

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



*BUREAU OF EXPORT
ADMINISTRATION*

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

Final Inspection Report No. IPE-142246-2/September 2001

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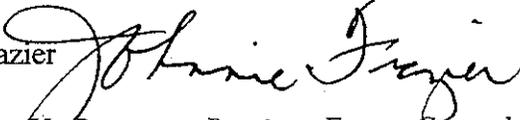
Office of Inspections and Program Evaluations



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

SEP 28 2001

MEMORANDUM FOR: Kenneth Juster
Under Secretary for Export Administration

FROM: Johnnie E. Frazier 

SUBJECT: *Annual Follow-Up Report on Previous Export Control Recommendations, as Mandated by the National Defense Authorization Act for Fiscal Year 2000 (IPE-14246-2)*

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

While the Bureau of Export Administration has taken corrective actions on some of the open recommendations from our March 2000 report, little action has been taken on the recommendations from the March 2001 report. As such, we request that BXA officials provide an updated response and action plan within 90 calendar days for those recommendations that we still consider to be open.

If you would like to discuss this report, please call me at (202) 482-4661, or Jill Gross, Assistant Inspector General for Inspections and Program Evaluations, at (202) 482-2754.

INTRODUCTION

The House and Senate Armed Services Committees, through the National Defense Authorization Act for Fiscal Year 2000, as amended, directed the Inspectors General of the Departments of Commerce, Defense, Energy, State, and the Treasury, and the Central Intelligence Agency, in consultation with the Federal Bureau of Investigation, to conduct an annual assessment of the adequacy of current export controls and counterintelligence measures to prevent the acquisition of sensitive U.S. technology and technical information by countries and entities of concern.¹ The Office of Inspectors General (OIGs) are required to report to the Congress no later than March 30 of each year from 2000 to 2007. In addition, the legislation requires the OIGs to include in their

¹Public Law 106-65, October 5, 1999.

annual report the status or disposition of recommendations made in earlier reports submitted in accordance with the act. This report presents the status of recommendations made in our March 2001 report, as well as those that remain open from our March 2000 report.

Inspections are special reviews that the OIG undertakes to provide agency managers with information about operational issues. One of the main goals of an inspection is to eliminate waste in federal government programs by encouraging effective and efficient operations. By asking questions, identifying problems, and suggesting solutions, the OIG hopes to help managers move quickly to address problems identified during the inspection. Inspections may also highlight effective programs or operations, particularly if they may be useful or adaptable for agency managers or program operations elsewhere.

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

OBJECTIVES, SCOPE, AND METHODOLOGY

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

BACKGROUND

The United States controls the export of dual-use commodities for national security and foreign policy (including nonproliferation) reasons under the authority of several different laws. Dual-use commodities are goods and technologies determined to have both civilian and military uses. The primary legislative authority for controlling the export of dual-use commodities is the Export Administration Act of 1979, as amended.² Under the act, BXA administers the Export Administration Regulations (EAR) by developing export control policies, issuing export licenses, and enforcing the laws and regulations for dual-use exports.

² Although the Export Administration Act expired on August 20, 2001, the President has extended existing export regulations under Executive Order 13222, dated August 17, 2001, invoking emergency authority contained in the International Emergency Economic Powers Act.

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

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

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

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

⁴Because the National Defense Authorization Act was not enacted until October 1999, we were not able to conduct a comprehensive assessment of BXA's export enforcement activities by the March 30, 2000, deadline. However, as a part of the interagency OIG multi-year review plan, we anticipate conducting this assessment in fiscal year 2002.

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

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

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

- ❖ Exporters generally think the CCL is easier to understand than the U.S. Munitions List. However, some improvements are needed in the management of the CCL, including (1) exploring additional ways to make the list more user-friendly (2) improving the timeliness of implementing agreed-upon multilateral changes to the list, and (3) correcting the inappropriate use of national security controls on some items.
- ❖ There is a continuing need for improvements in the commodity classification process. Again, we found that the processing of commodity classifications is untimely, resulting in unnecessary delays for exporters. More importantly, we determined that the commodity classification process is not transparent because BXA is still not referring all munitions-related classifications to Defense and State for review, as directed by the 1996 National Security Council (NSC) guidelines. This creates the potential for incorrect classifications.
- ❖ The commodity jurisdiction process needs improvement. CJ determination requests are not being processed in a timely manner by any of the involved agencies, including Commerce, Defense, and State. In addition, determination requests are currently being processed manually. Under such a manual system, documents can be lost, misplaced, or misdirected resulting in unnecessary delays. Furthermore, all of the agencies involved in the process are not always fully informed about the jurisdiction opinions provided by the other agencies. Finally, there are concerns that State may be making incorrect CJ determinations because it does not always consult with BXA or Defense. We found two instances where this had occurred, causing inconvenience and expense to the exporters involved.
- ❖ There is a breakdown in the interagency process for resolving jurisdictional disputes between Commerce, Defense, and State licensing offices (also called government jurisdictions) with regard to both night vision technology and space-qualified items. The NSC needs to help resolve these disputes.

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

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

Our March 2001 export control report on BXA's policies and procedures for the design, maintenance, and application of the CCL contained a number of recommendations to protect against the illicit export or transfer of militarily sensitive technologies and commodities. While BXA agreed with most of our recommendations, we are disappointed that BXA has taken little action to date to implement these. Specifically, only 2 of the 14 recommendations have been fully implemented. While BXA is currently taking some action on the remaining 12 recommendations, overall we do not believe its actions adequately address our recommendations. (See the attachment for a detailed description of the status of our March 2001 recommendations.) Given BXA's key role in administering the dual-use export control process, we believe that action should be taken to implement the open recommendations as expeditiously as possible.

A FEW KEY RECOMMENDATIONS FROM THE MARCH 2000 REPORT REMAIN OPEN

Our March 2000 export control report on programs designed to protect against the transfer of sensitive technologies to countries of concern contained 24 recommendations to several Commerce bureaus (BXA, NOAA, ITA, and the National Institute of Standards and Technology) to help the government's efforts in protecting against illicit technology transfer.⁷ In our March 2001 follow-up report, we highlighted that the actions planned or taken for 16 of these recommendations met the intent of our recommendations, but that BXA's actions for the remaining eight did not. Based on our current follow-up work on these eight recommendations, we found that six of them, relating to deemed export controls and the visa application review program, remain open (see the attachment for a detailed description of the status of open recommendations from our March 2000 report). Again, given BXA's important role in administering the dual-use export control process, we believe that action should be taken to implement the open recommendations as quickly as possible.

Attachment

cc: Scott Gudes, Acting Under Secretary for Oceans and Atmosphere

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

ATTACHMENT

STATUS OF RECOMMENDATIONS

MARCH 2001 REPORT

Commerce Control List

1. **Review BXA's internal clearance process and procedures for implementing agreed-upon multilateral changes to the CCL and work with the other licensing agencies, including Defense, Energy, and State, to determine whether the current process for updating the CCL can be adjusted in order to publish regulations more expeditiously. In addition, immediately implement the regulatory changes resulting from the May 1999 NSG plenary session and the October 1999 MTCR plenary session.**

Status: Open. BXA began an evaluation of the current regulatory review process in September 2001 to determine whether it could be adjusted and expects to complete this review by November 2001. BXA also indicated that regular meetings are held by the Deputy Assistant Secretary for Export Administration with the Director of the Regulatory Policy Division, as well as staff from other BXA program offices, as needed, to discuss the status of all pending regulations, prioritize them, and make regulatory changes in a more timely manner. However, BXA's July 2001 action plan pointed out that the primary reason for delays in drafting and implementing regulations is the shortage of regulatory personnel in BXA and other agencies. Consequently, BXA requested funding in both its fiscal year 2002 and 2003 budget submissions for additional regulatory staff. While we recognize BXA's need to hire additional engineering and regulatory staff to offset its shortage of technical and analytical capacity, we believe that BXA can take action on this recommendation with its current staff level.

With regard to the May 1999 NSG regulatory changes, BXA informed us that a draft regulation will be sent out for interagency review during the week of September 24, 2001, requesting reviewing agencies to provide comments and clearance within two weeks. In addition, BXA reported that the draft regulation implementing the October 1999 MTCR plenary regulation changes was sent out for interagency review on August 9, 2001. According to BXA, the Departments of Energy and State have cleared the regulation, while the Department of Defense is still reviewing it. Although BXA's actions partially meet the intent of our recommendation, this recommendation will remain open until BXA completes its evaluation of the current regulatory review process and publishes the 1999 NSG and MTCR regulatory changes in the *Federal Register*.

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

Status: Open. BXA has taken no action on this recommendation since the publication of our March 2001 report. However, BXA did inform us that it will begin discussions with Defense and State in October 2001 to determine the appropriate controls for the four Export Control Classification Numbers currently subject to unilateral national security controls. BXA believes that, at a minimum, the existing foreign policy (antiterrorism) controls should be continued on these items. BXA's actions do not meet the intent of our recommendation. Until a review of these items has been completed, this recommendation will remain open.

3. **Convene a working group of business and government representatives, under the auspices of the Regulations and Procedures Technical Advisory Committee, to improve the user-friendliness of the CCL. In addition, work with State to (1) eliminate the current overlap of items and make sure that it is very clear on which list an item falls, and (2) create a user-friendly consolidated index of the items on the CCL and USML. To ensure that this happens, work with the applicable congressional committees, that are considering new legislation for dual-use exports, to ensure that any new Export Administration Act or similar legislation includes a requirement that the agencies eliminate the overlap and create such an index for both the CCL and the USML. Finally, ensure that the annual scrubs of the CCL also take into account any corrections or changes that would help to make the CCL easier for exporters to use.**

Status: Open. The Regulations and Procedures Technical Advisory Committee has formed a working group to suggest improvements to the CCL. According to the committee's chair, it is likely that the working group will present its suggested changes to BXA at the Advisory Committee's next meeting, scheduled for early December 2001. With regard to our recommendation that BXA work with State to eliminate the overlap of items on both the CCL and USML and create a consolidated index of items on both lists, BXA and State are in the process of reviewing Defense's first set of changes to the USML resulting from the five-part "scrub" of the list as part of the Defense Trade Security Initiative Number 17. While one of the goals of this initiative is the identification of USML items that are more appropriately controlled by the CCL, the initiative does not specifically address the overlap problem we identified. Therefore, we are not confident that relying on Defense's effort will resolve the overlap issue. In addition, BXA contends that it would be premature to create a consolidated index until there is interagency agreement on the first set of changes to the USML. We see no reason to delay the start of work on the index because changes that will be made as a result of the 5-year Defense Trade Security Initiative Number 17 effort can be inserted into the index after interagency agreement on the changes is reached. Thus, we urge BXA to begin work with State immediately on the index and to eliminate the overlap.

Overall, BXA's actions taken to date do not meet the intent of our recommendation.

Commodity Classifications

4. Review Export Administration priorities and staffing levels and make adjustments to improve BXA's timeliness on CCATS requests.

Status: Open. BXA believes that additional technical personnel are needed to improve the timeliness on commodity classification requests. As a result, BXA has made funding for additional technical experts one of its highest priorities for fiscal years 2002 and 2003. We verified that BXA had requested additional funding for hiring technical personnel in both its 2002 and 2003 budget requests. While BXA's actions partially meet the intent of our recommendation, this recommendation will remain open until BXA implements the necessary actions to improve its timeliness on CCATS.

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

Status: Open. BXA informed us that it intends to implement this recommendation as part of its ECASS redesign project. However, until BXA makes a final decision on the commodity classification system requirements as a part of its redesign efforts, this recommendation will remain open.

6. Develop policies and procedures for the intra-agency review of CCATS.

Status: Closed. In its July 2001 action plan, BXA stated that it does not believe that developing additional policies and procedures for intra-BXA referral of commodity classifications is necessary. However, on June 4, 2001, BXA's Director of Exporter Services sent an e-mail message to all of the Export Administration's office directors instructing them to remind their licensing officers that if they need to seek advice about a commodity classification from another office or have been requested to provide input on a commodity classification to another division, they should do so promptly and complete the action within three working days. BXA's actions meet the intent of our recommendation.

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

Status: Open. BXA recently notified us that it plans to work with the NSC and the other agencies to review the 1996 CCATS guidance once the night vision jurisdiction issue is resolved (see recommendation 13 below). In addition, BXA informed us that the current Administration has reached internal agreement on the principles that would govern Defense's review of commodity classification requests. We also point out that the proposed Export Administration Act of 2001 (S. 149) would require Commerce, by law for the first time, to notify Defense of all commodity classification requests it receives. We are pleased that high-level discussions are taking place about the review of commodity classifications. As such, BXA's actions partially meet the intent of our recommendation. This recommendation will remain open until the NSC/Commerce/Defense/State review of the 1996 CCATS guidance is complete.

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

Status: Open. BXA informed us that the procedures for sending completed commodity classifications to the State Department will be completed by October 15, 2001. This recommendation will remain open until BXA begins to provide State with a copy of the final commodity classification determinations it reviews.

Commodity Jurisdictions

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

Status: Open. BXA believes that additional technical personnel are needed to improve the timeliness on CJ requests. As a result, BXA has made funding for additional technical experts one of its highest priorities for fiscal years 2002 and 2003. We verified that BXA had requested additional funding for hiring technical personnel in both its 2002 and 2003 budget requests. While BXA's actions partially meet the intent of our recommendation, this recommendation will remain open until BXA implements the necessary actions to improve its timeliness on CJ requests.

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

Status: Open. BXA agreed to work with State and Defense to have this issue addressed as part of Defense's USXPORTS initiative.⁸ To that end, BXA raised the issue with State and Defense at the September 19, 2001, quarterly interagency export licensing meeting. In addition, BXA stated that it would raise this issue with the appropriate officials at State and Defense now that the new management teams are in place at those departments. Finally, BXA pointed out that, ultimately, State has to agree to electronic processing of CJ requests, and it has not yet done so. We request that BXA continue to press State and Defense on this issue. Until a definitive decision to automated the CJ process, this recommendation will remain open.

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

Status: Open. BXA stated that it will make this request to State by October 1, 2001, now that State's new management team is in place. Until the request is made, this recommendation will remain open.

Licensing of Night Vision Technology

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

Status: Open. BXA has taken no action on this recommendation since the publication of our March 2001 report. BXA informed us that it will discuss this recommendation with the NSC, Defense, and State after the night vision jurisdiction review is resolved (see recommendation 13 below) and the 1996 commodity classification guidance is reviewed (as discussed in recommendation 7 above). Until BXA raises this issue with the NSC, at a minimum, or until some guidance on processing government jurisdictions is provided to the licensing agencies, this recommendation will remain open.

⁸ In May 2000, Defense announced the start of a new interagency automation effort designed to improve the U.S. government's export license review process. The USXPORTS Interagency Program Management Office was established to oversee this initiative. At this time, State has not officially agreed to participate in this initiative.

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

Status: Open. BXA has not formally requested the NSC to resolve the jurisdictional issues regarding night vision equipment and technology since issuance of our March 2001 report. However, BXA recently informed us that the NSC will begin a review of this matter in October 2001. Until the review is completed, this recommendation will remain open.

Licensing of Space-Qualified Items

- 14. Submit a formal written request to the new head of the NSC asking for early resolution of the jurisdictional issues regarding the 16 space-qualified items.**

Status: Closed. The NSC and the Departments of Commerce, Defense, and State recently completed a review of licensing jurisdiction for space qualified items. The Departments have posted charts on their respective web sites detailing the resolution of this issue. According to BXA, each agency will publish rules shortly in the *Federal Register* amending their regulations, where appropriate, and specifying the relevant details and technical parameters associated with export control of these items. Of the 16 space-qualified items in dispute, 6 have been determined to fall strictly under the U.S. Munitions List; 4 have been determined to fall strictly under the CCL; and 4 have been determined to fall under both the CCL and the U.S. Munitions List depending on certain technical parameters. The remaining two categories were decontrolled by the Wassenaar Arrangement in December 1998. The deletions were made to the CCL in mid-1999, but new categories were created to unilaterally control these items on the CCL for anti-terrorism reasons. BXA's actions meet the intent of our recommendation.

MARCH 2000 REPORT

Recommendations for the Bureau of Export Administration

- 3. Expand outreach efforts with federal agencies (including the Departments of Commerce, Defense, Energy, and Transportation, and the National Aeronautics and Space Administration) to ensure that these agencies fully understand the deemed export control requirements and to help them determine whether foreign visitors at their facilities and/or laboratories require a deemed export license. At a minimum, BXA should**
- (c) Engage in discussions with the NOAA Administrator, as well as the Assistant Administrators of its line offices and in particular NESDIS, to discuss deemed export regulations and their potential applicability to NOAA.**

Status: Open. During fiscal year 2000, officials of BXA's Office of Export Enforcement (OEE) visited NOAA's facility in Boulder, Colorado, and met with attorneys in its Office of Chief Counsel. According to OEE officials, the presentation in Boulder was focused primarily on deemed exports. Furthermore, on May 31, 2001, the Under Secretary for Export Administration sent a memorandum to NOAA's Acting Administrator offering to brief NOAA personnel on deemed exports. While BXA has not received a response from NOAA to date, BXA's action plan stated that it will follow-up with NOAA by October 1, 2001. While BXA's actions partially meet the intent of our recommendation, this recommendation will remain open until BXA meets with NOAA.

4. Clarify the term "fundamental research" in the deemed export regulations to leave less room for interpretation and confusion on the part of the scientific community.

Status: Open. While BXA generally concurred with this recommendation in its response to our draft report, in its July 2001 action plan, BXA stated that there is no indication that the definition of "fundamental research" is misused or misunderstood. The action plan also reiterated BXA's position that the EAR adequately defines the term fundamental research in sections 734.8 and 734.11, as well as in a series of questions and answers in sections A through D of Supplement 1 to Part 734. In addition, BXA stated that the term fundamental research is further clarified in the Frequently Asked Questions section on BXA's web site. Again, while we believe these references are all valuable tools for exporters, the explanation provided for fundamental research in all three of these resources is essentially a restatement of how the EAR defines this term. As such, we still maintain that U.S. entities could misuse this exemption by broadly defining fundamental research in order not to comply with deemed export controls. Therefore, we do not believe that BXA's actions fully meet the intent of our recommendation.

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

Status: Open. On March 14, 2000, in response to our draft report and just before issuance of the final report, the former Assistant Secretary for Export Administration sent a letter to the former Special Assistant to the President and Senior Director for Nonproliferation and Export Controls at the NSC requesting that it convene a working group of representatives from the Departments of Commerce, Defense, Energy, Justice, and State, and the Office of Management and Budget to review U.S. policy regarding deemed export technology transfers. While BXA has not followed up with the NSC to determine the status of its request, it has recently established a deemed export task force to review the current deemed export policy and process. According to BXA, the task force will consider input from other

departments and industry. BXA indicated that once the task force completes its review, it will consult with the NSC on any possible revisions to the deemed export policy and process. BXA expects the task force to complete its review in early 2002. We look forward to reviewing the task force's conclusions on deemed export controls. However, until the task force completes its review, this recommendation will remain open.

8. Work with the State Department to have a worldwide cable issued to reiterate the need for complete information in the visa application cables, including specific information for all stops on a visa applicant's proposed trip to the United States.

Status: Closed. In our March 2001 follow-up report, we reported that the Office of Enforcement Analysis (OEA) sent a letter to the State Department in July 2000, requesting that a worldwide cable be issued reiterating the need for complete information in the visa application cables. However, the Director of OEA's Export License Review and Compliance Division was not sure whether such a cable was ever issued. While OEA saw some improvement in the visa application cables, the Director felt that still more information would be helpful. Therefore, we requested that BXA again contact State to put out better guidance on what information is needed in the visa application cables.

On June 25, 2001, the Director of OEA's Export License Review and Compliance Division met with officials in the visa office at the State Department to discuss the need for additional information in the visa application cables, such as what individuals, companies, or institutions will be visited during each stop listed on the applicant's itinerary. Since the meeting, OEA analysts have noticed an improvement in the information provided on the visa application cables. BXA's actions meet the intent of our recommendation.

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

Status: Open. BXA informed us that its current information technology priority is its ECASS redesign effort. As such, other information technology upgrades, such as changing the OEA referral queue in Enforce as we have recommended, are receiving a lower priority and are effectively not being done. However, BXA is now in the process of contracting for an investigative tracking system that is scheduled to be operational in March 2002. This replacement system, an add-on to the existing Enforce system, will permit statistical queries and electronic notification to the responsible agent of a visa referral being made involving an existing case. This recommendation will remain open until the investigative tracking system and the changes we have recommended are operational.

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

Status: Open. While BXA has not formally assessed the visa application review program as we recommended, the agency has taken action to conclude that the resources dedicated to the program do justify the results. Specifically, BXA measures the number of investigative referrals made to the Office of Export Enforcement resulting from the visa application review program. In addition, the outcome of those referrals is evaluated at least annually. While BXA admits that leads from visa referrals are not always as fruitful as those from other sources, there are always some significant cases resulting from visa referrals included in the agency's annual report to the Congress. In addition, the importance of the visa application review program has also been highlighted since the September 11, 2001, terrorist attacks on the United States. Specifically, BXA is currently preparing a daily report for the President, which includes any visa application referrals that deal with possible terrorist threats. We are pleased that BXA's managers are convinced of the value of the visa application referral program. However, we suggest that BXA might be better able to measure the outcome of the visa referrals by creating a new performance measure, such as the number of significant cases resulting from visa referrals. We recognize that cases take a number of years of work before they can be termed "significant", but since such cases are at the heart of BXA's investigative mission, we believe it might be a good measure of the program's success to determine how many referrals actually end up as significant cases. This recommendation will remain open until BXA responds to our suggestion.

17. **Ensure that all future CFIUS filings, especially those involving countries of concern, are forwarded to both Export Enforcement and the appropriate Export Administration licensing office for review. In addition, make certain that any referral and recommendations are documented in the CFIUS case file.**

Status: Closed. Although BXA has not issued written procedures for referring CFIUS cases to Export Enforcement (EE) and Export Administration, its CFIUS database now includes separate line items for "To EE" and "ECASS Checked," which prompt the analyst entering the data to perform these checks. In addition, since July 2001, the Office of Strategic Industries and Economic Security has performed its own Export Administration checks, because the CFIUS analyst now has access to ECASS. According to BXA, each CFIUS file is reviewed by the Director of that office to ensure the EE and ECASS checks are completed. BXA's actions meet the intent of our recommendation.

Recommendation for the National Oceanic and Atmospheric Administration

- 1. Establish procedures to ensure that technical information or know-how released to foreign nationals is in compliance with federal export licensing requirements. At a minimum:**
 - (a) Develop guidance regarding when a visit, assignment, or collaborative relationship of a foreign national to a NOAA facility requires a deemed export license.**
 - (b) Clearly state policies, procedures, and responsibilities of NOAA hosts for determining whether a deemed export license is required.**
 - (c) Establish a focal point at each appropriate NOAA research facility to determine whether a deemed export license is required when a foreign national visits the facility.**
 - (d) Develop an export control program document containing procedures for determining whether technology or commodities at NOAA facilities can be exported to foreign countries, with or without a license.**
 - (e) Mandate training requirements for personnel at NOAA facilities on the deemed export licensing requirements.**

Status: Open. Since our March 2001 follow-up report, NOAA's National Environmental Satellite, Data, and Information Service (NESDIS) formed an Export Action Team with representation from all of its major divisions. According to a NESDIS official, this team serves as a formal structure to both review incoming export actions, and make sure that line office activities are staffed for export compliance. We were also told that key members of this team, as well as a representative from NOAA's Office of General Counsel, have taken several export training classes. In addition, NESDIS reportedly maintains close contact with the State Department and the National Aeronautics and Space Administration regarding munitions export requirements and export licenses for its satellite programs.

Furthermore, we were told that NESDIS is developing an International Visitor Policy that will provide comprehensive guidance to its staff on various requirements, including export controls, security, and visa issues. In addition, NESDIS informed us that it is developing an export control awareness and training program that can be presented to its staff on a regular basis and believes that BXA's help in this effort would be valuable.

Finally, NESDIS hopes that the recently formed Commerce Remote Sensing Working Group, with representation from the International Trade Administration, the Technology Administration, BXA, and NOAA, will afford it the opportunity to deal with export control issues related to commercial remote sensing satellites.

We are pleased to report that NESDIS actions to improve its compliance with export controls in general, and deemed export controls in particular, are meeting the intent of our recommendations. We believe that NOAA's other line offices could benefit from similar actions.

While one NOAA official informed us that its other line offices do not believe this issue is relevant to them, we believe it is. Given the complexity of deemed export controls, we strongly urge NOAA to respond to BXA's May 31, 2001, offer (as discussed in recommendation 3(c)) to discuss this issue to determine whether additional efforts need to be taken by NOAA's other line offices to ensure that technical information or know-how released to foreign nationals is in compliance with federal export licensing requirements. As a result, NOAA's actions have not fully met the intent of our recommendations.