UNITED STATES DEPARTMENT OF COMMERCE
The Inspector General
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STATEMENT BY

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BEFORE THE
SUBCOMMITTEE ON TECHNOLOGY
COMMITTEE ON SCIENCE
HOUSE OF REPRESENTATIVES

FEBRUARY 26, 1998

Madame Chairwoman and Members of the Committee, I am pleased to appear before you today to discuss some of the Office of Inspector General's recent audit and inspection work at the National Institute of Standards and Technology and the National Technical Information Service, two of the agencies that constitute the Department of Commerce's Technology Administration. I will begin with a discussion of some of our work at NIST, specifically our work related to the agency's Capital Improvements Facilities Program.

NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY

Capital Improvements Facilities Program

Two years ago, we began a review of NIST's plans for renovating its existing laboratory and office facilities, as well as constructing new facilities, at its Gaithersburg, Maryland, and Boulder, Colorado, sites. These plans, which are embodied in NIST's Capital Improvements Facilities Program (CIFP), were originally estimated to cost $540 million and take 10 years, from 1993 through 2002, to complete. NIST's latest revised CIFP, submitted to the Congress this month, raised the price tag of these plans to nearly $900 million. Since fiscal year 1993, NIST has received $386 million in construction appropriations, although $121 million of that was rescinded by the Congress. The CIFP, as envisioned in fiscal year 1993, included (1) construction of two advanced measurement laboratories (AML), one each in Boulder and Gaithersburg; (2) renovation of most existing general purpose laboratory buildings at both sites, and (3) construction of a central utility plant in Boulder.

We have issued four reports on various aspects of the CIFP during the past two years. Our first report, issued in March 1996, evaluated whether NIST's dual-site operation could be consolidated and the need for construction of an AML in Boulder. We concluded that total consolidation of the current Boulder laboratory facilities, programs, and personnel at Gaithersburg could not be achieved in a cost-effective manner. Besides the higher-than-projected monetary costs, this move would likely result in the loss of key personnel, disruption of research, and possible shutdown of certain specialized research programs. We did not, however, rule out the potential cost effectiveness of partial consolidation of some of Boulder's operations in Gaithersburg.

Indeed, although our review of NIST's plans for constructing an AML in Boulder found that the agency does have limited requirements for advanced laboratory space for certain programs located in Boulder, in these times of funding uncertainties and an increasing need for greater economies and efficiencies, we concluded that the agency should move to consolidate Boulder's advanced laboratory space requirements with plans for similar space in Gaithersburg. We also recommended that NIST proceed with building renovations needed to meet health and safety requirements in Boulder when adequate funds become available. NIST agreed to proceed with some health- and safety-related renovations, to reassess its facility improvement requirements, and to consider the possibility of consolidating its advanced laboratory space requirements in Gaithersburg.

Our second report, issued in July 1996, analyzed the validity of a large portion of NIST's fiscal year 1995 CIFP obligations -- in particular, $51.6 million in obligations for architecture and engineering services and for construction management. Our review disclosed that these obligations exceeded the amounts allowable under its contracts by $31.8 million and NIST could not provide adequate justifications for these obligations. Moreover, at the time of the obligations, the Congress was scrutinizing NIST's carryover funds to identify monies available for rescission. Knowledge of NIST's improper obligations could have affected congressional decisions concerning future funding of the CIFP, placing the CIFP and future appropriations at risk and raising serious concerns about its overall management.

We recommended that NIST immediately deobligate $23.7 million of the improper obligations and inform the Congress of this action. After the improper obligations occurred, NIST properly obligated $8.1 million of the $31.8 million we identified and deobligated the balance. Further, to ensure that, in the future, NIST does not obligate CIFP funds in excess of proper levels under procurement regulations, we recommended that CIFP management and procurement personnel be reminded of and receive appropriate training on the rules and regulations governing obligations. NIST agreed with our observations and recommendations.

Our third report, issued in August 1996, analyzed NIST's lease of an office building in Gaithersburg. NIST leased the building to provide "swing space" to allow existing laboratory and office space to be vacated and renovated. Our review found that NIST did not adequately assess the impact of major changes to its original plans on its need for leased space. The major changes included the decisions to build a new advanced chemical sciences laboratory instead of renovating the existing chemistry building in Gaithersburg and to delay most major renovations until at least 1999, which eliminated the need for leased space. As a result, we believe that NIST unnecessarily committed itself to a 10- to 15-year lease that may cost from $31 million to $47 million.

We recommended that NIST take the necessary actions to vacate and sublet the majority of the leased building immediately. NIST and the Department disagreed with our recommendation, stating that the space was needed to relieve office overcrowding on its main campus. While we agreed that NIST had some minor office overcrowding problems, we concluded that it could justify only about a third of the currently leased space and that other NIST buildings will be available for swing space when renovations take place.

The Department subsequently hired a contractor to study the overcrowding issue. Based on the results of the contractor's study, the Department concluded that there was little available space on the NIST Gaithersburg campus for personnel to backfill if the leased building was vacated and sublet, and that it would not be cost-effective to move employees back to the main campus until more space is available there.

We disagreed with the Department's conclusion and with the methodology and findings of the contractor's study. We do not believe that the study answered the questions needed to properly define NIST's space requirements, including the office space needs of researchers versus those of more traditional office workers elsewhere in the Department. Based on its latest plans, NIST now projects that it will have a continuing need for this leased space for the next 18 years. We continue to question NIST's need for the leased space, especially after the new chemistry building is completed in fiscal year 1999.

Our fourth report, issued in January 1997, evaluated NIST's overall management of the CIFP. While we found cause for concern with certain parts of the CIFP, we recognized that NIST has handled many aspects of the program well. For example, through a series of contractor studies, the agency examined its facility deficiencies and translated its needs into specific plans for remedying those deficiencies and producing energy-related savings and improvements in productivity and performance. In addition, NIST has demonstrated a need for an AML in Gaithersburg, and has used effective techniques to ensure that precise controls for temperature, humidity, vibration, air cleanliness, and electrical power are incorporated in the building's design. Further, NIST's plans for upgrading its central utilities facilities in Gaithersburg should improve performance and produce energy and cost savings.

At the same time, we highlighted certain aspects of NIST facilities plans that warranted management attention. We noted, for example, that neither the Department nor NIST management believed that the plan could be completed for $540 million, as stated. In fact, NIST management subsequently told us that they believed that the CIFP would require at least $940 million and four years longer to implement. This increase was partly the result of slower than anticipated appropriations, some rescissions, additions to the original plan, and inflation. Our concerns, however, focused on the plan's inclusion of at least $212 million in unjustified program elements, including $92 million for the construction of an AML in Boulder, which we previously recommended not be built, and a $120 million increase in the estimated cost for renovations in Gaithersburg, which were not adequately explained.

Our fourth report also discussed our concerns about NIST's initial acquisition strategy for the CIFP. The strategy allowed for the award of an omnibus task order construction contract to a single firm. The contract could extend for as long as 10 years and cost as much as $480 million. Although the initial contract was to be awarded competitively, the strategy allowed for all successive task orders to be awarded without competition. We concluded that this approach would not be in the government's best interest and recommended to NIST that the contract be awarded to multiple suppliers, thereby ensuring competition for task orders. As it turned out, NIST canceled the proposed contract because of a lack of funding, but agreed to address our concerns in any future solicitation.

Of primary importance, we found that although NIST had clearly demonstrated the need to construct an AML in Gaithersburg, it was planning to build the laboratory in phases because it did not believe that advance funding for unified construction of the building would be available. We concluded that phased construction of the AML would greatly reduce efficiency and involve other costly disadvantages. Based on NIST's figures and information obtained from other sources, we estimated that if constructed in a unified manner beginning in fiscal year 1998, the AML could be built in 42 months for an estimated cost of $191 million, and save the taxpayers between $29 million and $86 million over a phased construction approach.

We recommended that NIST work with the Department, OMB, and the Congress to find a funding strategy that would allow for unified construction of the AML. In addition, we emphasized to NIST and the Department the importance of having the most accurate, defensible, and fiscally responsible CIFP possible. NIST generally agreed with our conclusions, acknowledging that the projected cost of the CIFP has escalated dramatically and that it should reevaluate its facilities needs and revise the program. We reiterated the need for NIST to reevaluate its requirements and produce a realistic facilities improvement plan.

Since we issued our fourth report, we are pleased that NIST, the Department, and OMB have all agreed on the importance of obtaining advance appropriations for the construction of the AML in Gaithersburg. The President's fiscal year 1999 budget includes a request for such appropriations. Advance appropriations will enable NIST to build the AML more efficiently, and for less money, than possible if traditional funding mechanisms are used. I strongly urge the Congress to support this request, which will allow NIST to construct the AML in an efficient, cost-effective manner.

In addition, the Department has improved its oversight of the CIFP. The Department has taken a more active role in determining if CIFP budget requests are reasonable and justified, and its Office of Budget, Management, and Information has coordinated a successful effort to obtain current and reliable information on NIST's facilities needs and plans.

However, we have some continuing concerns about the latest version of NIST's CIFP. While an improvement over earlier versions, it now includes nearly $220 million for renovations to NIST's metrology, physics, and existing chemistry buildings in Gaithersburg, which we believe have not been adequately justified. Although some renovations are obviously needed, NIST has not provided adequate documentation to justify the estimated cost of these renovations.

Further, by leasing one building, NIST North, and building another, the new chemistry building, neither of which was included in its original plans, NIST has greatly increased its square footage without developing corresponding plans to terminate the use of older, less useful space or to vacate its leased space in Gaithersburg in the near term. NIST should take budget implications into greater account when making and changing its facilities plans. We believe that the Department must scrutinize the current and any future facilities plans to ensure that all construction and renovation costs are fully justified.

In addition, although NIST no longer plans to build a $92 million AML in Boulder, it now plans to construct a $20 million "clean room," which, in our view, is not needed. Construction of the clean room is scheduled to begin in fiscal year 2000 and be completed in fiscal year 2003. NIST has not, however, completed a benefit-cost analysis to justify the building. As stated in our first report on the CIFP, we believe that all requirements for advanced laboratory space being considered for Boulder should be consolidated with requirements for the AML soon to be built in Gaithersburg. We also recommended that NIST thoroughly reevaluate its renovation proposals and the size of the proposed $27 million central utility plant in Boulder in light of projected future operations there.

Finally, as we reported to the Congress last September, we recommended that the Department conduct a study to determine the costs and benefits of full, as well as partial, consolidation of Boulder programs and operations at Gaithersburg over the long-term, not just the five-year period covered by NIST's review. A recent study by an independent contractor concluded that partial consolidation of these facilities may be cost effective. Our observations -- based on more than two years of review -- support the need for a study of long-term consolidation options and their benefits and costs.

Advanced Technology Program

The Advanced Technology Program (ATP) grew rapidly -- from 11 awards representing 35 companies and $98 million in federal and non-federal matching funds in fiscal year 1991 to a total of 292 awards representing more than 600 companies and $2 billion in federal and non-federal matching funds in fiscal year 1997. Since ATP's inception, the Office of Inspector

General has provided advice and assistance to NIST to ensure that these funds and awards are properly administered.

Since 1993, we have performed much-needed surveys of the accounting systems of selected ATP award recipients that also are first-time recipients of federal financial assistance awards to determine whether they are (1) claiming costs that are reasonable, allowable, and allocable and (2) complying with the financial terms and conditions of their awards. Rather than waiting until projects are completed, we conduct these surveys early in the award periods to reduce the likelihood that future cost claims will be questioned.

The recipients also benefit by receiving immediate feedback from OIG auditors on improving their financial management systems and complying with federal requirements. In almost half of the surveys, we use an expedited reporting process to eliminate the draft audit report, provide for more timely report processing, and resolve findings faster. To date, we have performed surveys of 112 first-time recipients representing more than $600 million in federal and non-federal funds. In over three-quarters of the surveys, we identified weaknesses -- most commonly the failure to adequately account for the federal funds, to properly claim and document only allowable costs, and to implement adequate financial management policies and procedures. The majority of recipients have concurred with our findings and agreed to take prompt corrective actions.

We have issued two reports on NIST's processes for selecting, monitoring, and evaluating ATP awards. Our first report, issued in July 1995, evaluated the agency's selection process for its fiscal year 1994 ATP awards. We found instances of incomplete documentation that made it difficult to verify that selections were based on the published criteria. We stressed to NIST the importance of documenting all significant actions taken by review panels on ATP award proposals. NIST concurred with our observations and moved immediately to improve its documentation of decisions for the fiscal year 1995 competitions. We also suggested that NIST develop internal guidelines for panel operations to ensure that the selection process is completely documented. The agency immediately drafted a set of standard operating procedures for use in its fiscal year 1996 competitions. Our second, follow-up, report, issued in February 1996, concluded that NIST's selection, monitoring, and evaluation processes had significantly improved since our earlier review.

During the past two years, we also have been conducting interim audits of the accounting practices used by ATP joint ventures in managing the federal funds. Based on this work, and a separate survey of 49 ATP joint venture participants, we identified the potential for inappropriate cost claims based on commercial prices. Our interim audits of costs claimed under two ATP joint venture agreements involving 19 participants found that many of the participants claimed costs based on commercial billing rates rather than actual costs, as required by the ATP statute and governing OMB circulars.

The questionable transactions generally involved software development companies that provided licenses, software maintenance and support, or other items from a commercial product line for use on the project. Problems arose because federal cost reimbursement rules do not permit financial assistance award recipients to be reimbursed for previously invested ("sunk") development costs, corporate interest expenses, or profit. We have issued nine reports to individual recipients addressing questioned costs, of which seven cited problems with commercial pricing. NIST is working with these recipients to resolve the problems identified through our audits. Of equal, if not greater, significance, NIST also has taken steps to educate future ATP applicants on the cost and accounting requirements for federal financial assistance awards, specifically pointing out that commercial prices are not acceptable bases for cost claims.

In July 1997, we issued a report on NIST's administration of its authority to issue multi-year ATP awards and the adequacy of the agency's management controls over its fiscal year 1995 ATP award process. In August 1994, NIST received departmental approval to make multi-year awards even though the program may not have enough money to fund the entire project. To be eligible for a multi-year award, a project must be severable into annual increments that have defined work products that represent tangible accomplishments. We found that NIST issued multi-year awards without certifying that each award met these criteria. We recommended that NIST review these awards and (1) ensure that the required certifications are prepared for those awards determined to be severable and (2) fully fund the remaining awards that are not severable before obligating any funds for new awards.

By the end of fiscal year 1996, NIST had accumulated approximately $155 million of unfunded balances for multi-year ATP awards. We determined that these unfunded balances should be disclosed in the management overview and notes that accompany NIST's annual financial statements in order to provide management with more complete information for use in making financial decisions.

We also have provided advice and assistance and conducted special reviews to address specific ATP-related issues brought to our attention by NIST, the Department, and the Congress. For example, to assist NIST in meeting its statutory requirements for periodic audits of ATP awards to ensure that federal funds are used for their specified purposes, we developed program-specific guidelines for use by independent public accountants in conducting audits of ATP single company and joint venture awards. The guidelines were issued in November 1996. Also, last fall we completed a survey to determine the potential for double billing by small businesses and non-profit organizations that have received financial assistance awards from the Department of Commerce under ATP, NIST's Manufacturing Extension Partnership Program, and the government-wide Small Business Innovative Research Program. Double billing is claiming the same costs on one or more federal award. Entities with the greatest potential to engage in double billing are those that have received awards from two or more programs in the same fiscal year. Our survey, which focused on the 568 small businesses and nonprofit organizations that received awards under these three programs from fiscal years 1990 through 1996, found only four entities that met this criteria. We conducted on-site audits of these entities and found no evidence of double billing.

We will taking another look at the ATP soon as part of a comprehensive review of the Department's discretionary funding programs that we have just begun at the request of the Chairman of the Senate Commerce, Science, and Transportation Committee.

NATIONAL TECHNICAL INFORMATION SERVICE

In March 1997, we issued a report on our program evaluation of NTIS, which assessed how efficiently and effectively the agency pursues its traditional mission of collecting and disseminating scientific, technical, and engineering information. We concluded that NTIS has successfully managed most of its traditional mission activities, as provided by the American Technology Preeminence Act, and been responsive to the needs of its customers. We also noted that NTIS had benefited from improvements in its internal operations. During the past five years, the agency had adopted a more businesslike atmosphere, implemented an improved integrated accounting and order processing system, and received fewer customer complaints. Largely because of these factors, NTIS was selected as a candidate for conversion to a performance-based organization (PBO). The PBO concept is designed to provide certain agencies with greater flexibility in procurement and more control over their finances and personnel in exchange for stricter accountability for performance.

In our report, we noted that NTIS's traditional mission seemed to fit the PBO concept, but we expressed concerns that the agency was undertaking activities based on a very broad interpretation of its mission and authority. In March 1997, we issued a separate inspection report on one such activity, the joint NTIS-Internal Revenue Service CyberFile project. We found that NTIS lacked the requisite in-house technical and management expertise to handle such a project. NTIS's role in the project also was criticized by the General Accounting Office, the IRS internal audit office, and the Congress.

Based on our finding, we recommended that NTIS establish written criteria and a process for thoroughly reviewing all proposed "expansionary" projects to avoid taking on projects that are potentially outside of the agency's mission and capabilities and to ensure that ample time is afforded to effectively plan, manage, and complete any undertaking that meets the established criteria. NTIS agreed to implement this recommendation.

However, the draft PBO legislation included a provision that would further expand NTIS's mission to allow the agency to provide "information-related services to other federal agencies." This provision would place virtually no limits on the types of information-related activities NTIS would be authorized to undertake, some of which may not be appropriate government activities and could put the agency in direct competition with the private sector.

In addition, in September 1997, we completed an analysis of NTIS's financial data for fiscal years 1991 through 1997, which concluded that the agency will not meet its mandate to be self-supporting unless revenues increase and/or operating costs decrease. NTIS suffered net losses in fiscal years 1995 and 1997 due to decreased sales and increased costs. An independent public accounting firm, in its final audit report on NTIS's fiscal year 1997 financial statements, indicated that NTIS will have sufficient reserves for fiscal year 1998, although it appears that operating expenses may again exceed operating revenues.

A clearly defined mission and the ability to generate sufficient revenues to support business operations are two key prerequisites for becoming a PBO. Based on our findings, we are concerned about whether NTIS currently meets either of these prerequisites. For this reason, we recommended that the Department put the legislation on hold until an appropriate mission for the agency has been clearly defined and the agency is able to demonstrate, through short- and long-term business plans, that it will be able to generate sufficient revenues to remain financially self-supporting and position itself for the future. NTIS subsequently withdrew its request to be considered for conversion to a PBO. Nonetheless, we remain concerned about NTIS's need for a clearly defined mission and its ability to generate sufficient revenues to remain financially self-supporting.

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This completes my statement, Madame Chairwoman. I would be pleased to answer any questions you and other Members of the Committee may have.

U.S. DEPARTMENT OF COMMERCE
OFFICE OF INSPECTOR GENERAL

List of Reports Cited in Statement

NIST Capital Improvements Facilities Program

1. *Laboratory Consolidation Too Costly; Planned Boulder Construction Needs Reassessment* (IPE-7828, March 1996)

2. *$32 Million in Capital Improvements Facilities Program Funds Improperly Obligated* (IPE-8377-2, July 1996)

3. *Leased Space in Gaithersburg No Longer Justified* (IPE-8377-1, August 1996)

4. *Continued Progress of Capital Improvements Facilities Program Endangered by Certain Inadequately Justified Plans and Decisions* (IPE-8377-3, January 1997).

NIST Advanced Technology Program

5. *The Advanced Technology Program Must Improve Documentation of Selection Decisions* (TTD-7074-5-0001, July 1995)

6. *ATP Has Improved Procedures for Selecting, Monitoring, and Evaluating Projects* (TTD-8089-6-0001, February 1996)

7. *Advanced Technology Program Can Benefit from Financial and Management Improvements* (ENT-8984-7-0001, July 1997)

National Technical Information Service

8. *Traditional Missions Are Well Run, but Management Attention Is Needed for Expansionary Activities* (IPE-8497, March 1997)

9. *Management and Procurement Deficiencies Related to the CyberFile Project* (IPE-9364, March 1997)

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Johnnie E. Frazier was named Acting Inspector General of the U.S. Department of Commerce in January 1998. In this role, Mr. Frazier manages the Office of Inspector General (OIG), which is charged with conducting and supervising audits, inspections, and investigations of the Department's programs and operations. As the Acting Inspector General, Mr. Frazier is the Department's senior official in charge of promoting economy, efficiency, and effectiveness and preventing fraud, waste, and mismanagement.

Mr. Frazier previously served as Assistant Inspector General from 1994 to 1998 and as Deputy Assistant Inspector General from 1984 to 1994 for the Office of Inspections and Program Evaluations. In recent years, he also directed the OIG's administrative functions, which included the organization's budget, human resources, and information technology operations.

A member of the Senior Executive Service, Mr. Frazier has demonstrated distinguished service throughout his 26-year federal career. He has received numerous awards, including the Commerce Silver Medal Award in 1988 and the Department's top award, the Gold Medal, in 1996.

Mr. Frazier holds a bachelor's degree in business administration, with an emphasis in accounting, from Howard University. He also has a master's degree in public administration from George Washington University.