

1 of 1

United States Government

Department of Energy

memorandum

DATE: August 10, 1993

REPLY TO:
ATTN OF: IG-1

SUBJECT: INFORMATION: Report on "Inspection of the Department's Export Licensing Process for Dual-Use and Munitions Commodities"

TO: The Secretary

BACKGROUND:

The subject final report is provided to inform you of our findings and recommendations and to give you an opportunity to comment. The purpose of the inspection was to review the Department of Energy's export licensing process for dual-use and military (munitions) commodities subject to nuclear nonproliferation controls. Specifically, we reviewed the Department's authorities, procedures, and policies pertaining to the export licensing process and examined procedures for safeguarding data transmitted between Energy and other agencies involved in the export licensing process. We also reviewed the Department's role as a member of the Subgroup on Nuclear Export Coordination.

DISCUSSION:

Our inspection was part of an interagency review by Offices of Inspector General of the export licensing process for dual-use and munitions commodities. Office of Inspector General Inspectors from the Department of Commerce, Department of Defense, Department of Energy and the Department of State conducted reviews in their respective Departments as part of the interagency review, which was conducted in accordance with a Memorandum of Understanding signed in June 1992 by the Inspectors General of the four Departments.

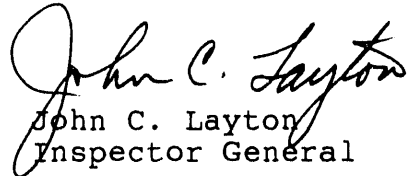
Our review of the sample of 60 export cases referred to Energy by Commerce did not find evidence to lead us to believe that Energy's recommendations for these cases were inappropriate or incorrect. We identified, however, problems regarding management systems associated with the export license review process. For example, we found that records documenting the basis for advice and recommendations were not retained by the Export Control Operations Division. Accordingly, we could not determine whether the Division's analysts considered all required criteria in their review of export cases referred to Energy. We also found that the Division did not have current

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written procedures for processing export cases; that there were inconsistencies in license application data for the same cases in the separate export licensing data bases maintained by Commerce and Energy; that Energy's intelligence capability may not be fully utilized in support of export case reviews; that Energy did not have the information maintained by Commerce and State regarding the final disposition of export license applications referred to Energy; and that Energy may not be receiving the maximum benefit of the technical and analytical capabilities of the laboratories in the review of export cases.

In commenting on our report, management generally agreed with the recommendations. The Director, Office of Intelligence and National Security, stated that he was currently working toward improving the review and handling of the licensing process.


John C. Layton
Inspector General

Attachment

cc: Deputy Secretary
Director, Office of Intelligence and National Security
Director, Office of Arms Control and Nonproliferation
Director, Office of Intelligence

**U.S. DEPARTMENT OF ENERGY
OFFICE OF INSPECTOR GENERAL**

**INSPECTION OF
THE DEPARTMENT'S
EXPORT LICENSING PROCESS
FOR
DUAL-USE AND MUNITIONS
COMMODITIES**

Report No. DOE/IG-0331
Date Issued: August 10, 1993

Office of Inspections
Washington, D.C. 20585

INSPECTION OF THE DEPARTMENT'S EXPORT LICENSING PROCESS
FOR DUAL-USE AND MUNITIONS COMMODITIES

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This report was conducted as part
of an interagency effort and is included
as Appendix C in the interagency report entitled
Federal Government's Export Licensing Processes
for Munitions and Dual-Use Commodities.

**U.S. DEPARTMENT OF ENERGY
OFFICE OF INSPECTOR GENERAL
OFFICE OF INSPECTIONS**

**INSPECTION OF THE DEPARTMENT'S EXPORT LICENSING PROCESS
FOR DUAL-USE AND MUNITIONS COMMODITIES**

PURPOSE, SCOPE AND METHODOLOGY

The purpose of our inspection was to review the Department of Energy's (Energy) export licensing process for dual-use and military (munitions) commodities subject to nuclear nonproliferation controls. Specifically, we reviewed Energy's authorities, procedures, and policies pertaining to the export licensing process and examined procedures for safeguarding data transmitted between Energy and other agencies involved in the export licensing process. We also reviewed Energy's role as a member of the Subgroup on Nuclear Export Coordination.

Our inspection was part of an interagency review by Offices of Inspector General (OIG) of the export licensing process for dual-use and munitions commodities. OIG Inspectors from the Department of Commerce (Commerce), Department of Defense (Defense), Department of State (State), and Energy conducted reviews in their respective Departments as part of the interagency review. A June 1992 Memorandum of Understanding (MOU) signed by the Inspectors General from the four Departments provided the framework for the interagency review. The MOU stated that the interagency review would examine four primary areas in the export licensing process: regulatory criteria, the license application review process, effectiveness of the license application review process, and security of data in the license application review process.

During early July 1992 to early October 1992, OIG inspectors received briefings from organizations involved in export licensing activities in each of the four Departments. OIG inspectors also received briefings from the U.S. Customs Service, Department of Treasury; the Arms Control and Disarmament Agency (ACDA); and the Nonproliferation Center, Central Intelligence Agency (CIA).

We interviewed officials in selected Energy Headquarters organizations and visited organizations involved in Energy's export licensing process at the Los Alamos National Laboratory (LANL); Lawrence Livermore National Laboratory (LLNL); and Oak Ridge National Laboratory (ORNL).

As part of our inspection, we analyzed 60 of a random sample of 100 nuclear dual-use export cases from the approximately 3100 cases referred to Energy by Commerce in the first six months of calendar year 1992. Appendix A of this report includes the criteria used to select the 60 cases and provides a limited analysis of each case.

BACKGROUND

U.S. Government policy encourages the export of goods and technologies by U.S. citizens to promote the U.S. economy. Nevertheless, for national security, foreign policy, and economic purposes the Government uses the authority of several laws and regulations (discussed below) to control the export of certain goods and technologies. Some of the controlled commodities are designated as "dual-use," that is, goods and technologies that have both civilian and military uses. The Government designates some dual-use commodities as "nuclear dual-use" -- items controlled for nuclear nonproliferation purposes. Another group of controlled commodities is designated as munitions, which are goods and technologies that have solely military uses.

Commerce and State administer the export licensing processes for dual-use and munitions commodities, respectively. As required by statute, or as evolved through practice, both Departments consult with other government agencies on export license applications for particular commodities. For example, Commerce and State consult with Energy on export license applications for the export of certain nuclear related dual-use and munitions commodities.

Energy's export licensing control activities for nuclear dual-use and munitions commodities are based on the provisions of the U.S. statutes and regulations governing export controls. Energy has not supplemented these laws and regulations with internal orders. Within Energy, the Export Control Operations Division, Office of Export Control and International Safeguards, Office of Arms Control and Nonproliferation (AN), serves as the primary focal point of export licensing operations. Energy's Office of Intelligence provides some intelligence information to personnel in the Export Control Operations Division, which conducts Energy's review of export license applications. Additionally, Energy's national laboratories assist the Export Control Operations Division in export license activities by providing technical advice on the commodities to be exported as well as intelligence information and analyses. (Note: On June 10, 1993, the Secretary established the Office of Intelligence and National

Security (IS), which includes among other organizations, the Office of Arms Control and Nonproliferation and the Office of Intelligence.)

RESULTS OF INSPECTION

OVERVIEW OF THE EXPORT LICENSING PROCESS WITHIN THE FEDERAL GOVERNMENT

Legislative/Regulatory Authorities

The principal legislative authorities that provide policies governing the export control of nuclear dual-use commodities are the Export Administration Act of 1979, as amended, and the Nuclear Non-Proliferation Act of 1978, as amended. Items designated for nuclear nonproliferation controls constitute the Nuclear Referral List, a subset of the Commerce Control List. Commerce uses the Export Administration Regulations to implement policies regarding the export control of nuclear dual-use commodities.

The International Security Assistance and Arms Export Control Act of 1976 governs the export of defense articles and defense services (munitions). Commodities designated for such controls constitute the U.S. Munitions List. State administers export controls on all munitions by using the International Traffic in Arms Regulations.

The following paragraphs provide brief excerpts from applicable laws and regulations regarding agency responsibilities. Appendix B of this report provides more detailed discussions of the applicable laws and regulations.

Public Law 96-72, Export Administration Act of 1979 (EAA), dated September 29, 1979, and Public Law 99-64, Export Administration Amendments Act of 1985 (amendment to the EAA), dated July 12, 1985, were enacted as the primary legislative authorities for controlling the export of dual-use commodities. The EAA required the Secretary of Commerce to establish and maintain a Commodity Control List showing licensing requirements for export of goods and technology under the Act. The EAA also required "appropriate departments and agencies" to identify goods and technologies for inclusion on the Commodity Control List. (Note: Commerce changed the Commodity Control List to the Commerce Control List in 1991.) The EAA expired on September 30, 1990. The International Emergency Economic Powers Act, however, extended the provisions of the EAA per Executive Order 12730, as continued by 56 Federal Register 49385, dated September 26, 1991, and

Executive Order 12735, as continued by 56 Federal Register 58171, dated November 15, 1991. On March 27, 1993, the President signed Public Law 103-10, extending the EAA until June 30, 1994.

Public Law 95-242, Nuclear Non-Proliferation Act of 1978 (NNPA), dated March 10, 1978, and Public Law 99-661, National Defense Authorization Act for 1987 (containing an amendment to the NNPA), dated November 14, 1986, authorized the Government to control the export of those commodities and technologies that could provide other countries with the capabilities to produce nuclear weapons. Section 309(c) of the NNPA required the President to publish procedures regarding the control by Commerce over all export items, other than those licensed by the Nuclear Regulatory Commission (NRC), which, if used for purposes other than those for which the export is intended, is of significance for nuclear explosive purposes.

A 1984 Amendment to "Procedures Established Pursuant to the Nuclear Non-Proliferation Act of 1978" revised the initial procedures required by Section 309(c). The 1984 Amendment directed Commerce to publish in the Export Administration Regulations a list of commodities referenced in Section 309(c), that is, "export items . . . of significance for nuclear explosive purposes." The 1984 Amendment also directed that Commerce and Energy revise the list, as appropriate, and in consultation with State, Defense, NRC, and ACDA. (Note: These sections of the 1984 Amendment are reprinted as Supplement 1, Part 778 of the Export Administration Regulations.)

Part 778, "Proliferation Controls," of the Export Administration Regulations (EAR) implements, among others, the policy set forth in Section 309(c) of the NNPA to maintain export controls over commodities because of their significance for nuclear explosive purposes. Specifically, Part 778.2 implements the requirement in Section 309(c) of the NNPA to publish procedures over export items significant for nuclear explosive purposes by identifying the list of controlled items as the Nuclear Referral List. The following section of this report, entitled Interagency Referral Process, further discusses these procedures.

Public Law 94-329, the International Security Assistance and Arms Export Control Act of 1976 (AECA), dated June 30, 1976, declared the Government's policy to administer programs and procedures governing the export control of certain defense articles and services. To implement this policy, the AECA authorized the President to designate these controlled items as the Munitions List.

Interagency Referral Process

Nuclear dual-use and munitions commodities require formal licensing from Commerce and State, respectively, before the items can be exported. In this regard, Commerce and State seek information and recommendations from appropriate departments and agencies concerned with U.S. domestic and foreign policies and operations having an effect on exports.

-- Nuclear Dual-Use Items

The EAA required Commerce to seek information and recommendations from those Departments "concerned with . . . policies and operations having an important bearing on exports." Regarding the time authorized for review, Section 17(d) (Non-Proliferation Controls) of the EAA exempted nuclear dual-use export cases from the 20-day period authorized agencies by the EAA, as amended, to review export license applications referred to them by Commerce. Section 17(d) stated that export licenses considered "pursuant to Section 309(c), the Nuclear Non-Proliferation Act of 1978" shall be processed in accordance with the procedures established pursuant to 309(c). The 1984 Amendment to "Procedures Established Pursuant to the Nuclear Non-Proliferation Act of 1978" authorized agencies 30 days to provide "their views" to Commerce. The 1984 Amendment also provided Departments needing more time to complete their actions an additional 30 days if they informed Commerce of the need.

Section 309(c) of the NNPA requires Commerce to consult with Energy on export items that could be "of significance for nuclear explosive purposes." The 1984 Amendment to "Procedures Established Pursuant to the Nuclear Non-Proliferation Act of 1978," and Part 778.2 of the EAR, specify the procedures by which Commerce consults with Energy on applicable export items. These directives require Commerce to refer export license applications to Energy if:

1. The commodity is on the Nuclear Referral List.
2. The commodity is not on the Nuclear Referral List but requires a validated export license for national security reasons and is intended for a nuclear related end-use or end-user.

-- Munitions Items

The AECA does not require State to refer export license applications on nuclear related munitions commodities to Energy

for comment. The Office of Defense Trade Controls (DTC), State, however, has routinely referred munitions export cases involving commodities in Category XVI (Nuclear Weapons Design and Test Equipment) of the Munitions List to Energy for review since the late 1970's. Additionally, the Licensing Guidelines for DTC Licensing Officers direct the Licensing Officers to refer nuclear related munitions export cases to Energy for review as well as cases involving commodities in Category XVI of the Munitions List.

-- Requirement to Maintain Records

The Export Administration Amendments Act of 1985 (amendment to the EAA) required agencies to make and retain records of specified export control operations. Specifically, the 1985 Amendment directed that "any department or agency consulted in connection with a license application under this Act or a revision of a list of goods or technology subject to export controls under this Act shall":

1. Make and keep records of their advice, recommendations, or decisions in connection with any such application or revision.
2. Make and keep the factual and analytical basis of the advice, recommendations, or decisions.

Interagency Resolution Process

The EAA provided general guidance for resolving interagency concerns and differences over export license applications, while the NNPA specified interagency procedures for resolving nuclear dual-use export cases. No formal interagency procedures exist for resolving interagency differences involving munitions cases.

Chartered by provisions in the NNPA, with formal proceedings published in 43 Federal Register 25326, dated June 9, 1978, the Subgroup on Nuclear Export Coordination (SNEC) was authorized to "monitor and facilitate the interagency processing [of nuclear related export licenses] and to serve as a forum for exchanging and coordinating views." The 1984 Amendment to "Procedures Established Pursuant to the Nuclear Non-Proliferation Act of 1978" authorizes Commerce or Energy to refer cases to the SNEC if either Department believes that an export application should be (1) reviewed by other agencies, or (2) denied because of the proposed destination of the export, its timing, or other relevant considerations.

A 1991 Amendment to "Procedures Pursuant to the Nuclear Non-Proliferation Act of 1978" and the resulting National Security Directive (NSD), NSD 53, further refine the procedures for resolving nuclear dual-use export cases. The 1991 Amendment directs the SNEC to provide Commerce a recommendation on an export case no later than 90 days after Commerce receives the application. NSD 53 establishes time frames for escalating Commerce dual-use export cases beyond the SNEC. The appeals process includes, in ascending order, the Advisory Committee on Export Policy, the Export Administration Review Board, the National Security Council, and the President.

OVERVIEW OF ENERGY'S EXPORT LICENSING PROCESS

As stated previously, the Export Control Operations Division (ECOD) serves as Energy's primary focal point for export licensing operations. Based upon the EAA, as amended, and Section 309(c) of the NNPA, export control analysts within the ECOD receive nuclear related dual-use export license applications from Commerce in order to provide "information and recommendations." ECOD analysts also receive nuclear related munitions export license applications from State based on evolved practices. (Note: Export license applications are hereinafter referred to as export cases.)

Interface with Commerce

Commerce usually electronically transmits information to Energy on export cases. The Export Control Automated Support System (ECASS) is Commerce's automated system for export licensing operations. The Export Information System (EIS) is Energy's automated system for export licensing operations.

Commerce currently refers approximately 6700 nuclear dual-use export cases annually to Energy for review. These cases involve commodities on the Nuclear Referral List or commodities that are intended for a nuclear end-use or nuclear end-user. Commerce, however, does not refer all Nuclear Referral List cases to Energy. For some commodities on the Nuclear Referral List, Energy has delegated to Commerce the authority to process these commodities without referring the cases to Energy. These delegations, which are by "Letters Delegating Authority," generally pertain to commodities that ECOD management judges they no longer need to review because of SNEC recommendations on previous similar export cases. Energy may also provide Commerce a Letter Delegating Authority based on guidelines from the international Nuclear Suppliers Group that may recommend the loosening of export controls on certain commodities.

To refer export cases to Energy, Commerce electronically transmits the applications via the ECASS to the EIS, which is maintained by the Critical Technology Group (IT-3), LANL, for Energy. Not all export licensing information, however, can be electronically transmitted between Commerce and Energy. For example, the EIS is a classified system, while the ECASS is unclassified and cannot be used to process or store classified information. Additionally, communication limitations and the inability of ECASS software to handle image type information prevent transmittal of large diagrams and other oversized documents such as technical specifications. To send these types of information to each other, Commerce and Energy use both classified and unclassified telephones, mail, and messengers. A detailed discussion of the EIS is at Appendix C of this report.

Interface with State

State currently refers approximately 100 munitions cases involving commodities in Category XVI of the Munitions List or other nuclear related munitions to the ECOD per year for review. Export cases are transmitted via the mail because the agencies lack an electronic interface. Except for the different methods of transmitting export cases between agencies, ECOD export control personnel process nuclear dual-use and munitions cases using the same procedures.

Interface with the Subgroup on Nuclear Export Coordination (SNEC)

The 1984 Amendment to "Procedures Established Pursuant to the Nuclear Non-Proliferation Act of 1978" authorizes Energy and Commerce to refer nuclear related dual-use export cases to the SNEC. In 1992, the SNEC reviewed approximately 500 export cases, approximately 400 of which were referred by Energy. Commerce referred most of the remaining cases. Also, on occasion, other agencies became aware of a particularly controversial export case and requested that Energy refer the case to the SNEC.

In commenting on a draft of this report, AN management stated that when Energy places a case on the SNEC agenda at the request of another agency, in AN management's view, Energy is acting in its role as the Secretariat for the SNEC. AN management considers the other agency as having made the referral of the case to the SNEC.

Energy refers nuclear dual-use export cases to the SNEC if ECOD export control personnel believe that the cases should be denied because of proposed destination, timing, or other relevant considerations. These considerations include: the application

sets a precedent (e.g., export of a supercomputer); the application is controversial; or an agency other than Commerce requests a referral.

The procedures for referring nuclear dual-use export cases to the SNEC were developed by Energy, Commerce, Defense, State, ACDA and the NRC in the late 1970's. At that time, Energy assumed the role of Secretariat to the SNEC. As the Secretariat, Energy prepares and publishes the minutes of SNEC meetings and prepares the agenda for the next SNEC session. A detailed discussion of the SNEC is at Appendix D of this report.

Interface with the Intelligence Community

Executive Order 12333, "United States Intelligence Activities," dated December 4, 1981, designates Energy as a member of the Intelligence Community and assigns Energy specific duties and responsibilities to include:

1. Produce and disseminate foreign intelligence necessary for the Secretary's responsibilities.
2. Provide expert technical, analytical and research capability to other agencies within the Intelligence Community.

In April 1990, the Secretary of Energy established the Office of Intelligence to coordinate all Energy intelligence-related activities. The primary missions of the Office of Intelligence include, among others, to:

1. Ensure that intelligence information requirements of the Secretary and senior Energy policy-makers are met.
2. Ensure that Energy's technical, analytical, and research expertise is made available to the Intelligence Community in accordance with Executive Order 12333.

To fulfill its responsibilities, the Office of Intelligence receives and analyzes information primarily from the CIA, the Defense Intelligence Agency, State, Military Intelligence units, the Foreign Broadcast Information Service and the press. Additionally, the Director, Office of Intelligence, designated eight Energy organizations as field intelligence elements. These field elements are LLNL, LANL, ORNL (Martin Marietta Energy Systems), Pacific Northwest Laboratory (PNL), Sandia National Laboratory (SNL), Special Technologies Laboratory in Santa Barbara, California, Idaho National Engineering Laboratory, and Savannah River Laboratory.

The CIA recently established the Nonproliferation Center, which is responsible for providing intelligence-based recommendations on export licensing issues. If ECOD requires proliferation intelligence that the Office of Intelligence does not have, the Office of Intelligence can request assistance from the Nonproliferation Center to obtain the necessary information.

Processing of Export Cases by Energy

-- Organization

Export control activities within Energy are conducted by the Office of Arms Control and Nonproliferation (AN). AN's responsibilities include, among others, the following functions that are related to export control activities:

1. "Direct development and coordination of positions [and] policies relating to . . . export control"
2. "Integrate DOE's [Energy's] . . . export control . . . policies and programs."
3. "Serve as DOE [Energy] point of contact for other Government agencies on matters related to . . . export control"
4. "Provide technical and policy expertise for all U.S. nuclear energy-related exports"

The Office of Export Control and International Safeguards (AN-30) is one of the three offices within AN. AN-30's responsibilities include, among others, the following functions:

1. "Serve as the focal point for all DOE [Energy] export control . . . activities, including support activities by contractors and [national] laboratories."
2. "Represent DOE [Energy] in interagency groups responsible for nuclear export control"
3. "Serve as the DOE [Energy] point of contact and conduct technical liaison with the DOE [Energy] national laboratories on nuclear export control"
4. "Serve as the DOE [Energy] point of contact for other government agencies on technical matters related to nuclear export control"

As previously mentioned, ECOD, a division in AN-30, processes the Department's export control-related issues. A small group of export control personnel within ECOD are responsible for fulfilling AN-30's export control functions. Two of these personnel process both nuclear dual-use and munitions cases.

-- Description of Process

For nuclear dual-use commodities, a license application is electronically transmitted from the ECASS at Commerce to the EIS at Energy, which is maintained by LANL. As stated previously, State mails nuclear related munitions applications to the ECOD.

In order to develop recommendations on export cases, the ECOD export control analysts first examine the cases using the criteria established in Part 778.4 (Export Licensing Factors) of the EAR. Part 778.4 of the EAR states: "To fulfill considerations set forth in 778.1, the following [export licensing] factors are among those used to determine what action should be taken on individual applications subject to 778.2 and 778.3."

1. Stated end-use of the commodity.
2. Significance for nuclear purpose of the commodity.
3. Availability of the commodity from non-U.S. sources.
4. Types of assurances or guarantees against use for nuclear explosive purposes or proliferation given in the particular case.
5. Nonproliferation credentials of the importing country based on consideration of such factors as:
 - a. Country's status as a party to nuclear non-proliferation treaties (Supplement 2, Part 778 of the EAR).
 - b. Whether the country has all its nuclear activities under International Atomic Energy Agency safeguards or equivalent full scope safeguards.
 - c. Whether the country has an agreement with the U.S. for cooperation in the civil use of atomic energy.
 - d. The country's statements and policies concerning nuclear developments and non-proliferation.

- e. Extent of cooperation in non-proliferation policy generally.
- f. Intelligence data on a country's nuclear intentions and activities.

Part 773.4 of the EAR does not specifically direct Energy to consider these factors. Appendix E of this report discusses how Parts 778.1, 778.2, and 778.3 provide the basis for Energy to use the export licensing factors in Part 778.4.

The ECOD export control analysts routinely examine cases using all of the Part 778.4 criteria. If the ECOD export control analysts require additional intelligence information, they can seek assistance from Energy's national laboratories or from Energy's Office of Intelligence (IN). If needed, IN will seek the assistance of the CIA's Nonproliferation Center.

According to ECOD personnel, the ECOD export control analysts seek assistance from the Energy national laboratories if they need technical advice in order to develop recommendations on export cases. The Export Control Supervisor estimated that "roughly" ten export cases went to the laboratories weekly (approximately 500 annually). ORNL and LANL received approximately 200 cases annually, with the remainder divided among the other laboratories.

In commenting on a draft of this report, IN management stated that the above reference to ORNL should read Martin Marietta Energy Systems (MMES).

The ECOD export control analysts request and obtain technical advice from the laboratories through classified and unclassified mail, telephone, fax, and in person. (Laboratory personnel frequently visit AN-30 for numerous reasons.) Essentially, the ECOD export control analysts ask laboratory personnel the question, "What are your views?" on a particular case. Upon receiving the laboratories' responses, the ECOD export control analysts summarize the information and enter the summaries into the EIS.

Although the ECOD has not formalized the policy in writing, the export control analysts use certain laboratories to obtain recommendations on certain categories of commodities. The following chart depicts the informal policy:

LABORATORY	LANL	ORNL	PNL	SNL
CATEGORY	Weaponization Technology Transfer	Machine Tools Fuel Cycle	Reactors	Computers

Note: ECOD personnel also use LLNL for intelligence information and analyses, particularly country analyses. Also, the ECOD uses Argonne National Laboratory to review export cases involving the export of technical data.

Should a question arise concerning a particular export case, the ECOD export control analyst may contact the applicant directly to seek further information or specifications.

After developing recommendations for the export cases, the export control analysts enter the recommendations into the EIS. They then queue the cases within the EIS to the ECOD Export Control Supervisor for review.

-- Case Review Time

At the time of our inspection, two export control analysts processed nuclear dual-use and munitions export cases within ECOD. According to the EIS data base, ECOD receives approximately 6700 nuclear dual-use export cases a year from Commerce for review.

In view of the number of nuclear dual-use export cases that were referred to ECOD annually and the relatively small staff assigned to review them, the average amount of time that would be available for an analyst to review a case is very limited. Not taking into account time off for annual leave, sick leave, training, travel, or other activities, we estimated that a maximum of 40 minutes per case would be available.

-- Supervisory Review

The ECOD Export Control Supervisor reviews the cases in order to check the analysts' recommendations; to consider the cases based on available intelligence, an export factor in Part 778.4 of the EAR; and to determine the final recommendation sent to Commerce for each case. The Export Control Supervisor said that he sought additional information on 10 to 15 percent of the export cases before finalizing the recommendations. He said that the Energy

national laboratories, State, and ACDA were his primary sources of additional information.

The Export Control Supervisor also used considerations in his review that had not been formally established by ECOD as criteria for the review of export cases. For example, the Supervisor said that he included available intelligence in his review regarding the probability of a commodity's diversion and the resulting damage to national security, if diverted. In addition to the Part 778.4 criteria, he also considered foreign policy and national security issues. According to the Supervisor, he had training and expertise in those two areas.

After reviewing a case, the Export Control Supervisor can recommend to Commerce that Energy: (1) has "no objection to approval," (2) "concurs [with] or recommends approval or denial," (3) "defers to another agency," or (4) "returns [the] case without action." He can also provide comments to Commerce in addition to the recommendation. An example of a recommendation with comment would be "no objection to approval provided conditions are imposed." Additionally, the Export Control Supervisor can refer the case to the SNEC for resolution. The ECOD has formatted standard recommendations in the EIS to accommodate all of these options.

Upon completing the review, the Supervisor queues the case recommendation to the EIS at LANL for transfer to the ECASS at Commerce.

-- Office of Intelligence

Within IN, the Office of Foreign Intelligence (IN-10) is responsible for proliferation intelligence. Proliferation intelligence includes analysis of the status of a country's nuclear program; support to treaty adherence and international obligations; and analysis of nuclear facility profiles. Export control-related intelligence is a subset of proliferation intelligence. By knowing what companies and countries are buying, intelligence analysts may learn about a country's capabilities and intentions.

IN-10 also has other major missions, which include producing current intelligence for Energy; providing program management for long-term projects and proliferation-related research at Energy national laboratories; providing representation in the Intelligence Community; and providing case officer support to Energy policy makers.

IN-10 provides some intelligence support to AN, which is the primary customer within Energy for proliferation intelligence. An IN-10 case officer usually provides twice weekly briefings on current intelligence to AN. Additionally, AN personnel can attend the country briefings provided by IN, which are intended to update Energy employees on the proliferation status of various countries.

CASE STUDIES

To assist the interagency review of the process for referring export cases between agencies, Commerce OIG provided us information on a random sample of 100 export cases processed by Energy from January through June 1992. As mentioned previously, we selected 60 of these 100 export cases for analysis. Our analysis included a comparison of case information in the automated data bases maintained by Commerce (ECASS) and Energy (EIS). As part of the interagency review, Commerce requested that we specifically examine the timeliness and appropriateness of the referral process for the 60 export cases. The results of our analyses of the 60 cases are provided below. Appendix A of this report provides additional analyses of the sample cases.

Timeliness

Our analysis of the 60 export cases showed that Energy provided comments to Commerce on the majority of export cases reviewed by Energy within the 30-day period required by the 1984 Amendment to the "Procedures Established Pursuant to the Nuclear Non-Proliferation Act of 1978" (Procedures).

1. Commerce received comments on 82 percent (49/60) of the cases from Energy within the 30-day period required by the Procedures.
2. Commerce received comments on 17 percent (10/60) of the cases from Energy within 60 days. Commerce and Energy automated records did not indicate if Energy had requested a 30-day extension, as required by the Procedures.
3. Commerce received comments on one percent (1/60) of the cases from Energy after 60 days.

Appropriate Referral

Our analysis indicated that Commerce may have improperly referred eight percent (5/60) of the cases to Energy.

1. The Licensing Officer's notes in the ECASS on two of the five export cases showed that the Licensing Officer withdrew the license applications for Nuclear Referral List commodities after the cases were referred to Energy. In one case, the Licensing Officer determined that Energy did not have to process the application because of the "country destination." In the other case, the Licensing Officer's comments to Defense stated that the case was "sent to DOE [Energy] in error." The Licensing Officer's notes did not contain any additional information regarding the Licensing Officer's comments on either case. Energy provided recommendations on both cases.
2. The Licensing Officer's notes in the ECASS on another of the five export cases showed that Commerce referred a case involving a non-Nuclear Referral List commodity to Energy for comment. Energy replied to Commerce that "no recommendation was required from DOE [Energy]."
3. The Licensing Officer's notes in the ECASS on the remaining two export cases showed that, although the commodities were not on the Nuclear Referral List, the Licensing Officer had questions about the commodities' significance to nuclear end-uses. The Licensing Officer, therefore, referred the cases to Energy for comment. Energy replied to Commerce that neither case had to be referred to Energy.

Twelve percent (7/60) of the export cases in our sample contained commodities that were not on the Nuclear Referral List. Three of the seven export cases were among the five possible improper referrals discussed above.

Twenty-two percent (13/60) of the export cases in our sample had been referred to the SNEC. Energy referred 9 of the 13 cases to the SNEC. Commerce referred 3 of the 13 cases to the SNEC, one of which was a "walk-in." A "walk-in" is an export case that was not listed as a discussion item on the SNEC agenda. The EIS and ECASS records that we reviewed do not show which agency referred the remaining case.

FINDINGS

A. Lack of a Records Management Program

We found that the Export Control Operations Division (ECOD) does not retain records documenting the bases for its advice, recommendations, or decisions regarding its reviews of export

cases or regarding revisions to lists of controlled commodities and, therefore, is not in compliance with certain provisions of the Export Administration Act of 1979 (EAA), as amended, and Energy records management directives.

Section 105(o), "RECORDKEEPING," of Public Law 99-64, dated July 12, 1985, (Export Administration Amendments Act of 1985 (EAA, as amended)) stated that: The Secretary of Commerce "and any other department or agency consulted in connection with a license application under this Act or a revision of a list of goods or technology subject to export controls under this Act, shall make and keep records of their respective advice, recommendations, or decisions in connection with any such license application or revision, including the factual and analytical basis of the advice, recommendations, or decisions."

DOE (Energy) Order 1324.5A, "RECORDS MANAGEMENT PROGRAM," dated April 30, 1992, refers to records management as the planning, organizing, directing, and control involved in managing records in any medium, which encompasses records creation, maintenance and use, and disposition of records, regardless of media. One of the objectives of the Order is to "[e]ffectively control the creation or collection, organization, maintenance, use, and disposition of records in the conduct of business while complying with Federal laws and regulations."

DOE (Energy) Order 1324.2A (change 1), "RECORDS DISPOSITION," dated April 9, 1992, has, as an objective, to "[i]dentify and plan for the preservation of records documenting the organization, functions, policies, decisions, procedures, and essential transactions, including records containing evidence or information necessary for the protection of the rights of the Government and individuals." The Order requires Heads of Headquarters elements to prepare an annual records management plan for the inventory of records using DOE (Energy) Form 1324.10, Records Inventory and Disposition Schedule (RIDS).

AN Records Management Plan

A Department-wide memorandum from the Office of Administration and Human Resource Management (AD-1), subject: "Departmental Plan for Records Management," dated October 26, 1992, stated that Energy had received criticism from Congress, the General Accounting Office, and the National Archives and Records Administration regarding the manner in which Energy managed records. According to the memorandum, to correct this deficiency Energy established policies that encompassed the creation, maintenance, use, and disposition of records to manage its recorded information.

In June 1992, the Office of Arms Control and Nonproliferation (AN) submitted to the Chief, Headquarters Records Management Branch, for approval, a Records Inventory and Disposition Schedule. This document contained the records inventory and control schedule for AN and the Office of Export Control and International Safeguards (AN-30).

Item 40, "Policy and Program Records," in the AN Records Inventory and Disposition Schedule states that AN will retain, among other records, a record copy of position papers, decision documents, policy statements, directives, memoranda of agreement, memoranda of understanding, memoranda for record, and mission statements. According to the "Authorized Disposition Instructions," these records are to be retained permanently.

Item 44, "Commerce Cases," in the AN Records Inventory and Disposition Schedule identifies specific files concerning export cases referred to Energy by Commerce that the ECOD must maintain. These files include copies of correspondence between Commerce and the applicant, and Energy recommendations to Commerce regarding export license applications. According to the "Authorized Disposition Instructions," these files can be "destroyed 2 months after the case."

Management of Export Case Records in the ECOD

According to ECOD personnel, the records that Energy maintains for export cases processed by the ECOD are found in the Department's Export Information System (EIS). Based on a limited review of records maintained in the EIS, we believe that the records lack certain required information. Specifically, the EIS did not contain information concerning the "factual and analytical basis" for Energy's "advice, recommendations or decisions" regarding the export cases.

An ECOD export control analyst said that he destroyed paper copies of information that he received or wrote pertaining to export cases. He said that the documents were destroyed because the Director, AN-30, decided that paper copies were unnecessary as Energy had computer records and was not the licensing agency. He also said that he lacked the time and space to file and retain documents regarding the cases. He said that technical specifications, originally provided by license applicants to Commerce in conjunction with applications, were examples of paper records that he destroyed. Export control analysts in both the ECOD and the Energy national laboratories said that they used

technical specifications as part of the analytical basis for developing a recommendation on an export case.

As stated above, Item 44 of AN's Records Inventory and Disposition Schedule requires the ECOD to retain copies of correspondence, which includes technical specifications, between Commerce and an export applicant for two months. This requirement, however, is not consistent with the EAA, as amended, which, as discussed earlier in our report, required Energy to retain the "analytical basis" for a recommendation to Commerce on an export case.

As stated previously, the Energy national laboratories provided recommendations to the ECOD on some export cases through the U.S. mail or by telephone. One ECOD export control analyst said that he summarized the laboratories' recommendations and entered the summaries into the EIS. He said, however, that he did not enter the bases for the laboratories' recommendations, if provided by the laboratories, into the EIS. He also said that after entering the summaries of the laboratories' recommendations into the EIS, he destroyed any documentation that the laboratories provided, to include the bases for the laboratories' recommendations. The export control analyst additionally said that he did not retain records that he made of telephonic responses provided by the laboratories. He added that he did not know if the documentation provided by the laboratories constituted archival records.

In commenting on a draft of this report, AN management stated that the basis for a laboratory recommendation is included in the summary of the laboratory response that is entered into the EIS. In our view, this statement is not consistent with the export case records that we reviewed, which did not appear to contain the basis for the laboratories' recommendations, or with the comments of the ECOD export control analyst discussed above.

During an interview with the Director, ECOD, we asked for a copy of the Division's Records Inventory and Disposition Schedule. The Director, ECOD, was not aware that ECOD had a Records Inventory and Disposition Schedule.

We also asked ECOD personnel to provide specific documents that, in our opinion, should have been retained in accordance with the provisions of the EAA, as amended, and the Energy records management directives. The following documents regarding export licensing activities could not be produced by ECOD personnel from their records:

1. Memoranda pertaining to Letters Delegating Authority to Commerce that permit Commerce to process export license

applications on certain Nuclear Referral List (NRL) commodities without referring the applications to Energy for comments.

2. National Security Directive 53, which directs a timely processing of export cases with automatic procedures to escalate decisions upward to the National Security Council or Presidential level.
3. Latest revisions of the following commodity control lists:
 - a. The latest draft of the NRL. Energy is responsible for preparation of the draft NRL.
 - b. Militarily Critical Technologies List (MCTL). As authorized by Section 5(d) of the EAA, Defense maintains this list of strategically critical elements. Energy assists Defense in developing the nuclear section of the MCTL.
4. Records documenting the factual and analytical bases for the advice, recommendations, or decisions that the ECOD provided to Commerce on nuclear dual-use export cases and to State on nuclear related munitions cases.

Regarding the Letters Delegating Authority, an ECOD export control analyst said that the ECOD did not have a central file of the letters in the office's administrative files. When asked to provide us copies of the letters from other files in the office, the export control analyst said that the task to retrieve the letters would be "almost impossible" given the poor organization of the ECOD's files.

Recommendations

The Director, Office of Arms Control and Nonproliferation:

1. Review and update records maintained by the Export Control Operations Division to ensure compliance with Energy records management directives and provisions of the Export Administration Act of 1979, as amended.
2. Ensure that the AN Records Inventory Disposition Schedule complies with the provisions of the Export Administration Act of 1979, as amended, regarding records retention.

B. Compliance with Review Criteria

We could not determine the degree of compliance by Energy with the export licensing review criteria contained in the Export Administration Regulations (EAR) and the Nuclear Non-Proliferation Act of 1978 (NNPA) because the Export Control Operations Division (ECOD) did not retain records documenting the bases for its advice and recommendations on export cases. As stated previously in this report, the ECOD export control analysts use the export licensing review criteria established in Part 778 of the EAR to develop recommendations on export cases.

As discussed previously, Section 105(o) of the Export Administration Amendments Act of 1985 (EAA, as amended) required agencies consulted in connection with export license applications (cases) to make and retain records showing the agencies' advice, recommendations, and decisions in connection with any export license application and include the factual and analytical basis of the advice, recommendations, or decisions.

Also as discussed above, Energy maintains its records of export cases processed by the ECOD in the Export Information System (EIS). We determined, however, that the EIS does not contain information concerning the factual or analytical bases for Energy's advice, recommendations, or decisions regarding export cases.

We further found that the ECOD did not have current written procedures for processing export cases.

In commenting on a draft of this report, AN management stated that the export review process is not a mechanical check list to be completed, but rather an analysis of an application which considers such factors as the end-user, the country involved, the intended end-use, and the technical capabilities of the equipment. As discussed below, we believe that previously written procedures for processing export cases should be updated and could be useful in training new export control analysts.

Export Administration Regulations

As stated earlier, Part 778.4 (Export Licensing Factors) of the EAR, dated February 1992, lists the factors, i.e., criteria, to be used in determining what action should be taken on export cases for commodities on the Nuclear Referral List (NRL) or for non-NRL commodities that require a validated export license for national security reasons and are intended for a nuclear related end-use or end-user. Essentially, the factors require consideration of the commodity's stated end-use and significance

for nuclear purposes, the importing country's nonproliferation credentials, and any intelligence data on a country's nuclear intentions and activities.

Part 778.4 does not specifically identify what agency will use the factors in reviewing export cases. Nevertheless, Energy has taken actions in the past to use the export factors in order to review export cases. In 1984, the predecessor to the ECOD -- the Division of Politico Military Security Affairs in the Office of International Security Affairs (OISA) -- revised its four-volume set entitled "Procedures/Policies United States Nuclear Export Control." The revised volumes contained procedures and policies relevant to OISA's activities in the export licensing process. One of the volumes (Export Licensing Case Management Procedures) specifically directed the OISA export control analysts to determine what actions to take on export cases by considering the factors in 15 CFR 378.4. (Note: 53 Federal Register 37751, dated September 28, 1988, changed Part 378.4 to Part 778.4.)

We could not conclusively determine if the ECOD export control analysts considered the Part 778.4 factors in their review of export cases. ECOD analysts said that they had no records to document that they applied the Part 778.4 factors to their analyses of export cases in determining the significance of the commodities for nuclear explosive purposes. One ECOD export control analyst said that, although he considered the Part 778.4 factors in processing export cases, he conducted a mental examination and did not record the thought process that he used in making his determinations.

We also could not determine conclusively if the Energy national laboratories considered the Part 778.4 factors in reviewing export cases. According to an ECOD export control analyst, the laboratories are not required to address the Part 778.4 factors for their technical reviews of export cases. The ECOD export control analyst said, however, that the laboratories sometime consider the Part 778.4 factors in their review of export cases. Laboratory personnel also told us that they use the export factors in Part 778.4 of the EAR to review the cases. The ECOD export control analyst said that the laboratories provide the results of their reviews as advice and recommendations to the ECOD.

Personnel at two of the three Energy national laboratories that we visited said that they probably did not retain documentation regarding the bases of the advice and recommendations that they provided to the ECOD on export cases. The Chief Scientist, Intelligence Assessment Division, Lawrence Livermore National Laboratory (Z Division/LLNL), said that the laboratory used to

maintain extensive documentation regarding export cases in the years when LLNL reviewed dozens of cases on a monthly basis. He said, however, that his analysts may have not been retaining records on the few export cases that they were reviewing at the time. The Director, National Security Program Office, Oak Ridge National Laboratory (NSPO/ORNL), said that his analysts "probably do not have a rigorous process" for documenting advice and recommendations that they provided telephonically to the ECOD on export cases.

Nuclear Non-Proliferation Act of 1978

The 1984 Amendment to the "Procedures Established Pursuant to the Nuclear Non-Proliferation Act of 1978" contains the criteria to be used by Energy for referring export license applications (cases) to the Subgroup on Nuclear Export Coordination (SNEC). The criteria requires Energy to refer cases to the SNEC if Energy believes that an application should be denied or reviewed by agencies other than Commerce because of the export's proposed destination or timing, or other relevant considerations.

We could not conclusively determine if ECOD personnel considered the NNPA criteria in their decisions to refer export cases to the SNEC. Based on a limited review of records in the EIS, we determined that the EIS did not contain records regarding the factual or analytical bases for recommendations to refer export cases to the SNEC. The ECOD Export Control Supervisor said that he made a mental determination whether a case should be referred to the SNEC by applying the criteria cited above. Additionally, he said that he also considered as referral criteria whether: 1) the case was setting a precedent or was controversial, or 2) an agency other than Commerce requested that the case be referred to the SNEC. The Supervisor said that if, after considering the referral criteria, he determined that the SNEC should review a case, he queued the appropriate key in the EIS to refer the case to the SNEC. He said that no record was generated by the EIS regarding the basis for his referral and that he made no paper copy of his analysis.

Overall Appraisal of Energy's Licensing Review Activities

ECOD personnel could not provide us documentation that they followed the written procedures in the EAR, NNPA, and Energy guidelines regarding export licensing activities. We are unable, therefore, to reach an overall appraisal of the ECOD's export licensing activities. In our review, however, of the previously mentioned 60 sample export cases, we did not find evidence to lead us to believe that the Energy recommendations for these cases were inappropriate or incorrect. We also received several

favorable comments from personnel involved in export licensing activities at the Energy national laboratories and at other federal agencies regarding the ECOD's processing of export cases.

Regarding written Energy procedures for export licensing activities, we asked each individual in ECOD who we interviewed if ECOD had formal procedures for processing export cases. None of the ECOD personnel replied that ECOD had such procedures, nor did they say that they were aware of the OISA procedures/policies volumes mentioned above. On the other hand, the Director, Office of Export Control and International Safeguards, knew of the four volumes. The Director provided us the volumes after receiving our briefing on the tentative findings of the inspection.

In our view, an updated version of the four volumes could provide the ECOD a detailed current guide for processing export cases and assist in training new personnel. For example, according to ECOD and Energy national laboratory personnel, the ECOD "is awfully thin" in terms of experienced export analysts who can process export cases in an effective and timely fashion. ECOD and laboratory personnel told us that the loss of two of the key export analysts in the ECOD would cause the Department "severe problems." We believe that in the event of such a loss, a detailed, current guide for processing export cases could help the ECOD train new analysts faster and more effectively by providing them step-by-step procedures.

As we noted earlier, we estimated that based on the staffing at the time of our review, the ECOD export control analysts had, on the average, a maximum of 40 minutes to review each nuclear dual-use export case. The actual average time spent on a case is probably substantially less than 40 minutes.

Recommendations

The Director, Office of Arms Control and Nonproliferation:

3. Ensure that records are developed and maintained to document the Export Control Operations Division's factual and analytical basis for providing Commerce advice, recommendations, and decisions on export cases.
4. Update the procedures manual titled "Procedures/Policies United States Nuclear Export Control," and ensure the manual is used by analysts when processing export cases.
5. Assess the adequacy of the staffing level in the Export Control Operations Division for processing nuclear dual-use export cases.

C. Laboratory Capabilities

We found that, because most of the Energy national laboratories lack access to information available on all export cases reviewed by Energy, Energy may not be receiving the maximum benefit of the technical and analytical capabilities of the laboratories in the review of export cases.

Part 778.4 (Export Licensing Factors) of the Export Administration Regulations (EAR) lists the factors used to determine what action should be taken on export applications (cases) for commodities on the Nuclear Referral List (NRL) or for non-NRL commodities that require a validated export license for national security reasons and are intended for a nuclear related end-use or end-user. Essentially, the factors require consideration of the commodity's stated end-use and significance for nuclear purposes, the importing country's nonproliferation credentials, and any intelligence data on a country's nuclear intentions and activities.

As stated previously, the Energy national laboratories were sometimes required to provide assistance to the Department by reviewing nuclear nonproliferation cases, such as nuclear dual-use export cases. The laboratories were also tasked to provide advice and assistance to the Export Control Operations Division (ECOD) and other offices in the Office of Arms Control and Nonproliferation (AN) and the Office of Intelligence (IN) regarding nonproliferation issues.

As an example, the ECOD's FY 92 FISCAL YEAR PROJECT PLAN contained several projects that required Energy's national laboratories to provide technical advice and support to the Department when Energy participates in interagency negotiations relating to nuclear nonproliferation export cases and export controls. The support included conducting analyses; providing experts on nuclear technologies and related items for discussions and evaluations of export cases and export controls; and conducting analyses of export control policies and objectives with primary focus on nuclear nonproliferation. For example, one project required the International Technology Division, Los Alamos National Laboratory (IT/LANL), with support from the Intelligence Assessment Division, Lawrence Livermore National Laboratory (Z Division/LLNL), to provide a comprehensive technical overview and evaluation of nuclear facilities, programs, and procurement activities of potential proliferants for presentations to be made by Energy to high-level policy makers for review and possible implementation.

Also, the FY 92 PROGRAM GUIDANCE for the Office of Foreign Intelligence (IN-10) contained projects that required the Energy national laboratories to provide assessments and analyses of the nuclear capabilities and developments of proliferant countries. For example, IN-10 required Oak Ridge National Laboratory (ORNL) to monitor, analyze, and assess uranium enrichment, reprocessing, and weapons technologies and programs in proliferant and supplier countries.

Proliferation Information Network System (PINS)

PINS is an evolving and integrated, knowledge-based automated network that will link AN electronically with the Energy national laboratories. PINS is designed to track weaponization and proliferation activities, which include export licensing operations, and incorporate this information with intelligence. The system within PINS that tracks export cases is called the Export Information System (EIS), which has been previously discussed. Current plans call for Energy national laboratories to access PINS in Fiscal Year 1993 upon availability of funds and upon approval of the system's security plans by Energy's Office of Security Affairs.

LANL currently is the only Energy national laboratory that has access to PINS. Under the present Energy system for processing export cases, LANL, therefore, is the only Energy national laboratory that has access to information on all export cases in the EIS. The other Energy national laboratories, which do not have PINS, do not have direct access to information on all export cases in the EIS.

We believe that, by not having information on all export cases reviewed by Energy, the laboratories may be limited in their capability to provide the required technical and analytical support to the Department. Several analysts who reviewed export cases at the laboratories we visited said that access to information contained in past export cases would allow the laboratories to provide more complete and timely analyses to Energy.

For example, the Director, National Security Program Office (NSPO), ORNL, discussed the technical and analytical benefits of having access to all export cases or reviewing all export cases. He said that the review, i.e., access to knowledge of past export cases, could speed the processing of similar current cases because the previous technical analysis of a commodity's significance for nuclear explosive purposes would already be known. The Director also said that access to information from export cases processed by other laboratories could offset any

possible technical weaknesses in a particular laboratory's review of new cases. He added that information gained by reviewing all export cases referred to Energy would also help in the intelligence review of new export cases.

The Group Leader, Critical Technology Group (IT-3), IT/LANL, said that one of IT-3's general responsibilities was to develop technical arguments on the export control of nuclear related commodities. He said that access to all nuclear related export cases helped IT-3 develop the arguments by providing a history of what technical capabilities individual countries had and what technical capabilities the United States should attempt to keep the countries from obtaining through the use of export controls.

The Chief Scientist, Z Division/LLNL, also said that reviewing or having access to all export cases that Energy receives would be valuable. He emphasized, however, the potential intelligence benefits to be gained. He said that the review of an export case was a "gold mine that's not being mined." He said that examination of, or access to, all export cases that the ECOD received would greatly enhance the export-related and proliferation-related intelligence analyses performed by LLNL for Energy. He said that by reviewing export cases, analysts may obtain information on end users and their personalities; clues about a country's program needs and obstacles; and possible information on suppliers. He also said that intelligence gained from one case would help when reviewing additional cases from the same country. He used as an example the consideration of different requests for computers to be exported to [named country]. He said that individual applications may mean nothing to an analyst in the ECOD. He said that the [named country] analyst, however, in Z Division's Proliferation Assessments Section, which is responsible for conducting intelligence and policy assessments for proliferation issues, may detect a pattern developing that denotes [named country] proliferation interests.

Use of Proliferation Information Network System

According to the ECOD Export Control Supervisor, the Energy national laboratories could be better used to provide technical and intelligence assistance in processing export cases. He said that the laboratory-wide fielding of PINS would allow the ECOD to use the laboratories to a greater extent because PINS would allow the laboratories to provide faster service on a greater number of export cases. He said that PINS would also allow analysts to look for trends and patterns in export cases. For example, he said that PINS could assist analysts in identifying new proliferant countries and facilitate development of a country's procurement system.

We asked the ECOD Export Control Supervisor if his comments regarding PINS implied that the ECOD should be sending more export cases to the laboratories for review. He replied that he meant more laboratories would be able to review a single case, and not necessarily, more cases. He said that the laboratories sometimes examined cases from slightly different technical angles and expertise. He said that the differences in technical viewpoints would probably assist the ECOD export control analysts in making better recommendations on export cases.

Analysts at the laboratories that we visited provided similar views as the ECOD Export Control Supervisor about the use of PINS by the laboratories. The IT-3 Group Leader, IT/LANL, said that PINS would provide an interconnected automated link between the laboratories and AN that would track and expedite export licensing, and proliferation and weaponization activities. He said that the laboratories could specialize in their input to PINS. For example, he said that LLNL could provide intelligence information and ORNL could provide input on uranium enrichment and machine tools. Also, the Chief Scientist, Z Division/LLNL, said that he viewed PINS as being extremely beneficial to Energy. He said that, as envisioned, the system would provide analysts access to more cases -- a "research tool" that would allow instant capability to comment on cases and serve as a reference information system. He said that he believed analysts could use PINS as a research tool by looking at issues such as intermediaries, foreign subsidiaries of U.S. firms, and technology on a global basis. He added that he envisioned using PINS to complement the technical work LANL was doing.

We believe that PINS, once fully fielded, will provide laboratories the capability to have ready access to the export licensing information in the EIS. The EIS, however, currently does not include information on whether a commodity was approved/disapproved, and if approved, was purchased and shipped. As discussed later in finding E. Information Regarding Case Disposition below, we believe that this information could enhance the laboratories' capabilities to provide technical and analytical support to Energy.

Recommendation

The Director, Office of Arms Control and Nonproliferation:

6. Ensure timely completion of the fielding of the Proliferation Information Network System at the Energy national laboratories to allow them access to export case information in order to assist in Energy's processing of export cases.

D. Use of Energy's Intelligence Capability

We found that Energy's intelligence capability may not be fully utilized in support of export case reviews. We also found that the Office of Arms Control and Nonproliferation (AN), the Office of Intelligence (IN), and the Energy national laboratories had differing perceptions regarding the degree of cooperation and communications between AN and IN in processing export cases.

As mentioned previously, Part 778.4 (Export Licensing Factors) of the Export Administration Regulations (EAR) lists the factors to be used in determining what action should be taken on export cases for commodities on the Nuclear Referral List (NRL) or for non-NRL commodities intended for a nuclear related end-use or end-user. These factors include the consideration of intelligence data on a country's nuclear intentions and activities.

In April 1990, the Secretary of Energy established IN to be responsible for the coordination of all Energy intelligence-related activities. To meet this requirement, IN receives and analyzes information primarily from the Central Intelligence Agency (CIA), the Defense Intelligence Agency, the National Security Agency, State, Defense, the Foreign Broadcast Information Service, and the press.

The Office of Foreign Intelligence (IN-10) is responsible for proliferation intelligence. A manager within IN-10 said that proliferation intelligence included analysis of the status of a country's nuclear program; support to treaty adherence and international obligations; and analysis of nuclear facility profiles. The manager said that a goal of proliferation intelligence was learning about a country's motivations, capabilities and intentions regarding its nuclear program. The manager explained that export control-related intelligence was a subset of proliferation intelligence, and said that by knowing what a country was buying, analysts might learn what a country's capabilities were.

Lawrence Livermore National Laboratory (LLNL) Proliferation Intelligence Analyses

IN-10 routinely funds several of the Energy national laboratories' intelligence analyses and the preparation of reports in support of Energy programs. According to a manager in IN-10, LLNL served as the proliferation center for IN-10, receiving the majority of IN-10's budget for proliferation intelligence. IN-10 also funds proliferation intelligence work at Oak Ridge National Laboratory (ORNL) -- Martin Marietta Energy

Systems (MMES), and Los Alamos National Laboratory (LANL). Additionally, IN-10 funds small proliferation efforts at Sandia National Laboratory, Pacific Northwest Laboratory, and Idaho National Engineering Laboratory.

According to a manager in IN-10, analysts at LANL, LLNL, and ORNL (MMES) received intelligence information from IN, both electronically and in hard copy. The manager said that the three sites did not always receive the same intelligence information, primarily because of the requirements regarding the handling of Originator Controlled (ORCON) information from the CIA. According to the manager, IN cannot distribute ORCON material to the laboratories without permission from the originator. The manager said that the CIA, for example, would have to grant approval for release.

Of the three Energy national laboratories (LLNL, LANL, and ORNL (MMES)) receiving the bulk of IN-10's funds for proliferation work, LLNL had the most intelligence resources. Within LLNL, the Intelligence Assessment Division (Z Division) conducted intelligence and policy assessments for proliferation issues. A manager in Z Division/LLNL said that the Division provided multi-discipline intelligence analysis. The manager continued that this analysis included the motivation and intentions of a country regarding nuclear goods, the end use of a nuclear-related item, and the availability of an item from other countries.

Analysts at LANL and ORNL said that they did not have the necessary resources to analyze all the intelligence information that they received from IN. For example, an analyst at LANL explained that the Critical Technology Group (IT-3) had only one individual with time available to read all the intelligence information received. An MMES manager at ORNL said that, in general, he did not have access to the intelligence information needed to analyze export cases. He explained that his office at times was staffed with only two individuals because personnel were required to travel frequently. He added that even when the office was fully staffed, the personnel were not able to process all the available intelligence information.

Cases Referred to the Laboratories

The Export Control Operations Division (ECOD) Export Control Supervisor said that the Energy national laboratories reviewed approximately 500 of the export cases referred annually by Commerce to ECOD. As stated previously in this report, laboratory personnel said that they used the export factors in Part 778.4 of the EAR to review the cases.

The Supervisor said that of the 500 export cases, the ECOD referred approximately 200 each to LANL and ORNL and sent approximately 12 to LLNL. The ECOD referred the remaining export cases to other Energy national laboratories. In this regard, we believe that the ECOD may not be maximizing the individual capabilities of the laboratories. Although LLNL, we believe, has resources to conduct the most complete intelligence analysis, LLNL received the fewest number of export cases. In contrast, LANL and ORNL received the bulk of the cases referred to the laboratories, but had fewer resources to analyze proliferation intelligence.

In commenting on a draft of this report, the Director, ECOD, stated that "to more fully take advantage of all of the laboratories'" technical and intelligence capabilities and strengths, AN has developed the Proliferation Information Network System (PINS). The Director stated that PINS "will allow access and input from all relevant parties," including each Energy national laboratory. The Director also stated that the "various strengths (including intelligence information) of each laboratory might be factored into a final decision to recommend the approval/denial of a particular export" case.

A manager within Z Division/LLNL said that analysts at LLNL, ORNL, and LANL shared intelligence on an informal basis, i.e., at an "analyst to analyst" level. We believe, however, that this informal sharing of intelligence does not necessarily result in the bulk of the intelligence resources at the laboratories, i.e., LLNL, being involved in the review of export cases. A manager in IN-10 said that Energy's process for reviewing export cases could be enhanced if LLNL's intelligence resources could be linked to the technical resources of laboratories such as LANL and ORNL (MMES).

Coordination between AN and IN

Prior to April 1990, Energy's intelligence activities were subordinate to the Assistant Secretary for Defense Programs. DOE (Energy) Order 5670.1, "MANAGEMENT AND CONTROL OF FOREIGN INTELLIGENCE," dated August 22, 1986, addressed the policy regarding the management of Energy's foreign intelligence activities. The Order stated that the Secretary of Energy designated the Assistant Secretary for Defense Programs to be responsible for, among other things, "[p]roviding the exclusive channel for all Departmental requests to the intelligence community for foreign intelligence, including requests made by DOE [Energy] contractors." (Emphasis added).

The current order, DOE (Energy) Order 5670.1A, "MANAGEMENT AND CONTROL OF FOREIGN INTELLIGENCE," was issued on January 15, 1992. This Order assigns IN the responsibility for managing, coordinating, and overseeing all foreign intelligence activities relating to the production and analysis of nuclear proliferation intelligence in support of Energy and the Intelligence Community. This Order states that the Director of Intelligence shall "[p]rovide the primary channel into the intelligence community for DOE [Energy] and its contractors who request intelligence and counterintelligence support." (Emphasis added). In our view, one possible interpretation of this statement is that the new order is less restrictive, allowing other Energy activities to request support directly from the intelligence community without going through IN channels.

In commenting on a draft of this report, IN management stated that our interpretation is a possible one. IN management stated that IN is the primary channel to the Intelligence Community but not the only contact. IN management also stated, however, that "IN would frown on any organization setting up separate channels that undercut [IN's] effectiveness in negotiating for national collection and reporting assets in the Intelligence Community fora."

The ECOD Export Control Supervisor said that his review of export cases included consideration of available intelligence in accordance with Part 778.4 of the EAR. He said that he used intelligence to focus on the probability of a commodity being diverted to a proliferant country, and the damage to national security if the commodity was diverted. He also said that ECOD had no structured intelligence data base to use in support of export case reviews. He said that Energy's automated Export Information System (EIS) had a field for intelligence, but the field always reflected "no information" available. He explained that ECOD had no process in place or no dedicated employee to update the intelligence field in the EIS. He also said that the EIS was only authorized to process information classified SECRET and below. Furthermore, he said that most of the intelligence useful to the ECOD for export cases had a higher classification than SECRET, or was subject to limited distribution.

In commenting on a draft of this report, AN management stated that the EIS has an intelligence field that contains information on various end-users of concern. As discussed above, however, we noted that the information contained within the EIS intelligence field cannot be classified higher than SECRET. In view of the Export Control Supervisor's comment that most of the intelligence useful to the ECOD for export cases has a higher classification level than SECRET, we believe that the EIS intelligence field

would not contain much information of use to the ECOD because of the information's level of classification.

When asked upon what intelligence "data base" the ECOD depended, the ECOD Export Control Supervisor said "himself." He said that he remembered a great deal of export-related intelligence and, therefore, did not keep a written record of the intelligence that he acquired. He said that, when needed, he relied upon intelligence support outside the ECOD to review export cases. He said that he depended primarily on contacts he had developed among analysts at State, CIA, and LLNL. He believed that talking with the three or four people whom he usually contacted for intelligence "had no . . . substitute." Additionally, he said that these contacts were the "only people whom he trusted" to provide export-related intelligence.

We learned subsequent to our interviews with the ECOD Export Control Supervisor that he had been detailed from the ECOD. He said, however, that another supervisor had been chosen to replace him, but added that the replacement needed to be trained.

The ECOD Export Control Supervisor said someone from IN briefed key personnel in the Office of Export Control and International Safeguards (AN-30), which included the ECOD, twice per week (discussed below). He said, however, that these briefings did not provide him any information that he could use in reviewing export cases. He also said he believed that lack of cooperation between AN-30 and IN hindered communications between the two offices. We noted that several analysts at each of the three laboratories we visited reinforced the Supervisor's comments regarding lack of cooperation between AN-30 and IN. The analysts' general consensus was that communications between AN and IN were poor.

A manager within IN-10 said that AN is the primary customer for proliferation intelligence within Energy. The manager offered the following examples of IN-10's support to AN: 1) IN-10 assigned a case officer who screened incoming intelligence and provided current intelligence briefings to AN-30 twice a week (if the AN-30 personnel were available); 2) IN-10 prepared Daily Intelligence Highlights, which were distributed to various policymakers within Energy, to include the Director, AN; 3) IN-10 scheduled and presented intelligence briefings specifically designed to update AN employees on the proliferation status of various countries of concern as well as on various functional topics of interest; and 4) if AN requested proliferation intelligence that IN did not have, IN would request assistance from the Nonproliferation Center, CIA, to meet AN's requests.

Despite providing the above support, the manager in IN-10 said that AN was a "very difficult customer" to support because AN did not always identify intelligence requirements to IN-10. The manager also said that the IN-10 staff had difficulty maintaining contact with personnel in AN, to include AN-30, because of AN's workload and frequent travel by AN personnel. The manager stressed that communications between AN-30 and IN-10 were important because IN-10 relied on feedback from AN-30 to determine whether IN-10 was meeting AN-30's requirements.

An analyst in IN-10 discussed additional problems in providing intelligence support to AN-30. The analyst said that IN-10's limited resources at Energy Headquarters and broader mission of proliferation analysis prevented IN-10 from being involved specifically with export control analysis. Laboratory analysts, however, said that their proliferation analyses, which IN funded, could be used by IN to support AN's work.

In an effort to enhance the communications between AN-30 and IN-10, AN-30 hired a full-time employee to provide liaison with IN. The liaison described his role as that of a "facilitator," responsible for translating AN-30's policy needs for IN in order to obtain pertinent intelligence. Based on a profile he had developed regarding AN-30's intelligence needs, the liaison said that he daily reviewed the raw intelligence that IN received. Additionally, he said that he could attend IN-10's weekly staff meetings.

The manager in IN-10 said that AN-30's facilitator did not duplicate the work done by IN-10's case officer, because the facilitator worked at a lower level within AN-30 and was very much in tune with AN-30's information needs. The manager said that several other Departmental elements had used such facilitators to work with IN.

According to the ECOD Export Control Supervisor, the AN-30 facilitator had not provided, on any occasion, intelligence for the Supervisor's use in export cases. He said that the facilitator had provided intelligence on international safeguards activities to the Director, AN-30.

In conclusion, we believe that, although the Department has substantial resources to provide intelligence support to export case reviews, these resources may not be utilized as effectively as possible.

In commenting on a draft of this report, AN management stated that the need for Energy's intelligence review of export cases has decreased because of the additional intelligence review of

cases now conducted by other U.S. agencies. As we previously discussed, however, the 1984 OISA (now ECOD) "Procedures/Policies United States Nuclear Export Control" specifically directed the export control analysts to determine what actions to take on export cases by considering the factors in 15 CFR 378.4. One of these factors included consideration of intelligence data on a country's nuclear intentions and activities. If AN is reducing its emphasis on intelligence in reviewing export cases, we believe that AN management should clearly state this policy.

Recommendation

The Director, Office of Arms Control and Nonproliferation:

7. Coordinate with the Office of Intelligence and the Energy national laboratories to ensure that Energy's intelligence capability is being fully utilized in the processing of export cases.

E. Information Regarding Case Disposition

We found that Energy does not have the information maintained by Commerce and State regarding the final disposition of export cases referred to Energy. We are defining "final disposition" to include: 1) information regarding the approval or denial of the export application, and 2) information concerning whether the commodity was purchased and whether it was shipped.

Energy's national laboratories provide technical advice and support to the Department when Energy participates in interagency negotiations relating to nuclear nonproliferation export cases and export controls. As discussed earlier in our report, the Export Control Operations Division (ECOD) FY 92 FISCAL YEAR . PROJECT PLAN contained several such projects. The support provided by the laboratories included conducting analyses, as well as providing experts on nuclear technologies and related items for discussions and evaluations of export cases and export controls, and analyses of export control policies and objectives with primary focus on nuclear nonproliferation.

The analysts who reviewed export cases at the Energy national laboratories we visited, and the ECOD export control analysts that we interviewed, said that access to information, such as "final disposition," would allow the laboratories to provide better technical advice to Energy regarding export cases. For example, the Group Leader, Critical Technology Group (IT-3), Los Alamos National Laboratory (LANL), said that one of the general responsibilities of IT-3 is to develop technical arguments on the export control of nuclear related commodities. He said that

access to all nuclear related export cases would assist IT-3 in developing the arguments by providing a history of what technical capabilities individual countries have received and what technical capabilities the United States should attempt to keep from the countries through export controls. An ECOD export control analyst said that feedback could assist in processing future export cases, and also provide an intelligence picture of a country's proliferation efforts.

We believe that by not having information regarding the final disposition of export cases, Energy's ability to fulfill its foreign intelligence requirements may also be limited. Part 1.13, Executive Order 12333 (United States Intelligence Activities), states that the Secretary of Energy shall produce and disseminate foreign intelligence necessary for the Secretary's responsibilities and provide expert technical, analytical, and research capability to other agencies within the Intelligence Community. The Executive Order defines foreign intelligence as "information relating to the capabilities, intentions and activities of foreign powers, organizations or persons"

We noted previously that the Energy national laboratories have a major role in fulfilling Energy's requirements for Executive Order 12333. In this regard, FY 92 PROGRAM GUIDANCE for the Department's Office of Foreign Intelligence (IN-10) included projects that required Energy's national laboratories to provide assessments and analyses of the nuclear capabilities and developments of proliferant countries.

The Chief Scientist, Intelligence Assessment Division, Lawrence Livermore National Laboratory (Z Division/LLNL), said that knowing what items various countries were requesting, and knowing what items were being approved for export, would enhance export-related and other proliferation-related intelligence. Additionally, the Section Leader, Technology Security, IT-3, LANL, said that feedback on the final shipment of a commodity would validate a country's purchases, which would assist in analyzing a country's nuclear capabilities.

Despite the above comments, we did not find evidence that Energy had attempted to obtain final disposition information except on limited occasions. Based upon our inquiries, however, the Assistant Manager for Systems, IT-3, LANL, recently determined that Energy had the capability, from the time Energy's Export Information System (EIS) came on-line at LANL, to retrieve information readily from Commerce's Export Control Automated Support System (ECASS) regarding the approval or denial of a Commerce export license application.

Subsequently, the Assistant Manager for Systems said that he was developing an additional file within the EIS to obtain the approval/denial information from the ECASS. This file, developed from information retrieved from ECASS, would create a document containing only the application number, date of approval or denial, and the name of the Commerce Licensing Officer who processed the license.

The Assistant Manager for Systems added, however, that Energy could not obtain information from the ECASS pertaining to the actual purchase and shipment of licensed commodities. According to the Director, Office of Information Resources Management, Commerce, the ECASS did not contain information concerning the purchase and shipment of commodities approved for export. The Director said that the Bureau of Census, Commerce, received the "Shippers Export Declaration" from the U.S. Customs Service, Department of Treasury, which contained purchasing and shipment information. He said that the Bureau of Census, Commerce, however, did not provide this information to the Bureau of Export Administration, Commerce, which managed the ECASS.

We additionally noted that Energy had not attempted to obtain final disposition information from State regarding munitions licenses, except on limited occasions. As previously stated, Energy did not have an electronic interface with State regarding export licensing operations. Both Departments used the mail to transmit export cases to each other. State, however, did maintain its records of munitions cases on an automated system. The Director, Arms Licensing Division, Defense Trade Controls, State, said that these records contained final disposition information, which Defense Trade Controls would provide to Energy, if asked.

As stated previously in this report, Part 778.4 (Export Licensing Factors), of the Export Administration Regulations, requires consideration of a commodity's stated end-use and significance for nuclear purposes, the importing country's non-proliferation credentials, and any intelligence data on a country's nuclear intentions and activities. We believe that by having information regarding the final disposition of export cases, Energy may enhance its ability to apply Part 778.4 criteria in determining what actions should be taken on export license applications for commodities on the Nuclear Referral List (NRL) and for non-NRL commodities intended for a nuclear related end-use or end-user.

We also believe that the lack of information concerning the final disposition of export license applications may limit Energy's ability to provide assessments and analyses. The information may assist Energy national laboratories in providing assessments and

analyses of the nuclear capabilities and developments of proliferant countries. Additionally, the lack of information may limit Energy's ability to provide expert technical and analytical capability to other agencies within the intelligence community and to produce and disseminate foreign intelligence in support of the Department.

Recommendations

The Director, Office of Arms Control and Nonproliferation:

8. Coordinate with the Department of Commerce to ensure access by Energy to information within Commerce regarding the final disposition (i.e., approval/denial of license applications and the purchase and/or shipment of commodities) of export cases and develop guidelines for Energy's access to the information, if possible.
9. Coordinate with the Department of State to ensure access by Energy to information maintained by State regarding final disposition of export cases and develop guidelines for Energy's access to the information.
10. Ensure that Los Alamos National Laboratory completes its plan to obtain licensing decision information from Commerce.

F. Data Base Inconsistencies

We found inconsistencies in license application data for the same cases in the separate export licensing data bases maintained by Commerce and Energy. Specifically, we found differences in the data bases for 23 percent (14 of 60 export license cases) of the sample nuclear dual-use export cases that we reviewed. These differences concerned either: 1) the recommendations on the cases provided by Energy to Commerce, 2) the Export Control Classification Numbers (ECCNs) of the commodities for cases reviewed by Energy, or 3) both.

Commerce maintains export case data in the Export Control Automated Support System (ECASS). Similar data is maintained by Energy in the Export Information System (EIS), which is Energy's record of its export licensing operations.

Disposition of Energy Recommendations

For 12 of the 14 cases we reviewed, we identified inconsistencies in the EIS and the ECASS regarding the recommendations for case disposition that were sent by Energy to Commerce. (Note:

Appendix A of this report contains a limited analysis of each case discussed in this section.)

- For 6 of the 12 cases, the EIS showed that Energy provided Commerce a recommendation of "no objection to approval provided conditions are imposed." The data in the ECASS for the 6 cases, however, showed that Commerce had withdrawn the cases from Energy for various reasons before Energy had submitted recommendations.
- For 1 of the 12 cases, the ECASS also showed that Commerce withdrew the case from Energy. The EIS, on the other hand, showed that Energy requested additional information from Commerce in order to make a recommendation.
- For 1 of the 12 cases, the ECASS showed that Energy provided Commerce a "recommendation of approval with conditions." The EIS, however, showed that Energy made no recommendation to Commerce because the case involved a commodity that did not require referral to Energy.
- The EIS showed that for 2 of the 12 cases, Energy electronically provided Commerce a recommendation of "no objection to approval provided conditions are imposed." The ECASS, however, showed that for both cases Commerce received telephonic recommendations from Energy three to four weeks after the dates indicated in the EIS that electronic responses were provided.
- The EIS and the ECASS differed in 2 of the 12 cases on the referral of the cases to interagency export review groups. The EIS showed that the Subgroup on Nuclear Export Coordination (SNEC) reviewed one case, while the ECASS showed that a SNEC review of the same case was not needed. For the other case, the EIS showed that Energy provided Commerce a recommendation of "no objection to approval provided conditions are imposed." The ECASS stated that Energy "recommended approval with conditions." The ECASS also showed that the Operating Committee, which reviews export cases with national security considerations, reviewed the case. The ECASS showed that during the Operating Committee's review, Energy voted to deny the application. The EIS did not show that the Operating Committee reviewed the case or that Energy changed its recommendation.

Inconsistencies in ECCNs

For 6 of the 14 cases we reviewed, we identified inconsistencies between the EIS and the ECASS regarding ECCNs, which are the numbers identifying specific types of commodities on the Commerce Control List. Four of these 6 cases also involved differences in recommendations and were discussed above.

In accordance with Part 778, Export Administration Regulations, Commerce must refer to Energy for review license applications for commodities with certain ECCNs. For example, in one of the cases, an [item] had an ECCN of 4A03A. The Commerce Control List controls for this ECCN indicated that this [item] was on the Nuclear Referral List (NRL), the list of commodities for which Commerce must consult Energy for export licensing purposes. A similar [item] with the same commodity name, however, had an ECCN of 4A96G. This [item] was not on the NRL; therefore, Commerce had no requirement to consult with Energy for export licensing purposes.

The inconsistencies in ECCNs for the six cases were as follows:

- For 2 of the 6 cases, the EIS showed ECCNs for [items] that were on the NRL. The ECASS, however, showed ECCNs for [items] that were not on the NRL. Neither the EIS nor the ECASS showed why the ECCNs differed.
- In 4 of the 6 cases, Commerce changed the ECCNs for commodities that were on the NRL to ECCNs of commodities not on the NRL. These changes occurred from two weeks to one month after Commerce referred the cases to Energy for comment.
 - o In 3 of the 4 cases, the ECASS showed that the Commerce Office of Technology and Policy had reclassified the commodities to be eligible for General-Destination (G-Dest) export licenses. The reclassifications meant that Commerce did not have to refer the cases to Energy. The ECASS showed that Energy subsequently returned the cases to Commerce without action because the commodities were eligible for G-Dest licenses. The EIS, on the other hand, showed that Energy had provided Commerce recommendations of "no objection to approval provided conditions are imposed" on all three cases. Neither data base showed that Commerce informed Energy of the changed ECCNs for the three cases.

- o In the remaining case, the EIS showed that Energy suggested Commerce and the applicant verify the ECCN of the commodity. The ECASS showed that Commerce telephoned the applicant eight days after receiving Energy's suggestion. Based on the telephone call, Commerce reclassified the ECCN. Neither data base showed that Commerce informed Energy of the reclassification. The EIS reflected the original ECCN.

In commenting on a draft of this report, AN management discussed the differences in information in the EIS and ECASS for some of the sample export cases. For some cases, AN management provided possible explanations on how some of the differences may have occurred. For example, according to AN management, Energy cannot electronically provide Commerce information on an export case after Commerce withdraws the case from Energy for any reason. Energy, therefore, sends to Commerce by letter information updating any later Energy position on the case. AN assumes that Commerce will update ECASS based upon the letter's contents. For other sample export cases, AN management stated that they could not determine why information in the data bases were different. For example, they could not determine why the ECCNs for two of the cases differed.

Section 10j, Export Administration Act of 1979 (EAA), allowed an export license applicant to appeal the denial of an application, file a petition with the Secretary of Commerce requesting compliance with the EAA, or bring action in a U.S. district court to seek an appropriate relief that required compliance with the EAA. The Export Administration Amendments Act of 1985 (amendment to the EAA) required agencies consulted in connection with export license applications to make and keep records, to include the factual and analytical basis of their advice, recommendations, or decisions. Sections 1732 and 1733, U.S. Code Title 28, allows such records to be admitted as evidence of agencies' actions taken on processing export cases in any court proceedings authorized by the EAA.

In view of the provisions of the EAA that allowed appeal of export license decisions, we believe that records maintained by agencies involved in export license consultations should be in agreement regarding the actions taken by all agencies involved in the consultation. We believe that inconsistencies in agency records, such as the inconsistencies in the EIS and the ECASS discussed above, could be detrimental to the government's position in responding to an appeal of a license application decision or a court challenge of the government's decision. We also believe that differences in the records maintained by the

agencies involved in a license application decision call into question the integrity of the export licensing process.

We believe that changes in licensing data, which are not passed by Commerce to agencies reviewing license applications, could potentially result in improper referrals and erroneous licensing decisions, as well as lessen the value of any analyses and reports based upon the records. As an example of a diminished value of an analysis, differences in the two data bases could show an incorrect pattern of purchases by a particular company. This incorrect pattern could affect an intelligence analyst's review of purchases by this company.

Recommendation

The Director, Office of Arms Control and Nonproliferation:

11. Coordinate with the Department of Commerce to develop and implement procedures to ensure that export license application information in the ECASS data base maintained by Commerce and the EIS data base maintained by Energy are reconciled on a periodic basis.

SUMMARY FINDINGS AND CONCLUSIONS

Our review of the sample of 60 export cases did not find evidence to lead us to believe that Energy's recommendations for these cases were inappropriate or incorrect. We identified, however, problems regarding management systems associated with the export license review process.

We found that without documentation supporting export licensing decisions by the Export Control Operations Division (ECOD), we could not determine whether ECOD analysts considered all required criteria in their review of export cases referred to Energy. For example, we found that the ECOD did not retain records documenting the bases for its advice, recommendations, or decisions regarding its reviews of export license cases or revisions to lists of controlled commodities and, therefore, was not in compliance with certain provisions of the Export Administration Act, as amended, and Energy records management directives. Additionally, we found that the degree of compliance by Energy with the export licensing review criteria contained in the Export Administration Regulations and the Nuclear Non-Proliferation Act of 1978 could not be determined because ECOD did not retain records documenting the bases for its advice and recommendations on export cases. In our view, without

complete documentation, an accurate assessment cannot be made of the adequacy of Energy's process for reviewing export cases.

We also found that the ECOD did not have current written procedures for processing export cases. As we discussed earlier in our report, at one time Energy had internal procedures on "how to" process export cases. We believe that these procedures should be updated and utilized by ECOD export control analysts to process export cases.

We found inconsistencies in license application data for the same cases in the separate export licensing data bases maintained by Commerce and Energy. In view of the provisions of the Export Administration Act of 1979 that allow appeal of export license decisions, we believe that records maintained by agencies involved in export license consultations should be in agreement regarding the actions taken by all agencies involved in the consultation. We believe that inconsistencies in the Export Information System (EIS) and the Export Control Automated Support System (ECASS) could be detrimental to the government's position in responding to an appeal of a license application decision or a court challenge of the government's decision. We also believe that differences in the records maintained by the agencies involved in a license application decision call into question the integrity of the export licensing process. We further believe that changes in licensing data, which are not passed by Commerce to agencies reviewing license applications, could potentially result in improper referrals and erroneous licensing decisions, as well as lessen the value of any analyses and reports based upon the records.

We also found that Energy's intelligence capability may not be fully utilized in support of export case reviews. We believe that, although the Department has substantial resources to provide intelligence support to export case reviews, these resources may not be utilized as effectively as possible.

We found that Energy did not have the information maintained by Commerce and State regarding the final disposition of export license applications referred to Energy. We believe that by having information regarding the final disposition of export cases, Energy may enhance its ability to apply Part 778.4 criteria in determining what actions should be taken on export cases for commodities on the Nuclear Referral List (NRL) and for non-NRL commodities intended for a nuclear related end-use or end-user. We also believe that the lack of information concerning the final disposition of export cases may limit Energy's ability to provide assessments and analyses. This information may assist Energy national laboratories in providing

assessments and analyses of the nuclear capabilities and developments of proliferant countries. Additionally, the lack of information may limit Energy's ability to provide expert technical and analytical capability to other agencies within the intelligence community and to produce and disseminate foreign intelligence in support of the Department.

We also found that, because most of the Energy national laboratories lacked access to information available on all the export cases reviewed by Energy, Energy may not be receiving the maximum benefit of the technical and analytical capabilities of the laboratories in the review of export cases. We believe that the laboratories' lack of information on all export cases reviewed by Energy, which are contained in the EIS, may limit the laboratories' abilities to provide the required support to the Department. We also believe that the Proliferation Information Network System (PINS), once fully fielded, will provide laboratories the capability to have ready access to the export licensing information in the EIS.

In addition to the findings discussed above, we had an observation regarding the depth of expertise within ECOD to process export cases. At the time of our review, only two individuals in ECOD, the Export Control Supervisor and an export control analyst, were experienced in processing export cases. We learned that the Supervisor was subsequently detailed from ECOD, leaving only one individual experienced in processing cases. We believe that the lack of experienced analysts in ECOD and the lack of current procedures on "how to" process export cases could possibly lead to errors in the processing of export cases and a longer review cycle for cases referred to Energy. We also believe that current procedures for reviewing cases could help alleviate potential problems by assisting ECOD management in training new analysts.

SUMMARY OF RECOMMENDATIONS

We recommend that the Director, Office of Arms Control and Nonproliferation (AN-1):

1. Review and update records maintained by the Export Control Operations Division to ensure compliance with Energy records management directives and provisions of the Export Administration Act of 1979, as amended.
2. Ensure that the AN Records Inventory Disposition Schedule complies with the provisions of the Export Administration Act of 1979, as amended, regarding records retention.

3. Ensure that records are developed and maintained to document the Export Control Operations Division's factual and analytical basis for providing Commerce advice, recommendations, and decisions on export cases.
4. Update the procedures manual titled "Procedures/Policies United States Nuclear Export Control," and ensure the manual is used by analysts when processing export cases.
5. Assess the adequacy of the staffing level in the Export Control Operations Division for processing nuclear dual-use export cases.
6. Ensure timely completion of the fielding of the Proliferation Information Network System at the Energy national laboratories to allow them access to export case information in order to assist in Energy's processing of export cases.
7. Coordinate with the Office of Intelligence and the Energy national laboratories to ensure that Energy's intelligence capability is being fully utilized in the processing of export cases.
8. Coordinate with the Department of Commerce to ensure access by Energy to information within Commerce regarding the final disposition (i.e., approval/denial of license applications and the purchase and/or shipment of commodities) of export cases and develop guidelines for Energy's access to the information, if possible.
9. Coordinate with the Department of State to ensure access by Energy to information maintained by State regarding final disposition of export cases and develop guidelines for Energy's access to the information.
10. Ensure that Los Alamos National Laboratory completes its plan to obtain licensing decision information from Commerce.
11. Coordinate with the Department of Commerce to develop and implement procedures to ensure that export license application information in the ECASS data base maintained by Commerce and the EIS data base maintained by Energy are reconciled on a periodic basis.

MANAGEMENT COMMENTS

By memorandum dated June 11, 1993, the Director, Office of Intelligence and National Security, provided comments on our draft report. He stated that he agreed with the report's recommendations in general and that he was currently working toward improving the review and handling of the licensing process. He also stated that we may want to consider the comments that were provided by the Director, Office of Arms Control and Nonproliferation, in a memorandum dated March 31, 1993, to an earlier draft of our report.

We reviewed the March 31, 1993, comments provided by the Director, Office of Arms Control and Nonproliferation, to our earlier draft report. These comments have either been incorporated, where appropriate, in the report, or have been summarized as part of our report.

By memorandum dated June 7, 1993, the Acting Director, Office of Intelligence, provided minor administrative corrections and comments on our draft report. These comments have been incorporated, where appropriate, in the report. By memorandum dated April 6, 1993, the Acting Director provided comments on an earlier draft of our report. He generally agreed with the findings and recommendations. He also stated that he endorsed the IG's view "that DOE's intelligence resources in support of export control are not being maximized." We incorporated the Acting Director's comments in our report, where appropriate.

By memorandum dated July 1, 1993, the Acting Assistant Secretary for Defense Programs stated that he had no comment on our draft report.

SAMPLE CASES

The Quantitative Methods Division (QMD) of the Office of Inspector General, Defense, provided technical support in designing the samples used in our review. The following discussion shows the methodology used by the QMD to select the sample dual-use export cases to be analyzed. The sample cases cover the time period of January to June 1992.

QMD Sample Design

During the time period above, Commerce received approximately 15,000 dual-use cases. For sample design purposes, QMD assumed that about 6,000 of the 15,000 were referred to other agencies. To obtain a 6 percent precision at the 90 percent confidence level and a 10 percent expected rate of occurrence, Defense, Energy, and State had to sample a total of 180 export cases, or 60 cases each. Commerce provided Defense, Energy and State 100 statistically selected cases each, from which to select the 60 cases. The comparable expected precision for the three-agency sample of 180 was 4 percent.

Energy Case Selection Criteria

We used the following criteria to select 60 nuclear dual-use export cases from the 100 sample cases provided by Commerce.

The case was selected if the application met one of the following criterion:

- was reviewed by an Energy laboratory.
- showed significant differences between Energy and Commerce data base records.
- was returned to Commerce by Energy without action.
- involved items not on the Nuclear Referral List.
- was referred to an interagency dispute resolution body, e.g., the Subgroup on Nuclear Export Coordination (SNEC), the Advisory Committee on Export Policy (ACEP), the Export Administration Review Board (EARB), or the National Security Council (NSC).

- pertained to national security or foreign policy matters.
- appeared to involve routine case processing and included none of the criteria above.

To ensure our sample included cases from each of the criteria, we selected the 60 cases as follows:

- We discarded the four classified cases from the total number of cases, which left 96 cases.
- We identified those cases involving each of the above criteria. For example, 16 of the 96 cases were referred to the SNEC.
- From the total number of cases (96), we calculated the percentage of cases to be analyzed (60).
($60/96 = .625 = 62.5$ percent)
- For the cases that fell under two or more of the criteria, we selected a case based on only one of the criteria. For example, we selected 14 of the 16 available SNEC cases.
- We multiplied the number of selected cases under each criterion by .625. For example, because we selected 14 SNEC cases, we multiplied $14 \times .625 = 9$ cases. We made adjustments in fractions as needed.
- We randomly selected the number of cases determined above from the total number of cases under each of the criteria. For example, we randomly selected 9 cases from the 14 SNEC cases.
- By adding the cases under each criterion that were selected in this manner, we arrived at our sample of 60 cases.

Timeliness

The following matrix shows the data we used to determine the number of days Energy took to process and send each of the 60 sample cases back to Commerce.

CASE NO.	DATE DOE RECEIVED	DOE EC/S ACTION (1)	# DAYS UNTIL EC/S ACTION	DATE COMMERCE ENTERED ECASS	# DAYS DOE RECEIPT TO COMMERCE ECASS REVIEW
----451	1-07-92	1-22-92	15	1-24-92	17
678	2-21-92	3-08-92	16	3-10-92	18
785	1-13-92	1-23-92	10	1-31-92	18
875	1-21-92	1-29-92	8	2-03-92	13
902	1-21-92	6-11-92	142	3-13-92	52 >
----155	3-23-92	3-27-92	4	3-16-92	-7
195	1-23-92	2-06-92	14	2-13-92	21
340	2-07-92	2-26-92	19	2-28-92	21
565	1-24-92	2-06-92	13	2-26-92	33 >
695	1-27-92	2-10-92	14	2-20-92	24
710	1-29-92	2-12-92	14	2-20-92	22
865	1-28-92	2-10-92	13	1-31-92	3
940	2-10-92	2-26-92	16	2-28-92	18
----305	2-04-92	2-25-92	21	2-27-92	23
362	2-10-92	2-26-92	16	2-28-92	18
457	2-05-92	2-26-92	21	2-28-92	23
735	3-12-92	3-31-92	19	4-06-92	25
795	2-11-92	3-02-92	20	3-03-92	21
970 (S)	2-11-92	4-08-92	57	3-05-92	23
----158	2-24-92	3-08-92	13	3-10-92	15
375	2-21-92	3-08-92	16	3-10-92	18
428	3-18-92	4-02-92	15	4-30-92	43 >
644	3-02-92	3-14-92	12	4-16-92	45 *
----143 (S)	3-04-92	4-08-92	35	4-13-92	40 >
310	3-04-92	3-27-92	23	3-24-92	20
587	4-13-92	4-30-92	17	5-07-92	24
960	4-07-92	4-24-92	17	4-17-92	10
----139	3-18-92	4-02-92	15	3-31-92	13
565	3-25-92	4-10-92	16	4-13-92	19
755	3-25-92	4-10-92	16	4-13-92	19
935	3-27-92	4-16-92	20	4-10-92	16
----025	3-27-92	4-16-92	20	4-23-92	27
163 (S)	3-30-92	5-21-92	52	4-27-92	28
180	3-30-92	4-16-92	17	4-23-92	24
511 (S)	4-06-92	5-22-92	46	6-30-92	85 >
771	4-30-92	5-01-92	1	5-04-92	4
900	4-07-92	4-24-92	17	4-29-92	22
944	4-07-92	4-24-92	17	4-29-92	22
998 (S)	4-09-92	4-24-92	15	4-29-92	20

CASE NO.	DATE DOE RECEIVED	DOE EC/S ACTION (1)	# DAYS UNTIL EC/S ACTION	DATE COMMERCE ENTERED ECASS	# DAYS DOE RECEIPT TO COMMERCE ECASS REVIEW
----111	5-20-92	6-11-92	22	6-16-92	27
307	4-20-92	5-04-92	14	5-07-92	17
544 (S)	4-16-92	5-22-92	36	5-21-92	35 >
719	6-19-92	6-30-92	11	7-13-92	24
768 (S)	4-22-92	5-22-92	30	5-21-92	29
----305	4-27-92	5-22-92	25	6-18-92	52 >
326 (S)	4-28-92	6-12-92	45	6-08-92	41 >
510 (S)	4-29-92	6-05-92	37	5-05-92	6
715	5-04-92	6-08-92	35	6-16-92	43 >
625	4-30-92	6-05-92	36	6-16-92	47 >
752 (S)	7-31-92	7-31-92	0	7-29-92	-2
----015	5-20-92	6-11-92	22	6-16-92	27
236 (S)	5-20-92	6-11-92	22	6-15-92	26
----675	6-04-92	6-22-92	18	6-22-92	18
597	6-04-92	6-22-92	18	6-22-92	18
----096 (S)	6-08-92	7-10-92	32	7-02-92	24
381	6-16-92	6-29-92	13	6-30-92	14
605	6-16-92	6-29-92	13	7-06-92	20
851 (S)	6-19-92	7-31-92	42	7-27-92	38 >
855	6-30-92	7-07-92	7	7-13-92	13
----478	6-30-92	7-07-92	7	7-13-92	13

SUMMARY OF NUMBER OF DAYS
DOE RECEIPT OF CASES/TO DOC ECASS

DAYS	Below 31	31-60	61-90
CASES	49*	10	1

NOTES: (1) FOR MOST OF THESE CASES THE DATES IN THIS COLUMN CANNOT BE ACCURATELY DETERMINED. MOST OF THE CASES WERE PROCESSED ON THE OLD EIS COMPUTER WHICH DID NOT HAVE A FIELD FOR WHEN THE CASES WERE SIGNED OFF BY THE EXPORT CONTROL SUPERVISOR (EC/S). THE REMAINING CASES WERE PROCESSED ON THE NEW EIS COMPUTER THAT CAN ACCURATELY DETERMINE THE DATE WHEN THE EC/S SIGNED OFF THE CASES. IN OUR VIEW, THIS SITUATION DOES NOT AFFECT THE NUMBER OF DAYS FROM THE DATE DOE (ENERGY) RECEIVED THE CASES UNTIL THE DATE COMMERCE REVIEWED ENERGY'S COMMENTS.

(S) CASE REFERRED TO THE SNEC

> GREATER THAN THE 30-DAY REQUIREMENT FOR PROVIDING COMMERCE A RECOMMENDATION

* COMMERCE SAID THEY RECEIVED RECOMMENDATION 3/19/92 BUT FAILED TO ENTER INTO ECASS UNTIL 4/16/92 - CASE WAS NOT LATE. THE FIGURE IN THE SUMMARY BOX INCLUDES CASE NUMBER ----644.

Individual Case Analysis

The following matrix contains a limited analysis of each of the 60 sample export cases.

CASE NO.	DATE DOC TO DOE	DATE DOE RECEIVED	DOE EC/S APPROVED	DATE DOC REVIEWED	COMMODITY	NRL Y/N	SPC C'TRY LIST Y/N	APPROP RF'D Y/N	DOE REC	C'TRY E-USER
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----451	1-06-92	1-07-92	1-22-92	1-24-92	-----	Y	N	?	C	-----
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COMMENT: DATA BASES DIFFER. THE COMMERCE EXPORT CONTROL AUTOMATED SUPPORT SYSTEM (ECASS) SHOWS IN LICENSING OFFICER'S (LO) COMMENTS TO DEFENSE THAT THE LO REFERRED THE CASE TO ENERGY IN ERROR. ECASS, THEREFORE, SHOWS THAT ENERGY RETURNED THE CASE WITHOUT ACTION. THE ENERGY EXPORT INFORMATION SYSTEM (EIS), ON THE OTHER HAND, SHOWS THAT ENERGY MAILED TO COMMERCE ITS RECOMMENDATION OF "NO OBJECTION TO APPROVAL PROVIDED CONDITIONS ARE IMPOSED" (ITEM WAS ON THE NUCLEAR REFERRAL LIST (NRL)). NEITHER DATA BASE SHOWS WHY THE LO THOUGHT THAT THE CASE HAD BEEN "REFERRED . . . IN ERROR."

678	2-20-92	2-21-92	3-08-92	3-10-92	-----	N	Y	Y	R	-----
-----	---------	---------	---------	---------	-------	---	---	---	---	-------

COMMENT: ECASS SHOWS THAT THE APPLICATION COMMODITY WAS A GENERAL DESTINATION (G-DEST) ITEM THAT DOES NOT REQUIRE A VALIDATED LICENSE AND IS ELIGIBLE FOR A GENERAL LICENSE. COMMERCE SENT THE CASE TO ENERGY, HOWEVER, BECAUSE THE END-USER WAS A NUCLEAR POWER PLANT. EIS SHOWS THAT ENERGY HAD NO OBJECTION TO THE APPLICATION BECAUSE THE ITEM WAS A G-DEST COMMODITY.

KEY:

1. DOC is Commerce; DOE is Energy.
2. "EC/S" means the Export Control Supervisor in the Export Control Operations Division, DOE.
3. "SPC C'TRY" is Special Country; "C'TRY E-USER" is Country of the End-user (end destination of item.)
4. "DOE Recommendation" Column Codes:
 - a. "C"--no objection to approval (Commerce designates in ECASS as "approve with conditions")
 - b. "R"--return without action to the applicant
 - c. "D"--recommend or concur in denial
 - d. "I"--request for information
 - e. "NR"--no basis for referral to DOE
 - f. "S"--refer to the SNEC
5. "S" after the case number indicates a Subgroup on Nuclear Export Coordination (SNEC) case.
6. Specific export license data, such as complete case number, country, and commodity, have been deleted.

CASE NO.	DATE DOC TO DOE	DATE DOE RECEIVED	DOE EC/S APPROVED	DATE DOC REVIEWED	COMMODITY	NRL Y/N	SPC C'TRY LIST Y/N	APPROP RF'D Y/N	DOE REC	C'TRY E-USER
785	1-10-92	1-13-92	1-23-92	1-31-92	-----	Y	Y	Y	C	-----
<u>COMMENT: THE DATA BASES DIFFER. EXPORT CONTROL CLASSIFICATION NUMBERS (ECCNs) DIFFER. NEITHER DATA BASE SHOWS WHY THE ECCNs DIFFER.</u>										
875	1-16-92	1-21-92	1-23-92	2-03-92	-----	Y	N	Y	C	-----
902	1-16-92	1-21-92	6-11-92	3-13-92	-----	Y	Y	Y	D	-----
<u>COMMENT: THE MISSILE TECHNOLOGY CONTROL GROUP REVIEWED THIS CASE LATE MARCH 1992. ECASS SHOWS THAT COMMERCE KEPT THE CASE FROM MARCH UNTIL EARLY JUNE 1992, BUT DOES NOT SHOW WHY. NEITHER DATA BASE SHOWS WHY THE ENERGY EC/S APPROVED THE ENERGY RECOMMENDATION IN JUNE. BOTH DATA BASES SHOW THAT ENERGY RECOMMENDED DENIAL BECAUSE OF U.S. NON-PROLIFERATION POLICY.</u>										
----155	1-22-92	3-23-92	3-27-92	3-16-92	-----	Y	Y	Y	C	-----
<u>COMMENT: COMMERCE REFERRED THIS CASE THREE TIMES TO ENERGY. ENERGY REQUESTED MORE SPECIFIC END-USE INFORMATION THE FIRST TWO TIMES. ECASS SHOWS THAT THE OPERATING COMMITTEE (OC) REVIEWED THE CASE MID-TO-LATE MARCH 1992.</u>										
195	1-22-92	1-23-92	2-06-92	2-13-92	-----	Y	Y	Y	I	-----
<u>COMMENT: THE DATA BASES DIFFER (DIFFERENT ECCNs). ECASS SHOWS THAT THE LO CHANGED THE ECCN ON 2-21-92 BASED ON A PHONE CALL WITH THE APPLICANT. EIS SHOWS THAT ENERGY REQUESTED ADDITIONAL INFORMATION AND SUGGESTED THAT THE LO AND APPLICANT VERIFY THE ECCN. NEITHER DATA BASE SHOWS THAT COMMERCE INFORMED ENERGY OF THE CHANGE IN ECCN. ALSO, ECASS SHOWS THAT COMMERCE APPROVED THE APPLICATION, CITING A STANDARD ENERGY RECOMMENDATION. EIS DOES NOT SHOW THAT ENERGY PROVIDED THE RECOMMENDATION.</u>										

CASE NO.	DATE DOC TO DOE	DATE DOE RECEIVED	DOE EC/S APPROVED	DATE DOC REVIEWED	COMMODITY	NRL Y/N	SPC C'TRY LIST Y/N	APPROP RF'D Y/N	DOE REC	C'TRY E-USER
340	2-06-92	2-07-92	2-26-92	2-28-92	-----	Y	N	Y	C	-----
565	1-23-92	1-24-92	2-06-92	2-26-92	-----	Y	Y	Y	C	-----
<u>COMMENT: NEITHER DATA BASE SHOWS WHY IT TOOK 20 DAYS AFTER EC/S APPROVAL FOR COMMERCE TO RECEIVE ENERGY'S RECOMMENDATION.</u>										
695	1-24-92	1-27-92	2-10-92	2-20-92	-----	Y	Y	Y	C	-----
710	1-28-92	1-29-92	2-12-92	2-20-92	-----	Y	N	Y	C	-----
865	1-27-92	1-28-92	2-10-92	1-31-92	-----	Y	N	?	C	-----
<u>COMMENT: THE DATA BASES DIFFER. LO STATED THAT THE APPLICATION WAS REFERRED TO ENERGY IN ERROR BECAUSE OF THE COMMODITY'S DESTINATION. ECASS DOES NOT SHOW WHAT AUTHORITY THE LO USED TO MAKE THIS DETERMINATION. ECASS SHOWS THAT ENERGY, THEREFORE, RETURNED THE CASE WITHOUT ACTION. EIS, HOWEVER, SHOWS THAT ENERGY SENT TO COMMERCE ITS RECOMMENDATION OF "NO OBJECTION TO APPROVAL PROVIDED CONDITIONS ARE IMPOSED" (ITEM WAS A NRL COMMODITY).</u>										
940	2-07-92	2-10-92	2-26-92	2-28-92	-----	Y	N	Y	C	-----
----305	2-03-92	2-04-92	2-25-92	2-27-92	-----	Y	Y	Y	C	-----
362	2-07-92	2-10-92	2-26-92	2-28-92	-----	N	N	N	NR	-----
<u>COMMENT: ECASS SHOWS THAT THE LO BELIEVED THE COMMODITY WAS TECHNICALLY A "NUCLEAR END-USE" ITEM DESPITE NOT BEING ON THE NRL. EIS SHOWS THAT ENERGY STATED COMMERCE HAD NO BASIS FOR REFERRING THE CASE TO ENERGY.</u>										
457	2-04-92	2-05-92	2-26-92	2-28-92	-----	Y	N	Y	C	-----
735	3-06-92	3-12-92	3-31-92	4-06-92	-----	Y	N	Y	C	-----
795	2-10-92	2-11-92	3-02-92	3-03-92	-----	Y	Y	Y	C	-----

CASE NO.	DATE DOC TO DOE	DATE DOE RECEIVED	DOE EC/S APPROVED	DATE DOC REVIEWED	COMMODITY	NRL Y/N	SPC C'TRY LIST Y/N	APPROP RF'D Y/N	DOE REC	C'TRY E-USER
970 S	2-11-92	2-11-92	4-08-92	3-05-92	-----	Y	Y	Y	S	-----
<u>COMMENT: ECASS SHOWS THAT ENERGY REFERRED THE CASE TO THE SNEC.</u>										
-----158	2-22-92	2-24-92	3-08-92	3-10-92	-----	N	N	N	NR	-----
<u>COMMENT: COMMERCE IMPROPERLY REFERRED THIS CASE TO ENERGY. BOTH DATA BASES SHOW THAT THE CASE HAD NO BASIS FOR REFERRAL TO ENERGY BECAUSE THE ITEM WAS A G-DEST COMMODITY THAT WAS ELIGIBLE FOR A GENERAL LICENSE.</u>										
375	2-19-92	2-21-92	3-08-92	3-10-92	-----	Y	Y	Y	D	-----
<u>COMMENT: THE DATA BASES DIFFER ON THE ECCN OF ONE OF THE TWO [COMMODITIES] ON THE APPLICATION. NEITHER DATA BASE SHOWS WHY THE ECCNs DIFFER. EIS SHOWS THAT ENERGY RECOMMENDED DENIAL OF THE APPLICATION BASED UPON [COUNTRY] FOREIGN POLICY. ECASS SHOWS THAT COMMERCE REJECTED THE APPLICATION BECAUSE OF [COUNTRY] FOREIGN POLICY AND NATIONAL SECURITY REASONS.</u>										
428	3-13-92	3-18-92	4-02-92	4-30-92	-----	N	Y	Y	C	-----
<u>COMMENT: THE DATA BASES DIFFER. EIS SHOWS ENERGY PROVIDED A RECOMMENDATION ELECTRONICALLY ON 4-6-92. ECASS SHOWS THAT COMMERCE DID NOT RECEIVE ENERGY'S RECOMMENDATION SENT ELECTRONICALLY. ECASS SHOWS THAT ENERGY MADE A TELEPHONIC RECOMMENDATION ON 4-16-29.</u>										
644	2-27-92	3-02-92	3-14-92	4-16-92	-----	Y	N	Y	C	-----
<u>COMMENT: THE DATA BASES DIFFER. EIS SHOWS THAT ENERGY PROVIDED A RECOMMENDATION ELECTRONICALLY ON 3-19-92. ECASS SHOWS THAT COMMERCE DID NOT RECEIVE THE RECOMMENDATION SENT ELECTRONICALLY. ECASS SHOWS THAT ENERGY MADE A TELEPHONIC RECOMMENDATION ON 4-16-92. LO NOTES IN ECASS SHOW THAT COMMERCE HAD NOT ENTERED ENERGY'S ELECTRONIC COMMENT INTO ECASS.</u>										

CASE NO.	DATE DOC TO DOE	DATE DOE RECEIVED	DOE EC/S APPROVED	DATE DOC REVIEWED	COMMODITY	NRL Y/N	SPC C'TRY LIST Y/N	APPROP RF'D Y/N	DOE REC	C'TRY E-USER
----143 S	3-03-92	3-04-92	4-08-92	4-13-92	-----	Y	N	Y	C	-----
<u>COMMENT: ECASS SHOWS THAT COMMERCE REFERRED THE CASE TO THE SNEC.</u> <u>EIS SHOWS THAT LOS ALAMOS NATIONAL LABORATORY REVIEWED THE CASE.</u>										
310	3-03-92	3-04-92	3-27-92	3-24-92	-----	Y	N	Y	C	-----
<u>COMMENT: ECASS SHOWS THAT COMMERCE CALLED ENERGY FOR A VERBAL</u> <u>RECOMMENDATION ON 3-24-92. EIS SHOWS THAT ENERGY FOLLOWED UP THE</u> <u>VERBAL RECOMMENDATION WITH A LETTER ON OR ABOUT 3-27-92.</u>										
587	4-10-92	4-13-92	4-30-92	5-07-92	-----	Y	N	Y	C	-----
960	4-06-92	4-07-92	4-24-92	4-17-92	-----	N	Y	Y	NR	-----
<u>COMMENT: ECASS SHOWS THAT COMMERCE REFERRED THE CASE TO ENERGY</u> <u>BECAUSE OF NUCLEAR NONPROLIFERATION CONCERNS. ECASS SHOWS THAT</u> <u>COMMERCE RECLASSIFIED THE ORIGINAL ECCN TO A G-DEST COMMODITY ON</u> <u>4-17-92. EIS SHOWS THE ECCN CHANGE WAS LEFT BY MESSAGE ON ENERGY</u> <u>VOICE MAIL PER ECASS. BOTH DATA BASES SHOW THAT NO ENERGY</u> <u>RECOMMENDATION WAS REQUIRED ON THE APPLICATION FOR THE NEW ECCN.</u>										
----139	3-13-92	3-18-92	4-02-92	3-31-92	-----	Y	N	Y	C	-----
<u>COMMENT: ECASS SHOWS THAT COMMERCE CALLED ENERGY FOR A VERBAL</u> <u>RECOMMENDATION ON 3-31-92. EIS SHOWS THAT ENERGY FOLLOWED UP</u> <u>THE VERBAL RECOMMENDATION WITH A LETTER ON OR ABOUT 4-02-92.</u>										
565	3-19-92	3-25-92	4-10-92	4-13-92	-----	Y	Y	Y	C	-----
755	3-20-92	3-25-92	4-10-92	4-13-92	-----	Y	N	Y	C	-----

CASE NO.	DATE DOC TO DOE	DATE DOE RECEIVED	DOE EC/S APPROVED	DATE DOC REVIEWED	COMMODITY	NRL Y/N	SPC C'TRY LIST Y/N	APPROP RF'D Y/N	DOE REC	C'TRY E-USER
935	3-24-92	3-27-92	4-16-92	4-10-92	-----	Y	N	Y	C	-----
<u>COMMENT: THE DATA BASES DIFFER. ECASS SHOWS THAT COMMERCE WITHDREW THE CASE FROM ENERGY BECAUSE ENERGY "INDICATED" THAT THEY HAD PROVIDED COMMERCE A DELEGATION OF AUTHORITY LETTER ON 4-8-92 FOR 5 "FULL 5K" COUNTRIES. EIS SHOWS THAT ENERGY MAILED COMMERCE A RECOMMENDATION OF "NO OBJECTION TO APPROVAL PROVIDED CONDITIONS ARE IMPOSED."</u>										
----025	3-24-92	3-27-92	4-16-92	4-23-92	-----	Y	Y	Y	C	-----
163 S	3-26-92	3-30-92	5-21-92	4-27-92	-----	Y	N	Y	S	-----
<u>COMMENT: ECASS SHOWS THAT ENERGY REFERRED THE CASE TO THE SNEC.</u>										
180	3-26-92	3-30-92	4-16-92	4-23-92	-----	Y	N	Y	C	-----
511 S	3-31-92	4-06-92	5-22-92	6-30-92	-----	Y	Y	Y	S	-----
<u>COMMENT: NEITHER ECASS NOR EIS SHOWS WHY COMMERCE RECEIVED ENERGY'S RECOMMENDATION (WAS MAILED PER EIS) 39 DAYS AFTER EC/S APPROVAL. ECASS SHOWS THAT ENERGY REFERRED THE CASE TO THE SNEC. EIS SHOWS THAT LOS ALAMOS NATIONAL LABORATORY REVIEWED THE CASE.</u>										
771	4-02-92	4-30-92	5-01-92	5-04-92	-----	N	Y	Y	C	-----
<u>COMMENT: BOTH ECASS AND EIS SHOW THAT COMMERCE REFERRED THE CASE TO ENERGY TWICE BECAUSE ENERGY REQUESTED MORE INFORMATION.</u>										
900	4-06-92	4-07-92	4-24-92	4-29-92	-----	Y	N	Y	C	-----
944	4-06-92	4-07-92	4-24-92	4-29-92	-----	Y	N	Y	C	-----

CASE NO.	DATE DOC TO DOE	DATE DOE RECEIVED	DOE EC/S APPROVED	DATE DOC REVIEWED	COMMODITY	NRL Y/N	SPC C'TRY LIST Y/N	APPROP RF'D Y/N	DOE REC	C'TRY E-USER
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998 S	4-08-92	4-09-92	4-24-92	4-29-92	-----	Y	Y	Y	C	-----
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COMMENT: THE DATA BASES DIFFER. EIS SHOWS THAT THE CASE WENT TO THE SNEC. ECASS SHOWS THAT A SNEC REVIEW OF THE CASE WAS NOT NEEDED.

----111	5-07-92	5-20-92	6-11-92	6-16-92	-----	N	N	N	NR	-----
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COMMENT: THE DATA BASES DIFFER. ECASS SHOWS THAT COMMERCE REFERRED THE CASE TO ENERGY BECAUSE THE LO THOUGHT THAT THE "COMMODITY'S TECHNOLOGY" MIGHT HAVE BEEN OF INTEREST TO ENERGY. COMMENTS IN THE ENERGY SECTION OF ECASS SHOW THAT ENERGY SUBSEQUENTLY "RECOMMENDED APPROVAL WITH CONDITIONS." THE LO NOTES IN ECASS, HOWEVER, SHOW THAT THE LO WITHDREW THE CASE FROM ENERGY. EIS SHOWS THAT NO REFERRAL WAS NEEDED AND THAT ENERGY MADE NO RECOMMENDATION. NEITHER DATA BASE EXPLAINS WHY THE CASE TOOK 13 DAYS TO GET FROM COMMERCE TO ENERGY.

307	4-18-92	4-20-92	5-04-92	5-07-92	-----	Y	N	Y	C	-----
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544 S	4-15-92	4-16-92	5-22-92	5-21-92	-----	Y	N	Y	S	-----
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COMMENT: ECASS SHOWS THAT ENERGY REFERRED THE CASE TO THE SNEC.

719	6-19-92	6-19-92	6-30-92	7-13-92	-----	Y	Y	Y	C	-----
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COMMENT: THE DATA BASES DIFFER. EIS SHOWS THAT ENERGY PROVIDED COMMERCE ITS RECOMMENDATION OF "NO OBJECTION TO APPROVAL PROVIDED CONDITIONS ARE IMPOSED." ECASS SHOWS THIS ENERGY COMMENT. ECASS, HOWEVER, ALSO SHOWS THAT COMMERCE REFERRED THE CASE TO THE OC ON 7-17-92. ALL OC AGENCIES, TO INCLUDE ENERGY, VOTED TO DENY THE CASE BECAUSE OF "DIVERSION RISKS TO USES WHICH RAISE NATIONAL SECURITY CONCERNS." EIS DOES NOT SHOW THAT THE CASE WENT TO THE OC OR THAT ENERGY CHANGED ITS POSITION ON THE CASE AT THE OC.

CASE NO.	DATE DOC TO DOE	DATE DOE RECEIVED	DOE EC/S APPROVED	DATE DOC REVIEWED	COMMODITY	NRL Y/N	SPC LIST	C'TRY Y/N	APPROP RF'D Y/N	DOE REC	C'TRY E-USER
768 S	4-21-92	4-22-92	5-22-92	5-21-92	-----	Y	Y		Y	S	-----
<u>COMMENT: ECASS SHOWS THAT ENERGY REFERRED THE CASE TO THE SNEC.</u>											
----305	4-24-92	4-27-92	5-22-92	6-18-92	-----	Y	Y		Y	C	-----
<u>COMMENT: THE DATA BASES DIFFER. ECASS SHOWS THAT ENERGY RETURNED THE CASE WITH NO ACTION BECAUSE THE COMMODITY WAS ELIGIBLE FOR A G-DEST LICENSE. EIS SHOWS THAT ENERGY SENT ITS RECOMMENDATION OF "NO OBJECTION TO APPROVAL PROVIDED CONDITIONS ARE IMPOSED" TO COMMERCE. THE ECCNs DIFFER. ECASS SHOWS THAT THE OFFICE OF TECHNOLOGY AND POLICY (OTP), COMMERCE, RECLASSIFIED THE COMMODITY, I.E. CHANGED THE ECCN TO A G-DEST LICENSE COMMODITY ONE MONTH AFTER COMMERCE SENT THE CASE TO ENERGY. NEITHER DATA BASE SHOWS WHY COMMERCE DID NOT RECEIVE ENERGY'S RECOMMENDATION UNTIL 27 DAYS AFTER EC/S APPROVAL.</u>											
326 S	4-27-92	4-28-92	6-12-92	6-08-92	-----	Y	Y		Y	S	-----
<u>COMMENT: ECASS SHOWS THAT ENERGY REFERRED THE CASE TO THE SNEC.</u>											
510 S	4-28-92	4-29-92	6-05-92	5-05-92	-----	Y	Y		Y	C	-----
<u>COMMENT: ECASS SHOWS THAT COMMERCE WALKED-IN THE CASE TO THE SNEC.</u>											
715	5-01-92	5-04-92	6-08-92	6-16-92	-----	Y	Y		Y	C	-----
<u>COMMENT: THE DATA BASES DIFFER. ECASS SHOWS THAT ENERGY RETURNED THE CASE WITH NO ACTION BECAUSE THE COMMODITY WAS ELIGIBLE FOR A G-DEST LICENSE. EIS SHOWS THAT ENERGY MAILED ITS RECOMMENDATION OF "NO OBJECTION TO APPROVAL PROVIDED CONDITIONS ARE IMPOSED" TO COMMERCE. THE ECCNs DIFFER. ECASS SHOWS THAT OTP RECLASSIFIED THE COMMODITY TO A G-DEST LICENSE THREE WEEKS AFTER COMMERCE SENT THE CASE TO ENERGY.</u>											
625	4-29-92	4-30-92	6-05-92	6-16-92	-----	Y	Y		Y	C	-----

CASE NO.	DATE DOC TO DOE	DATE DOE RECEIVED	DOE EC/S APPROVED	DATE DOC REVIEWED	COMMODITY	NRL Y/N	SPC C'TRY LIST Y/N	APPROP RF'D Y/N	DOE REC	C'TRY E-USER
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752 S	5-05-92	7-31-92	7-31-92	7-29-92	-----	Y	N	Y	C	-----
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COMMENT: EIS AND ECASS SHOW THAT ENERGY REQUESTED ADDITIONAL INFORMATION. NEITHER DATA BASE SHOWS THAT ENERGY RECEIVED ADDITIONAL INFORMATION. COMMERCE ESCALATED THE CASE TO THE SNEC BECAUSE OF NATIONAL SECURITY DIRECTIVE (NSD) 53 TIME LIMITS.

----015	5-07-92	5-20-92	6-11-92	6-16-92	-----	Y	Y	Y	C	-----
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COMMENT: THE DATA BASES DIFFER. ECASS SHOWS THAT ENERGY RETURNED THE CASE WITH NO ACTION BECAUSE THE COMMODITY WAS ELIGIBLE FOR A G-DEST LICENSE. EIS SHOWS THAT ENERGY MAILED ITS RECOMMENDATION OF "NO OBJECTION TO APPROVAL PROVIDED CONDITIONS ARE IMPOSED" TO COMMERCE. THE ECCNs DIFFER. ECASS SHOWS THAT OTP RECLASSIFIED THE COMMODITY TO A G-DEST LICENSE TWO WEEKS AFTER COMMERCE SENT THE CASE TO ENERGY.

236 S	5-07-92	5-20-92	6-11-92	6-15-92	-----	Y	Y	Y	S	-----
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COMMENT: ECASS SHOWS THAT ENERGY REFERRED THE CASE TO THE SNEC.

----675	5-29-92	6-04-92	6-22-92	6-22-92	-----	Y	N	Y	C	-----
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597	6-02-92	6-04-92	6-22-92	6-22-92	-----	Y	N	Y	C	-----
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----096 S	6-05-92	6-08-92	7-10-92	7-20-92	-----	Y	Y	Y	S	-----
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COMMENT: ECASS SHOWS THAT ENERGY REFERRED THE CASE TO THE SNEC.

381	6-10-92	6-16-92	6-29-92	6-30-92	-----	Y	Y	Y	R	-----
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COMMENT: EIS SHOWS THAT ENERGY BELIEVED "IT IS EXTREMELY UNLIKELY THAT THE [COMMODITY] WOULD BE APPROVED FOR [COUNTRY]." ECASS SHOWS THAT COMMERCE RETURNED THE CASE TO THE APPLICANT PER THE APPLICANT'S REQUEST.

CASE NO.	DATE DOC TO DOE	DATE DOE RECEIVED	DOE EC/S APPROVED	DATE DOC REVIEWED	COMMODITY	NRL Y/N	SPC C'TRY LIST Y/N	APPROP RF'D Y/N	DOE REC	C'TRY E-USER
605	6-15-92	6-16-92	6-29-92	7-06-92	-----	Y	N	Y	C	-----
851 <u>S</u>	6-18-92	6-19-92	7-31-92	7-27-92	-----	Y	Y	Y	S	-----
<u>COMMENT: ECASS SHOWS THAT ENERGY REFERRED THE CASE TO THE SNEC.</u>										
855	6-30-92	6-30-92	7-07-92	7-13-92	-----	Y	N	Y	C	-----
----478	6-30-92	6-30-92	7-07-92	7-13-92	-----	Y	N	Y	C	-----

SUMMARY OF DOE RECOMMENDATIONS

<u>Code</u>	<u>Number</u>	<u>Percentage</u>
C	42	70
R	2	3
D	2	3
I	1	2
NR	4	7
S	9	15

"DOE Recommendation" Column Code: *

- "C" - no objection to approval (Commerce designates in ECASS as "approve with conditions")
- "R" - return without action to the applicant
- "D" - recommend or concur in denial
- "I" - request for information
- "NR" - no basis for referral to DOE
- "S" - refer to the SNEC

* The EIS export case records that we reviewed contain a "Recommendation" data label. In commenting on a draft of this report, AN management stated that Energy makes numerous recommendations on export cases to Commerce. The most frequently used recommendation is "no objection to approval." Energy also concurs with or recommends approval or denial, defers to another agency, returns a case without action, and/or provides comments to Commerce.

APPENDIX B

LAWS AND REGULATIONS

Public Law 96-72, Export Administration Act of 1979 (EAA), dated September 29, 1979, and Public Law 99-64, Export Administration Amendments Act of 1985, dated July 12, 1985:

1. Section 3, the EAA declared that U.S. policy:

- a. Encourages trade with all countries with which the U.S. has diplomatic or trading relations, except those countries with which such trade has been determined by the President to be against the national interest.
- b. Gives high priority to export trade by U.S. citizens and not control export trade except as specified in paragraph 1.c. below.
- c. Uses export controls only after full consideration of the impact on the U.S. economy and only to the extent necessary to restrict the export of goods and technologies:
 - (1) which would make a significant contribution to the military potential of any country or combination of countries that would prove detrimental to the national security of the U.S.;
 - (2) where necessary to further significantly U.S. foreign policy or to fulfill U.S. international obligations;
 - (3) where necessary to protect the domestic economy from excessive drain of scarce materials and to reduce the serious inflationary impact of foreign demand (goods only).

Public Law 95-242, Nuclear Non-Proliferation Act of 1978 (NNPA), dated March 10, 1978, and Public Law 99-661, National Defense Authorization Act for Fiscal Year 1987, which includes an amendment to the NNPA, dated November 14, 1986:

1. The NNPA declared that U.S. policy:

- a. Pursues the establishment of more effective international controls over the transfer and use of nuclear equipment, materials, and technology for peaceful purposes in order to prevent proliferation.

- b. Establishes procedures to facilitate timely processing of export licenses of nuclear reactors and fuel to nations that adhere to effective nonproliferation policies.
- 2. To implement the policies stated above, the U.S. Government enacted the NNPA to ensure effective controls by the U.S. over its exports of nuclear materials, equipment and technology. The NNPA defined nuclear materials and equipment to include "components, items, or substances determined to have significance for nuclear explosive purposes."

The Export Administration Regulations (EAR):

- 1. Part 778, "Proliferation Controls," of the EAR defined the types of export transactions governed by U.S. policy concerning the nonproliferation of nuclear weapons and explosive devices.
- 2. Part 778 implements policies set out in Sections 3(2)(A) and 3(2)(B) of the EAA and Section 309(c) of the NNPA, which are:
 - a. To exercise the necessary vigilance from the standpoint of the exported commodities' significance to U.S. national security.
 - b. To further significantly U.S. foreign policy or to fulfill U.S. international obligations.
 - c. To maintain controls over commodities because of their significance for nuclear explosive purposes.

Public Law 94-329, International Security Assistance and Arms Export Control Act of 1976 (AECA), dated June 30, 1976:

- 1. The AECA declared that U.S. policy:
 - a. Exerts leadership to bring about arrangements for reducing international trade in implements of war.
 - b. Administers programs and procedures governing the export of defense articles and services to carry out the reduction of trade in implements of war.
- 2. To implement the above policies, the AECA authorized the President to designate certain items, considered as defense articles and services, to be controlled for export purposes. The controlled items constitute the Munitions List.

3. Per Executive Order 11958, the President delegated the statutory authority of the AECA, to control certain defense articles and services for export purposes, to the Secretary of State.

ENERGY'S EXPORT INFORMATION SYSTEM

System Description

Until May 1992, the Office of Export Control and International Safeguards (AN-30) automated system for processing export license applications, the Export Information System (EIS), centered around a Hewlett Packard (HP) 3000 Computer. The Assistant Manager for Systems, Critical Technology Group (IT-3), International Technology Division (IT), Los Alamos National Laboratory (LANL), said that the HP 3000 lacked the capability to process information quickly and served only as a "file cabinet" for export license information. According to the Assistant Manager for Systems, IT-3, the Director, AN-30, therefore, was dissatisfied with the HP 3000. The Director, AN-30, concurred with the Assistant Manager's statement. The Director, AN-30, said that because of technological limitations with the HP 3000, he decided to acquire new hardware and software to support AN-30's efforts in the areas of export control and nonproliferation.

The centerpiece of the new EIS is a SUN Spark Model 470 Server with 64 megabyte internal capability, expandable to 20 gigabyte capability, if needed. Running on the SUN operating system BSD 4.3 software, the SUN 470 stores and processes export licensing information. The EIS uses a HP Laser Jet Series II printer.

The EIS contains two major softwares that process license applications. INGRIS provides the capability to process structured data obtained from a license application. INGRIS, however, does not provide the capability for a "full search," text retrieval system. IT-3, therefore, installed TOPIC in the EIS to enter and retrieve unstructured information. This information is obtained via a word search capability. An example of such information would be an excerpt from intelligence information.

The SUN server for this system is located in the IT Division, Technical Area 3, LANL. This area is approved for open storage of classified material up to and including Secret/Restricted Data (S/RD). The user operating positions for this system are located within AN-30, the Forrestal Building, Headquarters, Energy. The connection between the SUN server at LANL and AN-30 is via the AT&T model 1900 STU-III data encryption device approved by the National Security Agency as a type 1 encryption device using the Secure Access Control System. All personnel who have routine physical or on-line access to the system server have Q clearances.

Current hardware limitations in the EIS prevent transmittal of specifications and drawings between IT-3 and AN-30. IT-3, however, is testing new optical scanners to overcome this limitation.

Electronic Transfer of Cases

To refer export cases to Energy, Commerce transmits the applications via the Export Control Automated Support System (ECASS) to IT-3, LANL, the site of Energy's EIS hardware. Using an IBM personal computer clone, IT-3 captures the cases, which are unclassified, on a three-inch diskette. Subsequently, IT-3 initializes the IBM clone with a classified data pack, then transfers the cases into the EIS. As stated previously, the EIS can process classified information.

After IT-3 transfers the export cases into the EIS, the Export Control Operations Division (ECOD) analysts can process the cases in order to develop recommendations to send to Commerce. Once ECOD analysts develop the recommendations, an ECOD supervisor reviews and, subsequently, queues the cases to IT-3 for retransmission to Commerce. IT-3 copies the cases onto a three-inch diskette, declassifies any pertinent information, and retransmits the ECOD recommendations to ECASS via the IBM clone.

Commerce and Energy cannot transmit some export licensing information electronically between the two Departments. ECASS cannot be used to process or store classified information. Additionally, communication limitations and the inability of ECASS software to handle image type information prevent storage and transmittal of large diagrams and other oversized documents such as technical specifications. To send these types of information to each other, Commerce and Energy use both classified and unclassified telephones, mail, and messengers.

Access/Computer Security

Only four individuals at LANL, all within IT, have authorization to sign on to ECASS: the Group Leader, IT-3; the Section Leader, Technology Security, IT-3; the Assistant Manager for Systems, IT-3; and one of the IT-3 analysts. None of these individuals, however, have direct access to the Commerce ECASS data base.

IT-3 users of ECASS create their own passwords. The system provides a "checker" package that requires a specific length to the password and requires changing the password every 60 days.

According to the Assistant Manager for Systems, IT-3, LANL, the EIS and the ECASS differ in their capabilities to secure

operations. The EIS contains the necessary hardware and software to secure data within the system. The ECASS, however, lacks the hardware necessary to secure information transmitted over open telephone lines. The Assistant Manager for Systems, IT-3, said that information sent over these lines could be intercepted. He added that ECASS does require a password for entry and recommended that Commerce obtain software that allows data encryption and decryption over "open" telephone lines.

On authority of the EIS Data Manager, who is the Director, AN-30, the Network EIS Computer System Security Officer (CSSO), IT, LANL, grants user access to the EIS. This authority is documented by signature, on the "Agreement, Access and Utilization of the EIS" form verifying that the individual user:

- Possesses a valid Q clearance.
- Has a need-to-know for all data on the EIS.
- Is certified for access to WNINTEL data.
- Acknowledges his/her responsibilities for UNCI information.
- Acknowledges his/her responsibilities for PROPIN data.
- Acknowledges his/her responsibilities as an EIS user and the related password protection requirements.

Access into the EIS requires a ten-digit password authenticated to a user identification number. In addition, the operating system (SUN OS 4.1) supplies software security for the system supplemented by the SUN C2 security feature and the "Security Profile Inspector." These mechanisms provide the following features:

SUNOs C2 security features:

- Audit and record in a log file all successful and failed entries.
- Record in a log file all system administration operations performed by the system manager.
- Separate the group authorization and password file into two separate files.

Security Profile Inspector:

- Daily notification of critical system files that have had file contents or file permissions changed.
- Daily notification of accounts that need to be revalidated.
- Checks user passwords against various dictionaries and certain algorithmic permutations to find passwords that are easy to guess or find using trial-and-error methods. The system manager is notified daily of any passwords meeting the above criteria.

The CSSO, IT, LANL, stated that only the Assistant Systems Manager, IT-3, and he have access to the total system, to include the software.

The EIS received certification and accreditation to process classified information, up to and including S/RD, in July 1992, from the Computer Security Program Manager, Technical and Operations Security Branch, Policy, Standards and Analysis Division, Office of Safeguards and Security, Office of Security Affairs, Energy. Any material printed from the server is treated as S/RD and stored appropriately.

The EIS, as yet, contains no information classified above the S/RD level. The Assistant Manager for Systems, IT-3, said that Originator Controlled (ORCON) security rules prevent inclusion of higher classified information. Analysts currently have to read these higher level messages, then place them into a "hard copy" file. He added that AN-30 is looking for ways to place ORCON information into the EIS.

According to the Assistant Manager for Systems, IT-3, AN-30 envisions linking other Energy national laboratories to the EIS, once the system is totally operational, possibly sometime in Fiscal Year 1993.

THE SUBGROUP ON NUCLEAR EXPORT COORDINATION

The Subgroup on Nuclear Export Coordination (SNEC) of the National Security Council (NSC) Ad Hoc Group on Non-Proliferation was authorized by the "Procedures Established Pursuant to the Nuclear Non-Proliferation Act (NNPA) of 1978." The "Procedures," as amended in 1984, authorized the SNEC to monitor and facilitate the interagency processing of specific matters related to activities which, in the determination of any of the members, pose potential policy concerns. (Note: We subsequently learned that the SNEC is no longer an organization of the NSC.)

The 1984 Amendment to "Procedures Established Pursuant to the Nuclear Non-Proliferation Act of 1978" authorized Energy and Commerce to refer nuclear dual-use export cases to the SNEC. When either Commerce or Energy believes that -- because of the proposed destination of the export, its timing, or other relevant considerations -- a particular application should be reviewed by other agencies, or denied, such application shall be referred to the SNEC. The SNEC shall promptly consider such application and provide its advice and recommendations to Commerce.

In 1992, the SNEC reviewed approximately 500 export cases, of which Energy referred approximately 400. Commerce referred most of the remaining cases. Occasionally, other agencies, aware of a particularly controversial export case, requested Energy to refer the case to the SNEC.

Purpose of the SNEC

The purpose of the SNEC is to provide a forum whereby:

- interagency consideration of and consultation on nuclear dual-use exports, retransfers and related matters and issues can be facilitated, and
- policy guidelines that are consistent with U.S. foreign policy, national security and nonproliferation objectives, and commercial/economic considerations can be established.

The SNEC serves only as an advisory body and is not authorized to conduct or dispose of official responsibilities that are assigned by law to individual agencies represented on the SNEC.

Organization of the SNEC

The SNEC is comprised of representatives from State, Energy, Commerce, Defense, the Arms Control and Disarmament Agency, and the Nuclear Regulatory Commission. The SNEC also includes the Central Intelligence Agency as an observer. Representatives from other agencies may be invited as participants or observers, as appropriate.

The SNEC is chaired by the Office of Export and Import Control, Office of Nuclear Energy and Energy Technology Affairs, within State. The Office of Export Control and International Safeguards within Energy provides the Secretariat functions. Meetings are held every three weeks.

The SNEC Chairman said that SNEC procedures (framework and escalation of cases) "are outlined in . . . federal regulations." He stated that the SNEC has no other written procedures and relies upon 15 years of precedence. He said that the SNEC Secretariat records the minutes to the meetings and publishes the minutes and agenda for the next meeting. He said that the SNEC has had no problems with getting the minutes or agendas out to the respective members in a timely manner.

The Chairman said that the Assistant Chairman or he reviews draft SNEC minutes after they have been transcribed. He also said that any changes to the draft minutes are sent or telephoned to the Secretariat of the SNEC. He said that at the start of SNEC meetings, agency representatives in attendance have an opportunity to make changes to the minutes of the previous SNEC meeting. He also said that the SNEC does not have formal procedures for approving SNEC minutes. He said that instead the agencies reach a common agreement that the minutes are in order.

The Chairman said that the SNEC reviews Commerce cases and, where possible, reaches a consensus to make a recommendation of approval or denial to Commerce. He added that the agencies make SNEC decisions "within the parameters of the law" and that each agency is free to vote as it chooses. He said that all SNEC member agencies have agreed upon the following policies:

- no nuclear explosives activity exported to a nation,
- no exports to a non-safeguarded activity, and
- no support of nuclear naval propulsion programs.

As the Secretariat to the SNEC, Energy has the following responsibilities:

- schedule SNEC meetings;
- formulate meeting agenda;
- summarize and document the key points for each agenda item;
- attend meetings and record proceedings;
- prepare minutes for agency concurrence;
- track actions and requests;
- maintain a central record system; and
- keep SNEC participants and observers up-to-date on SNEC matters.

Commerce "Walk-in" Cases

The SNEC Chairman said that he thinks cases are walked into SNEC meetings to get agencies to focus on cases in order to move the cases through the system faster. He said that cases walked into the SNEC by Commerce are "usually of no big concern." He added that Commerce has no obligation to present the cases any earlier than the day of the SNEC meetings.

The Director, Proliferation Controls and Countermeasures, Office of Nonproliferation Policy, Defense, who is Defense's representative to the SNEC, said that Commerce walking in cases to the SNEC causes problems. He said that agencies do not have an opportunity to review walk-in cases prior to SNEC meetings. He said that National Security Directive (NSD) 53 time constraints frequently cause the SNEC to escalate walk-in cases higher in the resolution process because the cases cannot be resolved at one meeting.

The SNEC Assistant Chairman said that the SNEC receives walk-in cases that have not been previously reviewed by most SNEC members. He said that the number of cases walked-in at the meetings varied significantly. He said, however, that currently the SNEC is receiving a large number of walk-in cases. He said that at the January 8, 1993, SNEC meeting, the SNEC reviewed 131 cases, of which only 47 were on the agenda. He said the remainder (84) were walk-ins. He said that the agenda for the January 29, 1993, SNEC meeting contained 20 cases. He added, however, that Commerce

officials told him that Commerce would be walking-in 13 cases to the January 29, 1993, meeting.

The SNEC Assistant Chairman said that most of Commerce walk-in cases involved nuclear dual-use cases. He said that NSD 53 time frames generally force Commerce to refer cases to the SNEC. He said that Commerce may not always be the primary cause of cases not being on the SNEC agenda. He said that other agencies may hold a case longer, forcing Commerce to refer the case to the SNEC to meet NSD 53 time frames. He said, however, that he thought problems in the Bureau of Export Administration, Commerce, contributed to a great number of the cases being walked-in. He could only speculate about the problems internal to Commerce.

The SNEC Assistant Chairman said that interagency disputes over conditions imposed on approvals of export cases cause a large number of SNEC cases. He also said that most of the SNEC cases involved personal computers. He said that this area has problems because the administration of export controls on computers has not kept pace with technology. He offered as an example of computer administrative control problems the following:

- Energy refers numerous computer export cases to the SNEC. These cases generally involve bulk license cases, i.e., a license that sends more than one of the same commodity to more than one end-user in a country.
- The National Security Council "made a policy decision" that loosened export controls on these types of licenses. Commerce, however, has not implemented the decision in writing. He thought that Energy was abiding by the tighter controls, and therefore, was sending the cases to the SNEC for an inter-agency decision. (Note: We subsequently learned that the NSC did not "[make] a policy decision," but instead, "issued a decision directive" based upon a Policy Coordinating Committee decision.)

He also added that walk-in cases impacted the SNEC in the following ways:

- SNEC meetings lasted longer.
- The higher work load meant that the SNEC spent less time resolving a case.
- Agencies did not have an opportunity to review cases prior to the meeting.

He said that if cases could not be resolved at the SNEC meeting, the following actions could be taken:

- If time was available within NSD 53 timeframes, delay the resolution until the next SNEC meeting.
- If time was not available within NSD 53 timeframes, refer the case to the Advisory Committee on Export Policy (ACEP).

A member of the Secretariat said that the SNEC does not keep statistics on the number of walk-in cases that are presented at SNEC meetings. She said that walk-in cases are not reflected as walk-in cases in the SNEC minutes, but that the respective agencies know what cases have been walked-in.

APPENDIX E

PART 778.4 - EXPORT LICENSING FACTORS

Part 778.4, "Export Licensing Factors," Part 778, "Proliferation Controls," Export Administration Regulations (EAR), states: "To fulfill the considerations set forth in 778.1, the following factors are among those used to determine what action should be taken on individual applications subject to [Parts] 778.2 and 778.3 --".

Included in Part 778.1 is the purpose of Part 778 of the EAR: to wit, define the types of export transactions and controls governed by U.S. policy regarding the non-proliferation of nuclear weapons or explosive devices. Specifically, one of the controls contained in Part 778 implements the policy set out in Section 309(c), the Nuclear Non-Proliferation Act of 1978 -- to maintain control over commodities because of their significance for nuclear explosive purposes.

Section 309(c) of the Nuclear Non-Proliferation Act of 1978 (NNPA), requires the President to publish procedures regarding the control by Commerce over all export items, other than those licensed by the Nuclear Regulatory Commission, which could be of significance for nuclear explosive purposes if used for purposes other than those for which the exports are intended. Section 309(c) also directs the procedures to provide for prior consultation by Commerce with Energy, as required, over these export items.

The individual applications subject to 778.2, "Nuclear Related Commodities and Technical Data (the Nuclear Referral List)," include commodities on the Nuclear Referral List (NRL) and items requiring a validated export license for national security reasons and intended for a nuclear related end-use or end-user. Part 778.2 states that such commodities will be processed according to the provisions established pursuant to the NNPA and under Part 778 of the EAR. The procedures are reprinted in Supplement No. 1, "Procedures Established Pursuant to the Nuclear Non-Proliferation Act of 1978," Part 778 of the EAR.

Among other requirements, the "Procedures Established Pursuant to the Nuclear Non-Proliferation Act of 1978" directs Commerce to consult with Energy on export license applications for items on the NRL and for applications on items which may involve possible nuclear uses such as, we believe, commodities intended for a nuclear related end-use or end-user. These commodities are those items referred to in Part 778.2.

In our view, the above requirement for Commerce to consult with Energy links Energy to the use of the Part 778.4 export factors, which are among the "factors . . . used to determine what action" to take on applications for Part 778.2 commodities. We believe that because Energy provides comments to Commerce on export cases pertaining to Part 778.2 commodities, Energy should consider the Part 778.4 export licensing factors in order to provide the comments.

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