the Department of Health and Human Services List of Select Agents and Toxins as changes occur to those lists and determine whether any of the listed agents and toxins should be controlled for export purposes by inclusion on the Commerce Control List (see finding B).

Management Comments and Audit Response. The Deputy Under Secretary of Defense (Technology Security Policy and Counterproliferation) concurred with the audit findings and the recommendation. However, she stated that the section of the draft report labeled “Munitions Export License Applications” was not entirely accurate. Based on her comments, we made revisions to the “Munitions Export License Applications” section of the report to better reflect the process used by Defense Technology Security Administration to process and refer munitions export license applications. Management comments are responsive, and no additional comments are required. See the Finding sections of the report for a discussion of management comments and the Management Comments section of the report for the complete text of the comments.

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This audit was performed to meet the requirement of Public Law 106-65, “National Defense Authorization Act for FY 2000,” section 1402, “Annual Report on Transfers of Militarily Sensitive Technology to Countries and Entities of Concern,” October 5, 1999, which states:

“(a) ANNUAL REPORT. – Not later than March 30 of each year beginning in the year 2000 and ending in the year 2007, the President shall transmit to Congress a report on transfers to countries and entities of concern during the preceding calendar year of the most significant categories of United States technologies and technical information with potential military applications.

“(b) CONTENTS OF REPORT. – The report required by subsection (a) shall include, at a minimum, the following:

* * * * *

“(3) An audit by the Inspectors General of the Departments of Defense, State, Commerce, and Energy, in consultation with the Director of Central Intelligence and the Director of the Federal Bureau of Investigation, of the policies and procedures of the United States Government with respect to the export of technologies and technical information referred to in subsection (a) to countries and entities of concern.”

This report addresses the DoD portion of the required FY 2005 interagency review. An interagency report will also be issued.

Background

The United States unilaterally controls the export of certain goods and technologies for national security, foreign policy, or nonproliferation reasons under the authority of several different laws. The primary legislative authority for controlling the export of goods and technologies that have civilian and military application (dual-use) is the Export Administration Act (EAA) of 1979, as amended (title 50, United States Code, section 2401).¹ The Export Administration Regulations (EAR) state that the EAA gives authority to the Secretary of Commerce to issue rules and procedures for the export of dual-use items. The export of goods and technologies that have only military use (munitions items) is controlled under the authority of the Arms Export Control Act (AECA) (Public Law 90-629). The AECA authorizes the President to control the export of munitions items.

¹ The EAA expired in August 1994. However, the President, under the authority of the International Emergency Economic Powers Act (50 U.S.C. 1702), continued the provision of the EAA through Executive Orders 12924 and 13222, “Continuation of Export Control Regulations,” August 19, 1994, and August 17, 2001, respectively. Each year thereafter, and most recently on August 6, 2004, the President issued a notice, “Continuation of Emergency Regarding Export Control Regulations,” continuing the emergency declared by Executive Order 13222.

The United States restricts the export of chemical and biological items to foreign entities through two Federal export regulations: the EAR, maintained by the Department of Commerce (Commerce), and the International Traffic in Arms Regulations (ITAR), maintained by the Department of State (State). For this report, goods and technologies that are listed in Federal export regulations as requiring a license for export are referred to as export-controlled items. Both Commerce and State may consult with other Federal agencies (referral agencies), including DoD, on export-controlled items.

Department of Commerce. The Commerce Bureau of Industry and Security controls the export of dual-use items using the authority provided in the EAA. The EAR implements the EAA requirements for executing the export licensing process for dual-use items and contains the Commerce Control List (CCL) that identifies dual-use items—goods and technologies, including software—that are subject to the process as well as the conditions under which they may be exported. The term “dual-use” is used to distinguish EAR-controlled items that can be used both in military and other strategic uses and in commercial applications. CCL Category 1, “Materials, Chemicals, Microorganisms, and Toxins,” controls chemical and biological protective and detection equipment and components not specifically designed for military use. Category 1 also controls chemical agents, precursors for toxic chemical agents, human pathogens and toxins, and Chemical Weapons Convention schedule 2 and 3 chemicals. Software and technology specifically designed or modified to develop, produce, or use Category 1 items are also export-controlled items. This report uses the term “chemical and biological items” to refer to all items listed under Category 1.

Department of State. The State Office of Defense Trade Controls is responsible for controlling the export of defense-related articles and services, approving or denying export license applications, ensuring compliance with the AECA, and registering persons and contractors. The ITAR implements the AECA and contains the U.S. Munitions List (USML), which identifies export-controlled defense-related articles, services, and related technical data as well as the conditions under which they may be exported. USML Category 14, “Toxicological Agents and Equipment and Radiological Equipment” controls nerve agents, vesicant agents, incapacitating agents, riot control agents, defoliants, medical countermeasures, and modeling or simulation test facilities. In addition, Category 14 controls technical data and defensive services. Components, parts, accessories, tools, and equipment specifically designed or modified for the production of those munitions are also export-controlled items. This report’s use of the term “chemical and biological items” also includes all items listed under Category 14.

Department of Defense. Within DoD, the Deputy Under Secretary of Defense (Technology Security Policy and Counterproliferation), under the direction, authority, and control of the Under Secretary of Defense for Policy, is responsible for the development and issuance of export control and nonproliferation policies. The Deputy Under Secretary also serves as the Director of the Defense Technology Security Administration (DTSA) and is responsible for coordinating license application reviews and providing to Commerce and State, as appropriate, the overall DoD position on export license applications. According to Draft Directive 5105.72, “Defense Technology Security Administration (DTSA),”

DTSA is the receiving point for all export license applications and develops DoD positions on those applications. The Director, DTSA is also responsible for supporting the activities of other DoD Components and Federal agencies to restrain the flow of sensitive defense-related technology, goods, services, and munitions.

Export Licenses. To be exported from the United States, all items listed on either the CCL or the USML must have an approved license or a specific license exception. U.S. entities are generally required to obtain an export license before providing foreign nationals access to software or technology that is subject to export licensing requirements. The need for an export license or license exception is determined by the type of item being exported, the country of final destination, and the end use of the item. Information about consignees, end users, and end uses must be included in the application. Because of recent proliferation concerns, the export of even the most basic items may require an export license if the end use is for nuclear, missile, biological, or chemical research, development, or production. Commerce and State may issue licenses with conditions that require the exporter to abide by certain restrictions. The referral agencies can also recommend that conditions be placed on an export license before it is issued.

Objectives

Our overall audit objective was to evaluate whether the DoD export licensing review process helped deter the proliferation of chemical and biological commodities. We assessed the effectiveness of the DoD export licensing review process to ensure that lethal chemical and biological items were not exported to countries and entities of concern. Specifically, we determined whether DoD received, and how DoD assessed, export license applications for chemical and biological items. We also reviewed the management control program as it related to the overall objective. We deferred an announced objective of determining whether DoD facilities with chemical and biological items were in compliance with Federal export laws and regulations. See Appendix A for a discussion of the scope and methodology and our review of the management control program. See Appendix B for prior coverage related to the objectives.

A. DoD Review Process for Export License Applications

DoD had an effective process to review export license applications for chemical and biological items. DoD consistently reviewed and referred applications in a timely manner, provided positions on export license applications, and was in compliance with applicable requirements. Despite the lack of a fully automated license application referral process at State or Commerce, DoD met statutory and internal review objectives.

DoD Role in the Export License Application Review Process

DTSA is the DoD focal point and is responsible for coordinating and reviewing export license applications received from Commerce and State. DTSA is required to develop DoD positions on export license applications consistent with national security objectives and to process applications expeditiously, making full use of automation and other efficiencies. As required by Executive Order 12981, DTSA participates in the review of dual-use export license applications.

Dual-Use Export License Applications. DTSA follows statutorily required timelines² for review of dual-use export license applications, which allow up to 30 days for review. DTSA receives dual-use license applications electronically through the Technology Protection System (TPS), but DTSA receives supporting data in hard copy via a courier service. A DTSA Tiger Team, composed of representatives from the Licensing, Technical, and Policy Divisions of DTSA, meets each morning to review a synopsis of dual-use license applications to determine which license applications should be referred to DoD Components. DTSA does not refer an application that the Tiger Team determines is standard or repetitive. For non-referred license applications, DTSA records its position through TPS. If the application is not standard or repetitive, DTSA refers the application electronically to the appropriate DoD Components via TPS and sends the supporting data in hard copy via a courier service. The DoD Components that DTSA might refer applications to are the Army, the Navy, and the Air Force (the Military Departments). DTSA gives the Military Departments 10 days to review the application. Once DTSA receives the Military Departments' comments, a DTSA licensing officer creates a final DoD position and enters it into TPS.

Dual-use license applications are also reviewed at an interagency "Shield" meeting. Chaired by State, Shield is an informal interagency working group with representation from Commerce, the Central Intelligence Agency, DoD, and the Department of Energy. Shield meetings provide a forum for discussing different opinions on license applications. Shield facilitates the review of dual-use license applications for chemical and biological items by meeting once a week and reviewing all dual-use license applications that are 16 to 22 days old. Shield

² Executive Order 12981 states that for dual-use export license applications, a Department or agency shall provide the Secretary of Commerce with a recommendation either to approve or deny the license application within 30 days of receipt of a referral and all required information.

focuses on applications of concern and attempts to resolve issues. Shield escalates applications to the Operating Committee³ if issues cannot be resolved. The Operating Committee considers the agencies' positions on unresolved dual-use export license applications and determines whether to permit the export.

Munitions Export License Applications. DTSA has established informal, internal deadlines for the review of munitions export license applications. DTSA normally allows up to 31 days for DoD review and response to referred applications. DTSA either receives munitions license applications in hard copy via a courier or electronically through the U.S. Exports System (USXPORTS) from the State Department. Once DTSA receives a license application, they review the application and determine whether it is standard or repetitive and, therefore, does not need to be referred. If DTSA determines that a license application is standard or repetitive, DTSA provides the DoD position to State through USXPORTS. If the license application is not standard or repetitive, DTSA refers the application to the Military Departments. This step including the process of providing State the DoD position or referring the application to the Military Departments takes approximately 2 days. Hard copies of the applications and associated technical data are transferred for review via courier service. If the information is available in electronic form, it is also transferred for review via USXPORTS. DTSA allows Military Departments 25 days to review an application and, if that deadline is not met, DTSA can approve a 14-day extension. At the conclusion of the 25 days, it takes DTSA approximately 2 days to create and post the draft DoD position for review and comment by the Military Departments. Military Departments then have approximately 2 days to dispute the draft position. If there are no comments received from the reviewers, DTSA posts the final DoD position to State.

Military Department Referrals. For both dual-use and munitions license applications, the Military Departments refer the license applications to program managers, technical experts, or other appropriate personnel for comment.

The Deputy Assistant Secretary of the Army (Defense Exports and Cooperation) sent a memorandum to DTSA on July 23, 2003, that deferred the Army position on dual-use export license applications to the judgment and expertise of DTSA for the development of positions. The Deputy Assistant Secretary initiated that action after an internal review found that the Army's interests were equally served regardless of whether the Army or DTSA reviewed the applications. However, the memorandum also states that dual-use license applications considered by DTSA to be of particular importance could still be referred and would be appropriately reviewed. Army personnel stated that they review approximately 150 chemical or biological export license applications per year. Navy and Air Force personnel stated that they review approximately 20 or fewer chemical or biological license applications per year for each of their respective Departments.

³ Executive Order 12981 states that the Secretary of Commerce appoints the Chair of the Operating Committee and he or she will consider the recommendations of the reviewing Departments and agencies and make the final decision concerning the proposed export.

DoD Review of Export License Applications

We obtained a list of all chemical and biological export license applications received by Commerce and State during FY 2003. Those lists showed that Commerce had received 1,803 dual-use export license applications and that State had received 717 munitions export license applications for chemical or biological items. We reviewed random samples of 91 of the 1,803 dual-use applications and 85 of the 717 munitions applications.

Dual-Use Export License Applications. Commerce referred 84 of the 91 dual-use export license applications in our sample to DTSA for comment. Commerce returned six of the remaining seven applications to the applicant without action because the applications were incomplete, and Commerce did not refer the seventh application to DoD because it was not considered to be a military item. DTSA met the statutory timeframe for the 84 applications it reviewed, and DTSA personnel stated that they had no outstanding concerns with Commerce's final positions.

In addition, we reviewed 18 dual-use export license applications from the Commerce list that had been escalated to the Operating Committee. DTSA personnel stated that DoD had no outstanding issues with the Operating Committee's or Commerce's final positions.

Munitions Export License Applications. State referred 57 of the 85 munitions license applications in our sample to DTSA. State did not refer the other 28 applications to DTSA because of the following reasons.

- Eighteen applications were for standard or repetitive items or State considered the technology level of the item to be widespread and not to pose a threat to the United States.
- Ten applications were incomplete and returned to the applicant without action.

DTSA generally met internal deadlines for reviewing the 57 referred munitions export license applications. DTSA took more than 31 days to review 4 of the 57 referred applications; however, we do not consider those instances to be excessive or to reveal an overall weakness with the review process for munitions license applications because they were reviewed in under 45 days, which is still within the allowable 14-day extension. DTSA personnel stated that, for the 57 referred applications, they had no outstanding concerns with State's final positions.

Automation of the Export Licensing Process. DoD was generally timely in its reviews of both dual-use and munitions export licenses. However, DTSA and Military Department personnel stated that the application review process would be more efficient if all license applications and supporting data were provided electronically. Specifically, the use of a courier service to deliver supporting data to DTSA and Military Departments adds at least 3 days of processing time for both dual-use and munitions export license applications. If Commerce and State referred supporting data electronically with the applications, DTSA and Military

Departments could reduce their review time by at least 3 days for some applications. However, DTSA consistently met statutory and internal deadlines despite the lack of a fully automated license application process; therefore, we are not making a recommendation to fully automate the process. Additionally, DTSA does not control how it receives supporting data; Commerce and State would need to take actions to ensure that all supporting data were sent to DTSA electronically by their Departments.

Conclusion

DTSA and the Military Departments were effective in meeting their statutorily required and internal deadlines and contributed to the dual-use and munitions export license application review process. We attribute much of the success of the process to the spirit of cooperation exhibited by the personnel of DTSA and the Military Departments.

Management Comments on the Finding

Management Comments. The Deputy Under Secretary of Defense (Technology Security Policy and Counterproliferation) concurred with the audit finding. However, she stated that the paragraph of the draft report labeled “Munitions Export License Applications” was not entirely accurate. She provided alternate language for this section of the report.

Audit Response. As a result of management comments by the Deputy Under Secretary of Defense (Technology Security Policy and Counterproliferation), we made revisions to the “Munitions Export License Applications” paragraph of the report to better reflect the process used by DTSA to process and refer munitions export license applications.

B. Biological Items of Concern Not Currently Export Controlled

DoD uses the Commerce Control List (CCL) to determine which biological items of concern are export controlled and require the filing of an export license application. However, the CCL does not contain 20 biological agents and toxins identified on the U.S. Department of Agriculture (USDA) and the Department of Health and Human Services (HHS) lists that have the potential to pose a threat to animal, plant, and public health and safety. Commerce is currently considering whether the items contained in the USDA and HHS lists should be export controlled. It is our opinion that items listed on the USDA and HHS lists should be periodically evaluated for inclusion in the CCL.

Established Legislative Authority

The United States controls chemical and biological items through legislation and by implementing regulations. The AECA and the EAA are the legislative authority for the EAR and the ITAR. The EAR and the ITAR are the Federal export regulations that identify the chemical and biological items of concern that require export control. Also, Public Law 107-188, “Public Health Security and Bioterrorism Preparedness and Response Act of 2002” (Bioterrorism Act), directs the USDA and HHS to establish and enforce safeguards and security measures to restrict access to biological agents and toxins that could be used in acts of terrorism or for any other criminal purpose. USDA is required to establish and maintain a list of and controls for biological agents and toxins that have the potential to pose a threat to animal or plant health or to animal or plant products. HHS is required to establish and maintain a list of and controls for biological agents and toxins that have the potential to pose a threat to public health and safety.

Biological Items of Concern Not Export Controlled

As a result of the Bioterrorism Act, USDA and HHS published regulations on the possession, use, and transfer of chemical and biological items listed in those regulations. The regulations went into effect on February 11, 2003, and February 7, 2003, respectively.

Both regulations establish requirements regarding the possession and use of the listed agents, their importation, and their transfer within the United States. The USDA regulation does not address the establishment of export controls. The HHS regulation states that it does not set export controls because regulating exports is the responsibility of Commerce.

The USDA and HHS lists, in effect since February 2003, included 20 items that were not included on the CCL as of February 2005. Specifically, the CCL did not include:

-
- 15 biological agents on the USDA Biological Agent List;
 - 1 biological agent on both the USDA Biological Agent List and the HHS Select Agent List; and
 - 4 biological agents on the HHS Select Agent List.

See Appendix C for a table showing the 20 biological agents and the particular lists they are on.

DoD Control of Biological Items

DoD Directive 2040.2 requires the Under Secretary of Defense for Policy to prepare technology transfer control policy. In addition, the Directive requires DoD Components to manage transfers of technology, goods, services, and munitions consistent with U.S. foreign policy and national security objectives.

DoD, like all U.S. entities, uses the Federal export regulations to determine which chemical and biological items require a license for export (export-controlled items).

Annual Report to Congress on Export Policies and Procedures

To meet the intent of the “National Defense Authorization Act for FY 2000” the Offices of the Inspectors General of the Departments of Commerce, Defense, Energy, and State, in consultation with the Director of Central Intelligence and the Director of the Federal Bureau of Investigation, established guidelines for conducting annual reviews of controls over the transfer of militarily sensitive technology to countries and entities of concern. The participating Offices of Inspectors General signed a memorandum of understanding which stated that the agencies would develop an agreed upon approach to address each year’s review of controls over the transfer of militarily sensitive technology to countries and entities of concern. Each Office of Inspector General agreed to issue an agency specific report and work together to issue an interagency report to Congress outlining the combined findings and recommendations.

In discussions with the Commerce Office of Inspector General’s representative to the interagency working group, subsequent to the draft report, we were notified that Commerce will address the issue of updating the CCL with items listed on the USDA and HHS lists. This issue will also be addressed in the Commerce specific and interagency reports. As a result, we made revisions to our draft finding to reflect the actions planned by Commerce to expand the CCL.

Recommendation and Management Comments

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

Management Comments. The Deputy Under Secretary (Technology Security Policy and Counterproliferation) concurred with the draft finding and recommendation.

Appendix A. Scope and Methodology

We reviewed applicable Executive Orders and Federal laws and regulations, including the EAA, the AECA, and the associated EAR and ITAR. In addition, we evaluated the adequacy of DoD directives, policies, and regulations related to the disclosure and transfer of militarily sensitive and critical technologies to foreign entities from 1984 through 2004. We reviewed those documents to determine DoD responsibilities in the export license application review process.

We compared export-controlled items listed in the EAR and ITAR with chemical and biological items listed in multilateral agreements, such as the Australia Group, Chemical Weapons Convention, Comprehensive Nuclear-Test-Ban Treaty, Missile Technology Control Regime, and the Wassenaar Agreement, to identify whether any of those items were not included in the EAR or ITAR. Additionally, we compared the items on the USDA Biological Agent List and the HHS Select Agent List with the items controlled by the EAR and the ITAR to determine whether any of those items were not included in the EAR or ITAR.

During our audit, we interviewed personnel from the following offices: the Office of the Under Secretary of Defense for Intelligence; the Office of the Assistant to the Secretary of Defense (Chemical and Biological Defense); the Office of the Deputy Under Secretary of Defense (Technology Security Policy and Counterproliferation); the Plans & Policy Directorate (J-5) and the Force Structure, Resources, and Assessment Directorate (J-8), Joint Staff; the Joint Program Executive Office (Chemical and Biological Defense); the Office of the Deputy Assistant Secretary of the Army (Defense Exports and Cooperation); the Navy International Programs Office, Export License Division; the Deputy Under Secretary of the Air Force (Foreign Disclosure and Technology Transfer Division); the Defense Security Service; DTSA; and the Defense Threat Reduction Agency. At each location we discussed the export license application review process and the role and responsibilities for each office.

We performed this audit from September 2004 through February 2005 in accordance with generally accepted government auditing standards. Our scope was limited due to time and resource constraints. Specifically, we did not address the announced objective of determining whether DoD facilities with chemical and biological items were in compliance with Federal export laws and regulations.

We met with DTSA personnel who reviewed export license applications referred by Commerce and State, and we reviewed the automated systems used in the license review process. In addition, we met with the Shield chairperson to gain an understanding of the Shield process for reviewing dual-use export license applications. We also met with the Military Departments' export license application review offices to determine their processes for reviewing applications referred to them by DTSA.

To determine the effectiveness of the DoD export license application review process to ensure that lethal chemical and biological commodities were not exported to countries and entities of concern, we reviewed two random samples of applications—91 dual-use and 85 munitions export license applications. We

reviewed the samples to determine whether the export license applications were referred to DTSA and the Military Departments. To determine whether DoD received, and how DoD assessed, chemical and biological export license applications, we reconciled the export license applications in our samples with DTSA records and reviewed the rationale for each non-referral. We then compared actual processing times for referred applications with the statutory and internal deadlines for timeliness. We also compared the DoD final position with the final Commerce or State position, identified discrepancies, and inquired about those discrepancies.

For our samples, we obtained lists from Commerce and State of all chemical or biological export license applications they received during FY 2003. Those lists showed that Commerce had received 1,803 dual-use export license applications and that State had received 717 munitions export license applications for chemical or biological items. We used a sampling plan designed by the DoD Office of Inspector General's Quantitative Methods Division to randomly select export license applications from those lists for review.

Use of Computer-Processed Data. We relied on computer-processed data from the Commerce Export Control Automated Support System, USXPORTS, and TPS. We compared summarized or detailed data contained within those automated export licensing systems and reconciled differences. We did not find any errors that would preclude our use of the computer-processed data to meet the audit objectives or would change the conclusions in this report. Based on our comparison, we concluded that the system controls were adequate for our purposes in conducting this audit.

Use of Technical Assistance. We received technical assistance from the DoD Office of Inspector General's Quantitative Methods Division, which designed the sampling plan for our random samples taken from the lists of dual-use and munitions export license applications received by Commerce and State, respectively, during FY 2003. The sampling plan was designed with a 95 percent confidence level and a 10 percent precision level. We also received technical assistance from DTSA and Commerce during the course of this audit. Specifically, DTSA and Commerce personnel reviewed our comparison of the CCL and the USML with the multilateral agreement and unilateral regulations to determine whether our conclusions were accurate.

Management Control Program Review

DoD Directive 5010.38, "Management Control (MC) Program," August 26, 1996, and DoD Instruction 5010.40, "Management Control (MC) Program Procedures," August 28, 1996, require DoD organizations to implement a comprehensive system of management controls that provides reasonable assurance that programs are operating as intended and to evaluate the adequacy of the controls.

Scope of the Review of the Management Control Program. We evaluated the controls over the DoD export license review process for lethal chemical and biological items. Specifically, we reviewed the adequacy of the policies and

procedures that the Office of the Deputy Under Secretary of Defense (Technology Security Policy and Counterproliferation) had for preventing the transfer of lethal chemical and biological items to countries and entities of concern. We also reviewed the adequacy of DTSA management controls over referred dual-use and munitions export license applications. Because we did not identify a material weakness, we did not assess management's self-evaluation.

Adequacy of Management Controls. The Office of the Deputy Under Secretary of Defense (Technology Security Policy and Counterproliferation) and DTSA management controls were adequate in that we identified no material management control weakness.

Appendix B. Prior Coverage

During the last 6 years, the Government Accountability Office (GAO) and the Department of Defense Inspector General (DoD IG) have conducted multiple reviews discussing the adequacy of export controls. Unrestricted GAO reports can be accessed over the Internet at <http://www.gao.gov>. Unrestricted DoD IG reports can be accessed at <http://www.dodig.mil/audit/reports>. The following previous reports are of particular relevance to the subject matter in this report.

GAO

GAO Report No. GAO-01-528, “Export Controls: State and Commerce Department License Review Times are Similar,” June 14, 2001

DoD IG

DoD IG Report No. D-2004-061, “Export Controls: Export-Controlled Technology at Contractor, University, and Federally Funded Research and Development Center Facilities,” March 25, 2004

DoD IG Report No. D2003-070, “Export Controls: DoD Involvement in Export Enforcement Activities,” March 28, 2003

DoD IG Report No. D-2003-021, “Security: Export Controls Over Biological Agents (U),” November 12, 2002

DoD IG Report No. D-2002-039, “Automation of the DoD Export License Application Review Process,” January 15, 2002

DoD IG Report No. D-2001-088, “DoD Involvement in the Review and Revision of the Commerce Control List and the U.S. Munitions List,” March 23, 2001

DoD IG Report No. D-2000-110, “Export Licensing at DoD Research Facilities,” March 24, 2000

DoD IG Report No. 99-186, “Review of the DoD Export Licensing Processes for Dual-Use Commodities and Munitions,” June 18, 1999

Interagency Reviews

Inspectors General of the Departments of Commerce, Defense, Energy, Homeland Security, and State and the Central Intelligence Agency Report No. D-2004-062, "Interagency Review of Foreign National Access to Export-Controlled Technology in the United States," April 16, 2004

Inspectors General of the Departments of Commerce, Defense, State, and the Treasury; the Central Intelligence Agency; and the United States Postal Service Report No. D-2003-069, "Interagency Review of Federal Export Enforcement Efforts," April 18, 2003

Inspectors General of the Departments of Commerce, Defense, Energy, State, and the Treasury Report No. D-2002-074, "Interagency Review of Federal Automated Export Licensing Systems," March 29, 2002

Inspectors General of the Departments of Commerce, Defense, Energy, and State Report No. D-2001-092, "Interagency Review of the Commerce Control List and the U.S. Munitions List," March 23, 2001

Inspectors General of the Departments of Commerce, Defense, Energy, and State Report No. D-2000-109, "Interagency Review of the Export Licensing Process for Foreign National Visitors," March 24, 2000

Inspectors General of the Departments of Commerce, Defense, Energy, State, and the Treasury and the Central Intelligence Agency Report No. 99-187, "Interagency Review of the Export Licensing Processes for Dual-Use Commodities and Munitions," June 18, 1999

Appendix C. Biological Agents Not Included on the Commerce Control List

<u>Chemical and Biological Agent</u>	<u>USDA Biological Agent List</u>	<u>HHS Select Agent List</u>
Akabane virus	✓	
Bovine spongiform encephalopathy agent	✓	
Camel pox virus	✓	
Central European tick-borne encephalitis		✓
Cercopithecine herpesvirus 1 (Herpes B virus)		✓
Coccidioides immitis	✓	✓
Coccidioides posadasii		✓
Cowdria ruminantium (Heartwater)	✓	
Far Eastern tick-borne encephalitis		✓
Liberobacter africanus	✓	
Liberobacter asiaticus	✓	
Malignant catarrhal fever virus (Exotic)	✓	
Menangle virus	✓	
Mycoplasma capricolum/ M.F38/M. mycoides Capri	✓	
Peronosclerospora philippinensis	✓	
Phakopsora pachyrhizi	✓	
Plum Pox Potyvirus	✓	
Sclerophthora rayssiae var zeaе	✓	
Synchytrium endobioticum	✓	
Xylella fastidiosa (citrusBacillus anthracis variegated chlorosis strain)	✓	

Appendix D. Report Distribution

Office of the Secretary of Defense

Under Secretary of Defense for Acquisition, Technology, and Logistics
Deputy Under Secretary of Defense (Science and Technology)
Under Secretary of Defense for Policy
Under Secretary of Defense (Comptroller)/Chief Financial Officer
Deputy Chief Financial Officer
Deputy Comptroller (Program/Budget)
Under Secretary of Defense for Intelligence
Assistant to the Secretary of Defense (Nuclear and Chemical and Biological Defense Programs)
Director, Program Analysis and Evaluation
Deputy Under Secretary of Defense (Technology Security Policy and Counterproliferation)

Joint Staff

Director, Joint Staff
Director, Plans & Policy Directorate (J-5), Joint Staff
Director, Force Structure, Resources, and Assessment Directorate (J-8), Joint Staff

Department of the Army

Inspector General, Department of the Army
Director, Joint Program Executive Office (Chemical and Biological Defense)

Department of the Navy

Naval Inspector General
Auditor General, Department of the Navy

Department of the Air Force

Auditor General, Department of the Air Force

Combatant Command

Inspector General, U.S. Joint Forces Command

Other Defense Organizations

Director, Defense Intelligence Agency
Director, Defense Logistics Agency
Director, Defense Security Service
Director, Defense Technology Security Administration

Non-Defense Federal Organizations

Office of Management and Budget
Director, National Security Agency
Inspector General, Department of Agriculture
Inspector General, Department of Commerce
Inspector General, Department of Energy
Inspector General, Department of Health and Human Services
Inspector General, Department of Homeland Security
Inspector General, Department of State
Inspector General, Central Intelligence Agency

Congressional Committees and Subcommittees, Chairman and Ranking Minority Member

Senate Committee on Appropriations
Senate Subcommittee on Defense, Committee on Appropriations
Senate Committee on Armed Services
Senate Committee on Governmental Affairs
Senate Select Committee on Intelligence
Senate Committee on Foreign Relations
House Committee on Appropriations
House Subcommittee on Defense, Committee on Appropriations
House Committee on Armed Services
House Committee on Government Reform
House Subcommittee on Government Efficiency and Financial Management, Committee on Government Reform
House Subcommittee on National Security, Emerging Threats, and International Relations, Committee on Government Reform
House Subcommittee on Technology, Information Policy, Intergovernmental Relations, and the Census, Committee on Government Reform
House Committee on International Relations
House Permanent Select Committee on Intelligence

Deputy Under Secretary of Defense (Technology Security Policy and Counterproliferation) Comments

Final Report
Reference



POLICY

OFFICE OF THE UNDER SECRETARY OF DEFENSE
2000 DEFENSE PENTAGON
WASHINGTON, DC 20301-2000

MAR 17 2005

MEMORANDUM FOR THE DEPUTY INSPECTOR GENERAL FOR AUDITING,
READINESS AND LOGISTICS SUPPORT, OFFICE OF THE
INSPECTOR GENERAL, DEPARTMENT OF DEFENSE

SUBJECT: Comments on Draft of DoD/IG Audit Report, "Controls over the Licensing
Process for Biological and Chemical Commodities" (Proj. # D2004LG-
0232)

We concur with the findings and the recommendation contained in this report, with the exception of the findings in the section labeled "Munitions Export License Applications" on page 5, which is not entirely accurate. We recommend that the language of that section be revised as follows (in line-in/line-out format):

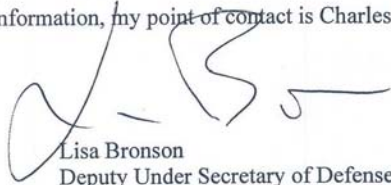
Munitions Export License Applications. DTSA has established informal, internal deadlines for the review of munitions export license applications. DTSA allows up to 31 days for DoD's review of an application. DTSA receives approximately 90% of the munitions license applications in hard copy via a courier from the State Department. The other 10% are received electronically through the automated U.S. Export System (USXPORTS), but normally receives hard copy supporting data via a courier service. Once DTSA receives a license application, it takes approximately 2 days to review the application and determine whether it is standard or repetitive and, therefore, does not need to be referred. it is reviewed the same day by the prescreening team and a determination is made on the requirement for external staffing. If DTSA determines that a license is standard or repetitive, DTSA provides the DoD position to State through USXPORTS at that time. If the license application is not standard or repetitive, DTSA refers the application electronically to the appropriate Military Departments via USXPORTS and sends the supporting data either electronically via USXPORTS or in hard copy via courier service. Approximately one third of the cases are processed without the need for external staffing to the Military Departments. If the information is available in electronic form, it is transferred for review via USXPORTS. Hard copies of the applications and associated technical data are staffed via courier service. DTSA allows the Military Departments 25 days to review an application and, if that deadline is not met, DTSA can approve a 14-day extension. When sufficient information is available to craft a position, DTSA releases a draft DoD position for review and comment by the reviewers, within 2 days of receiving comments from the Military Departments. The final DoD position is released to State Department 2 days later if there are no comments received from the

Revised

~~reviewers. Military Departments have approximately 2 days to dispute the draft position before DTSA sends the final DoD position to State.~~

We also note that the Department of State is circulating a draft paper which proposes adding to the Australia Group Core List (Control List) the 25 "Select Agents" that are not currently Australia Group controlled, but which are found on the U.S. Department of Health and Human Services' Centers for Disease Control and Prevention and U.S. Department of Agriculture's Animal and Plant Health Inspection Service lists.

Should you require further information, my point of contact is Charles B. Shotwell, (703) 325-3784.



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Counterproliferation

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