

Bureau of Industry and Security's Law Enforcement Oversight Policies and Procedures Need Improvement

FINAL REPORT NO. OIG-23-008-I

January 09, 2023



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



January 09, 2023

MEMORANDUM FOR: Alan F. Estevez
Under Secretary of Commerce for Industry and Security
Bureau of Industry and Security

FROM: Richard Bachman
Assistant Inspector General for Audit and Evaluation

SUBJECT: *Bureau of Industry and Security's Law Enforcement Oversight Policies and Procedures Need Improvement*
Final Report No. OIG-23-008-I

Attached is our final report on the evaluation of the Bureau of Industry and Security's (BIS) law enforcement function. The objectives were to determine (1) the mission, legal basis, and authority for such functions and whether relevant statutes and guidelines are satisfied, (2) whether BIS' law enforcement function developed plans and policies for oversight of their jurisdictions and offices and the extent to which oversight was provided, (3) whether training for BIS' law enforcement officers is adequate and up-to-date, and (4) the extent to which the U.S. Department of Commerce provides oversight to ensure that BIS' law enforcement powers are properly exercised within jurisdictional limits.

We found the following:

- I. BIS has the legal basis and authority for its law enforcement functions.
- II. Oversight policies and procedures need improvement.
- III. Office of Export Enforcement has procedures to provide adequate training, but oversight of firearms qualifications and training needs improvement.
- IV. The Department provides oversight of BIS law enforcement functions.

In its response to our draft report, BIS did not state concurrence with the report recommendations. Instead, BIS described both completed and planned actions to address Findings II and III. In addition, BIS did not concur with one example in Finding III and did not address Findings I and IV, which did not have recommendations. We also received technical comments on the draft report. Based on BIS' response and the technical comments, we made changes to the report where appropriate. BIS' response is included in appendix B. Subsequently, we met with BIS to explain report revisions and confirmed that BIS concurs with Findings I and IV and the report recommendations.

Pursuant to Department Administrative Order 213-5, please submit to us an action plan that addresses the recommendations in this report within 60 calendar days. This final report will be

posted on the Office of Inspector General's website pursuant to sections 4 and 8M of the Inspector General Act of 1978, as amended (5 U.S.C. App., §§ 4 & 8M).

We appreciate the cooperation and courtesies extended to us by your staff during our evaluation. If you have any questions or concerns about this report, please contact me at (202) 793-3344 or Patricia McBarnette, Audit Director, at (202) 793-3316.

Attachment

cc: Matthew S. Axelrod, Assistant Secretary for Export Enforcement
Kevin Kurland, Deputy Assistant Secretary for Export Enforcement
John D. Sonderman, Director of the Office of Export Enforcement
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Report in Brief

January 09, 2023

Background

The Bureau of Industry and Security (BIS) advances U.S. national security, foreign policy, and economic objectives by ensuring an effective export control and treaty compliance system and promoting continued U.S. strategic technology leadership. BIS, led by the Under Secretary for Industry and Security, oversees the offices under Export Enforcement (EE), among others. EE supports the overall BIS mission through a law enforcement program focused on deterring proliferation of weapons of mass destruction and missile delivery systems, prohibited foreign boycotts, and diversion of dual-use goods to unauthorized military end-uses. EE works with the Department of Justice to impose criminal sanctions for violations and with BIS' Office of the Chief Counsel for Industry and Security (OCC-IS) to impose civil fines and denials of export privileges. EE consists of the Office of Antiboycott Compliance (OAC), the Office of Enforcement Analysis (OEA), and the Office of Export Enforcement (OEE).

Why We Did This Review

Our evaluation objectives were to determine (1) the mission, legal basis, and authority for such functions and whether relevant statutes and guidelines are satisfied, (2) whether the BIS law enforcement function developed plans and policies for oversight of their jurisdictions and offices and the extent to which oversight was provided within BIS, (3) whether training for the BIS' law enforcement officers is adequate and up-to-date, and (4) the extent to which the U.S. Department of Commerce (Department) provides oversight to ensure that BIS' law enforcement powers are properly exercised within jurisdictional limits.

BUREAU OF INDUSTRY AND SECURITY

Law Enforcement Oversight Policies and Procedures Need Improvement

OIG-23-008-I

WHAT WE FOUND

We found the following:

- I. BIS has the legal basis and authority for its law enforcement functions.
- II. Oversight policies and procedures need improvement.
- III. OEE has procedures to provide adequate training, but oversight of firearms qualifications and training needs improvement.
- IV. The Department provides oversight of BIS law enforcement functions.

WHAT WE RECOMMEND

We recommend that the Assistant Secretary for Export Enforcement do the following:

1. Ensure that written policies encompass all oversight activities performed.
2. Implement controls to ensure that completed inspections and self-assessment are reviewed for completeness and accuracy.
3. Require special agents to certify on an annual basis that they are not convicted of a misdemeanor crime of domestic violence.
4. Include Lautenberg Amendment requirements in the Special Agent Manual and as an area of review during annual field office self-assessments and inspections.
5. Implement policies and procedures to monitor and track firearm qualifications and training, which includes centralized monitoring by those responsible for ensuring compliance with requirements.
6. Revise policies and procedures to clearly identify authorized personally owned firearms that special agents can be permitted to use for official business.
7. Revise policies and procedures to include timely updates to firearms inventory to ensure firearms records are complete and accurate.

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Cover: Herbert C. Hoover Building main entrance at 14th Street Northwest in Washington, DC. Completed in 1932, the building is named after the former Secretary of Commerce and 31st President of the United States.

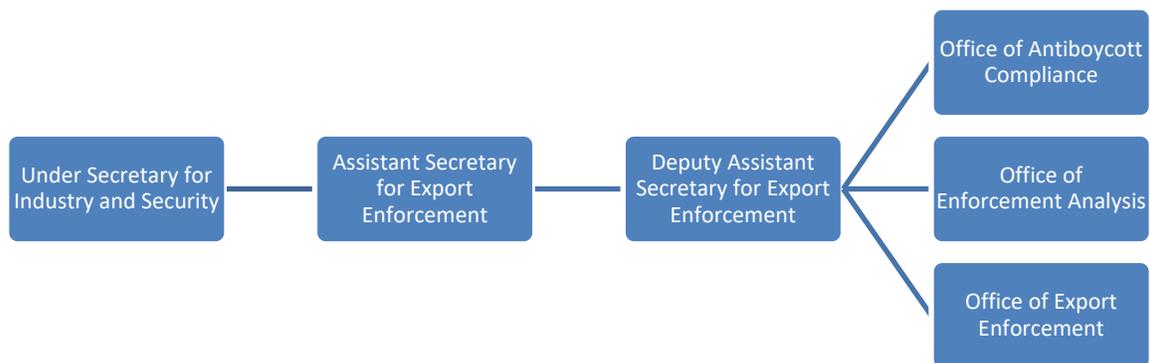
Acronyms and Abbreviations

APO	Authorized Personally Owned
BIS	Bureau of Industry and Security
COVID-19	Coronavirus Disease 2019
EAR	Export Administration Regulations
ECRA	Export Control Reform Act of 2018
EE	Export Enforcement
FY	Fiscal Year
OAC	Office of Antiboycott Compliance
OCC-IS	Office of the Chief Counsel for Industry and Security
OEA	Office of Enforcement Analysis
OEE	Office of Export Enforcement
OGC	Office of General Counsel
OLIA	Office of Legislative and Intergovernmental Affairs
OSY	Office of Security
IMS-R	Investigative Management System Redesign
SAC	Special Agent in Charge
SAM	Special Agent Manual

Introduction

The Bureau of Industry and Security (BIS) advances U.S. national security, foreign policy, and economic objectives by ensuring an effective export control and treaty compliance system and promoting continued U.S. strategic technology leadership. BIS, led by the Under Secretary for Industry and Security (see figure 1), oversees the offices under Export Enforcement (EE), among others. EE supports the overall BIS mission through a law enforcement program focused on deterring proliferation of weapons of mass destruction and missile delivery systems, prohibited foreign boycotts, and diversion of dual-use goods to unauthorized military end-uses. EE works with the Department of Justice to impose criminal sanctions for violations and with BIS' Office of the Chief Counsel for Industry and Security (OCC-IS) to impose civil fines and denials of export privileges. EE consists of the Office of Antiboycott Compliance (OAC), the Office of Enforcement Analysis (OEA), and the Office of Export Enforcement (OEE).¹

Figure 1. Reporting Structure of Export Enforcement Within BIS



Source: OIG, BIS

OAC conducts enforcement actions and investigations related to antiboycott violations of the Anti-Boycott Act of 2018, the Export Control Reform Act of 2018 (ECRA), and the Export Administration Regulations (EAR) that discourage or prohibit U.S. companies from taking certain actions to further or support a boycott maintained by a foreign country against a country friendly to the U.S.²

OEA supports the overall EE mission by evaluating all sources of information, including publicly available and government-privileged, to provide intelligence and analytical support to BIS enforcement and licensing activities, and to other federal agencies.³

¹ U.S. Department of Commerce, Bureau of Industry and Security, July 21, 2021. *Special Agent Manual*. Washington, DC: BIS, 10.

² See DOC BIS, "Office of Antiboycott Compliance (OAC)," [online]. <https://www.bis.doc.gov/index.php/enforcement/oac> (accessed September 15, 2021).

³ See DOC BIS, "Office of Enforcement Analysis," [online]. <https://www.bis.doc.gov/index.php/enforcement/oea> (accessed September 15, 2021).

OEE is the largest office in BIS and conducts investigations and enforcement actions related to administrative and criminal violations of the EAR, the ECRA, and other statutes and regulations. OEE special agents are sworn federal law enforcement officers with authority to act accordingly in that capacity. OEE has eight domestic field offices covering specified geographic regions of the country.⁴ Each field office is managed by a Special Agent in Charge (SAC) and Assistant Special Agent in Charge. Three field offices also have Resident Offices headed by a Resident Agent in Charge and all field offices have special agents located in additional cities under Forward Assigned Posts.⁵ OEE's Special Agent Manual (SAM) is the primary vehicle for which OEE limits, interprets, or enables its special agents to execute its law enforcement authority.

⁴ In June 2022, BIS created a ninth field office.

⁵ BIS, *Special Agent Manual*, 11.

Objectives, Findings, and Recommendations

The objectives of our evaluation were to determine (1) the mission, legal basis, and authority for such functions and whether relevant statutes and guidelines are satisfied, (2) whether the BIS law enforcement function developed plans and policies for oversight of their jurisdictions and offices and the extent to which oversight was provided within BIS, (3) whether training for the BIS' law enforcement officers is adequate and up-to-date, and (4) the extent to which the U.S. Department of Commerce (Department) provides oversight to ensure that BIS' law enforcement powers are properly exercised within jurisdictional limits. See appendix A for details on the scope and methodology of our evaluation.

We found that:

- BIS has the legal basis and authority for its law enforcement functions.
- OEE's oversight policies and procedures are not fully documented; inspections are not always complete or supported, and special agents do not provide annual Lautenberg certifications.
- OEE has policies and procedures in place to ensure training for law enforcement officers is adequate and up-to-date, but oversight of firearms qualifications and training needs improvement.
- The Department provides oversight over BIS law enforcement functions through Senate confirmed departmental officers, and the Department's Office of General Counsel (OGC) and Office of Security.

I. BIS Has the Legal Basis and Authority for Its Law Enforcement Functions

BIS identified its law enforcement functions as occurring in OAC, OEA, and OEE. BIS identified a provision in the ECRA, 50 U.S.C. § 4820(a), as the primary statutory authority for BIS' law enforcement authority. Also identified as significant to BIS authorities were:

- 50 U.S.C. § 4820(b) provides the authority for undercover investigations to detect and prosecute violations of Subchapter I of the ECRA.
- 50 U.S.C. § 4819 outlines the penalties under Subchapter I as well as unlawful acts subject to law enforcement authorities.
- 22 U.S.C. § 401 provides the authority for inspections, detentions, and seizures of war materials.
- 13 U.S.C. § 305(d)(1) allows the Secretary of Commerce to designate officers or employees of OEE to conduct investigations for failing to file or false statements on Automated Export System filings.
- EE's OAC is charged with administering and enforcing the Anti-Boycott Act of 2018, Part II of the ECRA (50 U.S.C. §§ 4841-4843) and the antiboycott provisions in Part 760 of the EAR, 15 C.F.R. Part 760.

We found these legal authorities provide for BIS to exercise its mission and law enforcement functions.⁶

II. Oversight Policies and Procedures Need Improvement

OEE performs oversight of its law enforcement functions through annual self-assessments and inspections of field offices, semiannual case file reviews, and semiannual reviews of OEE's electronic case file system, known as the Investigative Management System Redesign (IMS-R). Case file reviews entail supervisors formally reviewing all open cases including areas such as the status of the investigation, plans of action, and compliance with laws and regulations. IMS-R reviews include areas such as the timeliness, completeness, and accuracy of data input and case inventory in the IMS-R system.

All OEE field offices perform self-assessments annually using a standardized checklist covering areas such as training, vehicle operations, and case management. Additionally, an OEE inspection team performs in-person inspections at two to three field offices each fiscal year and covers areas similar to those in the self-assessment checklist. Due to coronavirus disease 2019 (COVID-19) pandemic restrictions and mandatory office shutdowns enforcing mandatory telework, OEE did not perform self-assessments or in-person inspections in FY 2020. Instead, OEE headquarters performed an abbreviated, centralized assessment of the field offices in conjunction with its September 2020 IMS-R review. OEE performed virtual inspections in FY 2021 in lieu of in-person inspections; and beginning in FY 2022, resumed in-person inspections.

We found that OEE did not document all oversight processes in its SAM and deviated from standard OEE described practices that were also not formalized as policy. Also, field office inspections did not always adequately address issues found, did not include all OEE locations, and answers on inspection checklists were not always properly supported. Additionally, OEE special agents did not provide annual Lautenberg certifications.

A. Oversight Processes Are Not Fully Documented

Documentation of internal controls retains organizational knowledge, mitigates the risk of having that knowledge limited to a few personnel, and communicates that knowledge as needed to external parties.⁷ Management also documents internal controls to meet operational needs, allow for communication to those responsible for their performance, and allow for monitoring and evaluation by the entity.⁸ OEE uses the SAM to document its policies and procedures and considers it a living document that is updated as needed; however, we found that OEE had not fully documented all oversight processes within

⁶ Our review was limited in scope and did not address whether BIS' actual practices are in accordance with the cited law enforcement authorities.

⁷ U.S. Government Accountability Office, September 2014. *Standards for Internal Control in the Federal Government*, 3.10. Washington, DC; Government Printing Office, 29.

⁸ *Ibid*, 3.11.

the SAM. We also identified deviations from the standard practices described by OEE that were not formalized as policy. Specifically, we found:

- OEE performs IMS-R reviews twice a year but has not documented processes for performing the IMS-R reviews in the SAM.
- The SAM did not include requirements for annual field office inspections and self-assessments until February 2022. The inspection template used in the assessments was included in previous versions of the SAM as an appendix, but the actual policy was not included in the body of the SAM until February 2022.
- The SAM does not specifically require finding response memorandums, or other documentation of corrective actions, for inspections.

When policies and procedures are not thoroughly documented, significant management controls may not be identified and special agents may not be aware of requirements and responsibilities, potentially leading to noncompliance with policies.

B. Inspections Are Not Always Complete or Supported

During the self-assessment process, supervisors should conduct adequate research and cite how they came to their conclusions when answering assessment checklist questions.⁹ At the conclusion of the self-assessment, a memorandum is submitted by the relevant SAC to OEE management with findings (if any) and remedial action(s) taken or planned. Once an in-person/virtual inspection is completed, the inspection team issues a memorandum to the office reporting its findings. The office has 60 days to submit a response to OEE documenting remedial measures that have been taken or will be taken to address the findings.

We reviewed 23 self-assessments and inspections performed in FYs 2019 and 2021. We found monitoring of self-assessment and inspection results was not adequate to ensure they were complete and accurate. Incomplete inspections and self-assessments may not prompt all necessary corrective actions to be taken by field offices—possibly resulting in the field office not complying with BIS policies and even leading to issues with employment if significant deficiencies or noncompliance by special agents are not identified and corrected. Specifically, we found the following during our review:

- Two inspections did not adequately address the noncompliance in the findings response memorandums. One memorandum stated there were no findings despite the inspection identifying two areas of noncompliance. Another did not address 6 of the 11 areas of noncompliance identified in the inspection but provided corrective action for 1 area identified as being in compliance.
- Although the inspection template includes questions designed for only OEE headquarters to complete, historically it has not been subject to inspection and

⁹ The BIS Office of Export Enforcement, Internal Compliance Program employs the *Compliance Guidelines for Office Self-Assessment* checklist.

no self-assessments were performed on OEE headquarters for FYs 2019 or 2021.

- OEE did not document a formal response memorandum or other documentation of corrective actions taken in response to the findings from the abbreviated centralized FY 2020 inspection.
- Assessments did not always provide descriptions of how conclusions were derived. For example, one field office's FY 2021 self-assessment stated it complied with firearms qualifications, but it did not explain the compliance was based on a waiver granted instead of special agents completing firearms qualifications.

C. *Special Agents Do Not Provide Annual Lautenberg Certifications*

In 1996, Congress amended the Gun Control Act of 1968 (Lautenberg Amendment) to prohibit anyone convicted of a misdemeanor crime of domestic violence to possess a firearm.¹⁰ BIS requires special agents to possess a firearm as part of the Criminal Investigation job-series position description.¹¹ Therefore, BIS special agents cannot continue to hold their positions if they are convicted of a misdemeanor crime of domestic violence and cannot legally possess a firearm. BIS' position description for special agents includes a Lautenberg Amendment requirement that the special agent, prior to employment and annually thereafter, provide a certified statement that they have not been convicted of a misdemeanor crime of domestic violence. However, in practice, special agents certify prior to employment they have not been convicted of a misdemeanor crime of domestic violence and are only required to self-report as needed after hiring. OEE management stated it was not aware that the position description for special agents required annual Lautenberg Amendment certifications and reliance on self-reporting after hiring was sufficient. Not reinforcing annual Lautenberg Amendment certification requirements could lead to special agents carrying weapons when they are ineligible to and, thereby, posing a threat to the public and themselves.

Recommendations

We recommend the Assistant Secretary for Export Enforcement:

1. Ensure that written policies encompass all oversight activities performed.
2. Implement controls to ensure that completed inspections and self-assessments are reviewed for completeness and accuracy.
3. Require special agents to certify on an annual basis that they are not convicted of a misdemeanor crime of domestic violence.
4. Include Lautenberg Amendment requirements in the SAM and as an area of review during annual field office self-assessments and inspections.

¹⁰ 18 U.S.C. § 922(g)(9).

¹¹ BIS Criminal Investigators are classified under the GS-1811 occupational series.

III. OEE Has Procedures to Provide Adequate Training, but Oversight of Firearms Qualifications and Training Needs Improvement

OEE ensures special agents are adequately trained by requiring completion of Federal Law Enforcement Training Center's Criminal Investigator Training Program or equivalent training, on-the-job training for newly hired special agents and those without significant export control or field experience (Field Training Program) during the first 12 months of employment, biannual all hands conference training for all special agents—including areas such as investigative techniques and legal and regulatory updates—and mandatory firearm training and qualifications.

OEE omitted its all-hands conference training in fiscal years FY 2020 and 2021 due to COVID-19 restrictions. However, OEE resumed the all-hands conference training in May 2022. We found the special agents hired during FY 2021 and eligible for the Field Training Program completed it within the required timeframe or made adequate progress with time remaining for completion.

We also requested documentation for all firearm qualifications and related training as evidence that special agents were adequately trained in the use of firearms. While most employees complied with the requirements, we identified six special agents that did not have documentation demonstrating compliance with the requirements during calendar year 2020.

OEE's SAM outlines firearm qualifications and training requirements as a minimum of three qualifications throughout the year and one use-of-force training.¹² OEE authorized a deviation from these requirements for 2020 and 2021 due to COVID-19 restrictions, requiring only one qualification and one training per calendar year. If special agents were unable to complete these requirements for the year because of COVID-19 restrictions, then the requirements could be waived after providing a memorandum to the OEE national firearms coordinator. The SAM states that SACs and headquarters Assistant Directors (ADs) are responsible for ensuring compliance with all firearm qualification requirements within their offices,¹³ and that completed firearm qualification forms are to be maintained by the special agents with copies as requested by the Firearms and Training Unit.¹⁴ However, the SAM does not prescribe or require any specific monitoring or tracking methods or processes, so each SAC and AD must develop their own processes to ensure special agents meet firearm qualifications and training requirements.

We selected a random, statistical sample of special agents employed by BIS during FY 2021 and requested documentation for all firearms qualifications and training from FY 2020 through January 2022. Our sample of 54 of the total 130 special agents found that all tested

¹² Commerce BIS, *Special Agent Manual*, 50 and 41.

¹³ *Ibid*, 42.

¹⁴ *Ibid*, 50.

special agents completed the required training and firearm qualifications during 2021.¹⁵ However, six special agents did not have documentation demonstrating completion of required training during 2020. BIS asserted that mandatory training for all special agents occurred during 2020 but did not maintain documentation of agents that participated. Based on the results of testing, we estimate that at least 9 of the 130 special agents did not complete the requirements during the 2020 to 2021 testing period.¹⁶

We also found that numerous firearm qualification forms provided contained errors, omissions, or other information that could have been identified or corrected with an improved monitoring process. For example, we found:

- The authorized personally owned (APO) policy was unclear as to whether a handgun used for qualification by a special agent hired in 2021 was allowable.¹⁷
- 1 special agent qualified using one agency issued firearm and four APO firearms. The SAM only allows for authorization of a maximum of three total handguns.
- 20 special agents did not use the most recently approved qualification form and instead used an older version that did not identify ownership of the firearms used for qualifying.
- 16 special agents had forms not marked to indicate whether the special agent conducted firearms familiarization or qualification.
- 3 special agents had forms not marked as pass or fail.
- 3 special agents had forms not initialed by themselves.
- 3 special agents signed their own qualification forms as the firearm instructor.
- 3 special agents had forms with incomplete serial numbers for the firearm used.

Better review and monitoring of firearm qualification and training could have identified (1) errors and omissions in these forms, which could have been corrected; (2) practices inconsistent with the SAM requirements or preferred practices, and (3) those special agents that did not complete forms for firearms qualifications or training as required. Incomplete or inadequate qualification forms could prevent the identification of noncompliance with training and qualification requirements. Special agents that have not adequately demonstrated regular proficiency with firearms may present a danger to themselves or the public.

¹⁵ Two special agents were identified as not completing qualifications and/or training during 2021 but transferred to new positions prior to the end of the calendar year.

¹⁶ Based on a 13.9 percent noncompliance rate of tested special agents, and 7.2 percent margin of error, we are 90 percent confident that actual number of noncompliant special agents is between 9 and 27.

¹⁷ According to OEE's SAM, section 3, attachment 2, a list of specific firearms (referenced by make and model) may be used as a special agent's APO firearm. The manual's update on December 2, 2020, included the removal of several firearms from the APO list. However, the policy is unclear as several firearms (including this special agent's) were included on both the APO list and the removal list.

During our testing, we also found that five firearms issued to special agents were not updated timely within the Department's personal property management system, Sunflower. The firearms were included in BIS' inventory, but the current user field had not been updated to identify the special agent who was issued the firearm. Sunflower, as the official asset management system of the Department, should be complete and accurate.

Recommendations

We recommend the Assistant Secretary for Export Enforcement:

5. Implement policies and procedures to monitor and track firearm qualifications and training, which includes centralized monitoring by those responsible for ensuring compliance with requirements.
6. Revise policies and procedures to clearly identify APO firearms that special agents can be permitted to use for official business.
7. Revise policies and procedures to include timely updates to firearms inventory to ensure firearm records are complete and accurate.

IV. The Department Provides Oversight of BIS Law Enforcement Functions

The Department's OGC described the structured oversight of BIS law enforcement functions to include Senate-confirmed departmental officers, OGC, and the Department's Office of Security (OSY). We found these descriptions to be consistent with Commerce Department Organization Orders (DOOs) 1-1 (*Mission and Organization of the Department*) and 50-1 (*Bureau of Industry and Security*) and the SAM.

- Presidential-appointed, Senate-confirmed departmental officers including the Under Secretary for Industry and Security and the Assistant Secretary for Export Enforcement provide primary oversight of BIS law enforcement activities. These officers exercise authority delegated by the Secretary of Commerce, and the Secretary has reserved the right to provide policy guidance and direction regarding the exercise of delegated authorities. The officials are also members of BIS' Administrative Case Review Board.
- OGC, through the BIS OCC-IS, counsels BIS officials on the exercise of law enforcement authorities and participates in several oversight bodies and processes. OCC-IS also reports to the Department's OGC. OCC-IS attorneys also participate in BIS' Administrative Enforcement Induction Committee and Undercover Review Committee and are assigned as counsel to investigations.
- OSY oversees the issuance of law enforcement credentials to BIS law enforcement personnel.

Additionally, OEE summarizes significant law enforcement activities in a weekly report provided to the Secretary, Deputy Secretary, OGC, and the Office of Legislative and Intergovernmental Affairs (OLIA). Continual monitoring and assessment of whether the oversight processes in place constitute sufficient oversight would allow the Department to

adjust as necessary to ensure that BIS' law enforcement powers are properly exercised within jurisdictional limits.

Summary of Agency Response and OIG Comments

On November 4, 2022, we received BIS' response to our draft report. In addition, on November 7, 2022, BIS provided the two attachments referenced in its response. BIS' response did not state concurrence with the report recommendations. However, BIS described both completed and planned actions to address Findings II and III. In addition, BIS did not concur with one example in Finding III (described below) and did not address Findings I and IV, which did not have recommendations. We also received technical comments on the draft report. Based on BIS' response and the technical comments, we made changes to the report where appropriate. BIS' response is included in appendix B.

Because BIS' response did not clearly identify whether BIS concurred with our results, we met with BIS officials on December 8, 2022. We explained revisions made to the report and confirmed that BIS concurs with Findings I and IV and the report recommendations. We look forward to receiving BIS' corrective action plan for implementing the recommendations.

Agency Response. BIS did not concur with the statement (in Finding III) that one special agent hired in 2021 qualified using a handgun no longer listed for use as an authorized personally owned (APO) firearm. BIS provided additional documentation and stated:

- “This special agent qualified on a Glock 27 handgun, a firearm which was authorized for use as an APO both at the time and currently.” (See Attachment 2.)

OIG Comment. We reviewed Attachment 2 and noted that, although page 1 includes Glock Model 27 on the list of Authorized Personally Owned Firearms, page 2 (Grand-Fathered Agency-Authorized Personally Owned Weapons, Effective 12/2/2020) removes the Glock G27 from the APO list and states:

The below weapons have been removed from the current OEE APO list. Therefore, new requests to carry the below weapons will no longer be approved. However, OEE SAs [special agents] who had obtained approval for these weapons as APOs before they were removed from the APO list may continue to utilize them as APOs . . .

During the December 8, 2022, meeting, BIS officials stated that the Glock 27 was never intended to be removed from the APO list and should not have been included on page 2 of Attachment 2 and BIS plans to update the attachment. As a result, we revised this part of the finding and the related recommendation.

Appendix A: Objectives, Scope, and Methodology

In September 2021, we initiated an evaluation of BIS' law enforcement function. The objectives of the evaluation were to determine whether (1) the mission, legal basis, and authority for such functions and whether relevant statutes and guidelines are satisfied, (2) whether the BIS law enforcement function developed plans and policies for oversight of their jurisdictions and offices and the extent to which oversight was provided within BIS, (3) whether training for the BIS' law enforcement officers is adequate and up-to-date, and (4) the extent to which the Department provides oversight to ensure that law enforcement powers are properly exercised within jurisdictional limits.

To accomplish our objectives, we performed the following actions:

- Reviewed relevant laws, regulations, and policies including:
 - Department of Commerce Department Administrative Order (DAO) 202-958, Law Enforcement Officers and Firefighters
 - Commerce DAO 207-11, Official Credential and Badge
 - Commerce DOO 1-1, Mission and Organization of the Department
 - Commerce DOO 50-1, Bureau of Industry and Security
 - Commerce DOO 20-6, Director of Security
 - BIS OEE SAM, updated 12/2/2020, 7/21/21, and 2/14/2022
 - Part II of ECRA, 50 U.S.C. §§ 4841-4843
 - 22 U.S.C. § 401, Illegal exportation of war materials
 - 13 U.S.C. § 305, Penalties for unlawful export information activities
 - The antiboycott provisions of the EAR, 15 C.F.R. Part 760
 - 50 U.S.C. § 4819
 - 50 U.S.C. § 4820
- Obtained from BIS a description of legal authorities supporting its law enforcement functions.
- Interviewed senior management and key staff in OAC, OEA, and OEE to gain an understanding of policies, procedures, control activities, and monitoring related to training of special agents and oversight of law enforcement functions within BIS.
- Reviewed documentation related to oversight of law enforcement functions within BIS including self-assessments, inspections, case file reviews, and IMS-R reviews from FY 2019 through 2021. BIS' special agents primarily are within OEE; therefore, we focused on law enforcement oversight activities and training within OEE. We did not evaluate the oversight activities of OAC and OEA.

- Obtained a listing of all special agents employed by BIS during FY 2021.
- Obtained BIS' firearm inventory from Sunflower as of January 2022.
- Selected a random, stratified sample of special agents to test for compliance with training and firearm qualification requirements. We selected 54 of 130 total special agents employed by BIS during FY 2021. Special agents were stratified into two strata: those hired during FY 2021 (15 of the 54 tested) and those hired prior to FY 2021 (39 of the 54 tested). As we used a random, statistical sample, we were able to project noncompliance found to the untested population of special agents.
- Interviewed key staff within BIS and the Department's OGC, OLIA, and Office of Secretary to gain an understanding of departmental oversight of BIS law enforcement functions.

We did not solely rely on computer-processed data to perform this evaluation. We assessed the reliability of data by (1) comparing data provided with source documentation and (2) interviewing personnel knowledgeable about the data. Based on these efforts, we believe the data were sufficiently reliable for this report.

During our evaluation, we assessed internal controls and compliance with policies, relevant to our evaluation objectives, and reported on internal control deficiencies and compliance matters identified in our evaluation.

We conducted our evaluation from September 2021 to May 2022 under the authority of the Inspector General Act of 1978, as amended (5 U.S.C. App.), and Department Organization Order 10-13, as amended October 21, 2020. We performed our fieldwork remotely.

We conducted this evaluation in accordance with Quality Standards for Inspection and Evaluation (January 2012) issued by the Council of the Inspectors General on Integrity and Efficiency. Those standards require that the evidence supporting the evaluation's findings, conclusions, and recommendations should lead a reasonable person to sustain the findings, conclusions, and recommendations. We believe that the evidence obtained provides a reasonable basis for our findings, conclusions, and recommendations based on our evaluation objectives.

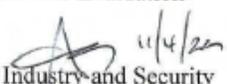
Appendix B: Agency Response



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

November 4, 2022

MEMORANDUM FOR: Richard Backman
Assistant Inspector General for Audit and Evaluation.

FROM: Alan F. Estevez  11/4/22
Under Secretary of Commerce for Industry and Security

SUBJECT: Response Memorandum to the Office of Inspector General's report:
Bureau of Industry and Security's Law Enforcement Oversight Policies and Procedures Need Improvement

This Memorandum is in response to the Office of Inspector General (OIG) Draft Report - *Bureau of Industry and Security's Law Enforcement Oversight Policies and Procedures Need Improvement* dated and provided to the Bureau of Industry and Security (BIS) on September 23, 2022.

Pursuant to Department Administrative Order 213-3, BIS's Office of Export Enforcement (OEE) presents the following information and corrective actions for the below findings:

- I. BIS has the legal basis and authority for its law enforcement functions.
- II. Office of Export Enforcement's (OEE's) oversight policies and procedures are not fully documented; inspections are not always complete or supported, and special agents do not provide annual Lautenberg certifications.
- III. OEE has policies and procedures in place to ensure training for law enforcement officers is adequate and up to date, but oversight of firearms qualifications and training needs improvement.
- IV. The Department provides oversight over BIS law enforcement functions through Senate confirmed departmental officers, and the Department's Office of General Counsel and Office of Security.

Part II. Oversight Policies and Procedures Need Improvement

BIS/OEE has a robust annual self-assessment and field office inspection process. Historically, each field office is provided a Self-Assessment packet for conducting their annual self-assessment which is based upon the agency's Special Agent Manual (SAM). This self-assessment is updated each year based upon updates to the SAM since the last self-assessment. These self-assessments are reviewed by OEE Headquarters personnel. OEE Headquarters personnel also conduct in-person field office inspections and use the office's completed self-assessment in the inspection process. The self-assessment is used by the inspection team to help identify potential problem areas, confirm if the

inspected field office has taken steps to address the issue(s), and to confirm the field office's review is an accurate depiction of the inspection areas. Additionally, BIS/OEE Headquarters conducts semiannual electronic case file reviews of the OEE electronic case management system, IMS-R, for activities such as field office input timeliness, completeness, accuracy, and overall case inventory. Field office management also conducts review of physical case folders and investigations. As pointed out in the OIG's draft report, the national pandemic impacted OEE's ability to conduct self-assessments and in-person field office inspections. OEE, like other federal agencies, had a reduced office presence in response to the COVID-19 national pandemic. This reduction in office staffing had a direct impact on field offices' ability to conduct self-assessments and HQ reviews thereof. In an attempt to overcome the COVID-19 induced restrictions, OEE Headquarters developed and implemented virtual inspections to remotely continue oversight of field operations and investigations. In FY2022, OEE Headquarters restarted in-person inspections and conducted double the number of inspections required under the SAM.

Below are OEE's responses to specific findings for Part II:

- a. Oversight processes are not fully documented.
 - OEE will update the SAM to document the process for performing the IMS-R reviews within 90 days.
 - OEE currently provides an inspection finding report to the Director. Field offices then have 60 days to file a response to the inspection's findings.
- b. Inspections are not always completed or supported.
 - OEE will ensure self-assessment findings are addressed by the Assistant Director for Investigative Programs and findings presented to the Director and Deputy Director within 30 days.
 - Historically the self-assessment process was field office-focused and Headquarters duties and responsibilities were not always captured. In FY2022, OEE Headquarters began developing a self-assessment for Headquarters Divisions and will begin implementing a self-assessment by 2nd Quarter of FY2023 and at least one (1) in-person inspection of a Headquarters Division by 4th Quarter of FY2023.
 - OEE will have self-assessment findings articulate how conclusions are derived and update the SAM within 90 days.
- c. Special Agents do not provide annual Lautenberg Certifications.
 - As part of the application process, new law enforcement personnel are required to certify that they have not been convicted of a qualifying offense that would prevent him or her from carrying a firearm pursuant to the Lautenberg Amendment. Additionally, the SAM Section 2-4(F)(1) requires onboarded law enforcement personnel who are detained or arrested or charged with any crime or criminal citation to report the detention, arrest, charge, or citation to his or her supervisor by the beginning of the next workday or within 24 hours, whichever is shorter. This would also apply to Lautenberg Amendment matters. OEE has also implemented an annual Lautenberg Certification by all law enforcement personnel for FY2023. (See Attachment 1)

Part III. OEE has Procedures to Provide Adequate Training, but Oversight of Firearms Qualifications and Training Needs Improvement

OEE concurs with OIG's draft report that:

OEE ensures special agents are adequately trained by requiring completion of Federal Law Enforcement Training Center's Criminal Investigator Training Program or equivalent training, on-the-job training for newly hired special agents and those without significant export control or field experience (Field Training Program) during the first 12 months of employment, biannual all hands conference training for all special agents—including areas such as investigative techniques and legal and regulatory updates—and mandatory firearm training and qualifications; and

[OIG] selected a random, statistical sample of special agents employed by BIS during FY 2021 and requested documentation for all firearms qualifications and training from FY 2020 through January 2022; and Our sample of 54 of the total 130 special agents found that all tested special agents completed the required training and firearm qualifications during 2021.

Below are OEE's responses to specific findings for Part III, which includes remedial steps already taken or that will be implemented. OEE notes that none of the administrative issues noted below presented a safety issue or otherwise called into question the special agent's qualification to carry a firearm or execute the agency's mission. Moreover, to provide better context for the numbers cited below, OEE notes that each special agent is required to qualify three times per year (each qualification with its own set of paperwork/forms), and many special agents exceed this requirement on their own initiative.

- a. One (1) special agent hired in 2021 qualified using a handgun no longer listed for use as an authorized personally owned (APO) firearm.
 - OEE does not concur with this finding. This special agent qualified on a Glock 27 handgun, a firearm which was authorized for use as an APO both at the time and currently. (See Attachment 2)
- b. One (1) special agent qualified using one (1) agency issued firearm and four (4) APO firearms.
 - OEE will implement a nationwide software tracking solution that will prevent this from occurring again.
 - The nationwide software tracking solution will be utilized by Headquarters to quality-control data entered by the field offices on a quarterly basis.
- c. Twenty (20) special agents did not qualify using the most recently approved qualification form and instead used an older version that did not identify ownership of the firearm used for qualifying.
 - OEE has re-distributed the current forms to all firearms instructors and will include in the annual self-assessments a review to make sure the correct forms are used.
 - The nationwide software tracking solution will be utilized by Headquarters to quality-control data entered by the field offices on a quarterly basis.
 - OEE notes that both the old and new forms contained the same firearm proficiency requirements or standards (i.e., number of rounds that need to hit the target) needed to qualify.

- d. Sixteen (16) special agents had forms not marked to indicate whether the special agent conducted firearms familiarization or qualification.
 - OEE will implement a nationwide software tracking solution that will prevent this from occurring again.
 - The nationwide software tracking solution will be utilized by Headquarters to quality-control data entered by the field offices on a quarterly basis.
- e. Three (3) special agents had forms not marked as pass or fail.
 - OEE will implement a nationwide software tracking solution that will prevent this from occurring again.
 - The nationwide software tracking solution will be utilized by Headquarters to quality-control data entered by the field offices on a quarterly basis.
- f. Three (3) special agents had forms not initialed by themselves.
 - OEE will implement a nationwide software tracking solution that will prevent this from occurring again.
 - The nationwide software tracking solution will be utilized by Headquarters to quality-control data entered by the field offices on a quarterly basis.
- g. Three (3) special agents signed their own qualification forms as the firearms instructor.
 - OEE will implement a nationwide software tracking solution that will prevent this from occurring again.
 - The nationwide software tracking solution will be utilized by Headquarters to quality-control data entered by the field offices on a quarterly basis.
- h. Three (3) special agents had forms with incomplete serial numbers for the firearm used.
 - OEE will implement a nationwide software tracking solution that will prevent this from occurring again.
 - The nationwide software tracking solution will be utilized by Headquarters to quality-control data entered by the field offices on a quarterly basis.

In FY2023, OEE will implement a nationwide commercial software solution which would allow for better oversight by the National Firearms Coordinator (NFC) and the Firearms Training Unit (FTU) to track field qualifications and training.

Additionally, Part III also referenced five (5) firearms issued to special agents were not updated timely within the Department's personal property management system, Sunflower, and acknowledges these same firearms were accounted for in the BIS inventory. OEE will amend the SAM within 90 days to set a requirement that all firearms transfers are input into Sunflower within five (5) business days.

It should be noted that OEE conducts biannual firearms inventory and requires biannual signed attestations and that every six months the BIS property custodian, or a member of their team, update Sunflower utilizing these attestations.

Attachments

- (1) Annual Lautenberg Certification
- (2) Special Agent Qualification (specifically mentioned above)



Special Agent
Office of Export Enforcement
U.S. Department of Commerce



Name: _____ Field Office: _____
Last First Middle Initial

- _____ (Initial) **Criminal Investigator's Availability Pay Certification:** I understand that as a condition of receiving availability pay under 5 U.S.C. Section 5545a, I will be required over the course of the next 12 months to average not less than two hours of unscheduled duty on a regular workday.

I understand that failing to average at least two hours of unscheduled duty per regular workday could result in an overpayment, and that hours of work which are misreported or not performed when scheduled, could result in an adverse action and de-certification for availability pay.

- _____ (Initial) **Physical Fitness:** During FY _____, I will perform physical fitness activities to include a mix of cardio/endurance training and weight training utilizing _____ facilities. I understand that under this program a maximum of three hours per week is allowed while in duty status. I also understand that physical conditioning is secondary to my regular duties and will adjust my workout times appropriately.
 - _____ Approve
 - _____ Disapprove

- _____ (Initial) **Authorization for Work-To-Home Use of Official Vehicle**
 1. **Statement of Duties:** The Special Agent named above is empowered by the Export Control Reform Act of 2018 to perform law enforcement duties.
 2. **Justification for Work-to-Home Use and Domicile Storage of Official Vehicles:** The Special Agent is required by specific law enforcement duties to respond immediately to emergency situations during off-duty hours. The SA must have access to and use an official vehicle when responding to emergency situations.
 3. **Notification:** The Special Agent named above, who is hereby authorized for work-to-home use and home storage of official vehicles, was apprised of the provisions of 31 U.S.C. Sections 1344 and 1349, regarding the use of official (government) vehicles and acknowledges this fact by signing below.
 4. This authority is for fiscal year: _____

- _____ (Initial) **Lautenberg Statement:** I certify that I have not been convicted of a misdemeanor crime of domestic violence and I am not subject to a restraining order as defined by statute. I certify that to the best of my knowledge and belief, all of the information provided by me is true, correct, complete and made in good faith. I understand providing false or fraudulent information may be punishable by a fine or imprisonment, or both, under 18 U.S.C. § 1001, and immediate removal.

- _____ (Initial) **Mobility Agreement:** Agents must agree in writing to comply with management-directed permanent change of station (PCS) movement to meet mission requirements.

Certification: I hereby certify that, to the best of my knowledge and belief, all of the information provided by me is true, correct, complete, and made in good faith. I understand that false or fraudulent information provided herein may be grounds for criminal and/or administrative proceedings, to include (if civilian) adverse action, up to and including removal. I further understand that I have a continuing obligation to inform my supervisor should I be convicted of a crime of domestic violence in the future.

 Special Agents Signature

 Supervisor Signature

Print Name: _____

Print Name: _____

Title: _____

USE OF FORCE POLICY
SECTION 3
ATTACHMENT 2
(Authorized Personally Owned Firearms)

All OEE SAs authorized to carry firearms will only carry authorized weapons. The below list signifies firearms for use as Authorized Personally Owned (APO) weapon. Prior to purchasing an APO, OEE SAs must consult with their PFI to ensure the firearm meets OEE APO requirements. APOs must be inspected and approved prior to utilization.

OEE SAs are authorized only two APOs. All APO weapons must have three (3) magazines. APO handguns must be fitted with night sights or similar sight which allows for low light sight recognition.

All APO firearms to be carried on official business are to be treated in the same manner as Agency-issued firearms.

Authorized Personally Owned Firearms:

Glock: Model 26, 17, 19, 43X, 45, 48
Model 23, 27
Model 30, 36, 38, 39
Model 32, 33
Model 31, 32, 33
(All MOS variants of the above accepted)

Sig Sauer: P226 All variants
P228 All variants
P229 All variants
P239 All variants
P320 All variants
P365 All variants

Heckler & Koch: VP9, SK
P30, SK
HK45, Compact
P2000, SK
USP, Compact

Rev 2/22

Grand-Fathered
Agency-Authorized Personally Owned Weapons

Effective: 12/2/2020

The below weapons have been removed from the current OEE APO list. Therefore, new requests to carry the below weapons will no longer be approved. However, OEE SAs who had obtained approval for these weapons as APOs before they were removed from the APO list may continue to utilize them as APOs until they are either removed from this list entirely or the SA elects not continue using the weapon as an APO, whichever occurs first. If an OEE SA elects not to continue use of the grandfathered weapon as an APO it may not be approved again at a later date.

ACCEPTABLE CALIBERS

9mm, .40 S&W, .357 SIG, .45 cal

SIG SAUER

P250	P226 X-Six
P250 Compact	P226 X-Five
P250 Subcompact	P226 X5 All Around
P220	P226 X5 Tactical
P220 Carry	P320
P220 Compact	P290

GLOCK

G34	G22	G23	G27
G35	G21	G30	G36
G31	G32	G33	

Rev 2/22

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