



U.S. Department of Energy
Office of Inspector General
Office of Inspections and Special Inquiries

Inspection Report

Review of Status of Prior Export Control Recommendations at the Department of Energy

INS-O-07-01

May 2007



Department of Energy

Washington, DC 20585

May 22, 2007

MEMORANDUM FOR THE DEPUTY ADMINISTRATOR, DEFENSE NUCLEAR
NONPROLIFERATION
CHIEF HEALTH, SAFETY AND SECURITY OFFICER

FROM:

Greg Friedman
Gregory H. Friedman
Inspector General

SUBJECT:

INFORMATION: Inspection Report on "Review of Status of
Prior Export Control Recommendations at the Department of
Energy"

BACKGROUND

The National Defense Authorization Act for Fiscal Year 2000 provided that beginning in the year 2000 and ending in the year 2007, the President shall annually submit to Congress a report by the Inspectors General of the Departments of Energy, Commerce, Defense, and State of the policies and procedures of the United States Government with respect to the export of technologies and technical information with potential military application to countries and entities of concern. Prior to the review which is the subject of this report, the Energy Office of Inspector General had issued seven reports under this requirement and had made 17 recommendations to Energy, including the National Nuclear Security Administration (NNSA), designed to improve the Department of Energy's export control efforts. The objective of this inspection was to determine the status of all 17 prior export control recommendations. Details on the prior recommendations are provided in Appendix C.

RESULTS OF INSPECTION

We concluded that the actions taken by Energy regarding the 14 closed recommendations appeared to be responsive and that these recommendations should remain closed. We also concluded that two of the three remaining open recommendations should be closed. Finally, we made two additional recommendations based upon this review. Regarding the three open recommendations, we determined that:

- The two recommendations pertaining to NNSA and Commerce's Export Control Automated Support System should be closed because NNSA has found alternate ways to access the necessary data; and
- The remaining recommendation to ensure that export control guidance is disseminated and implemented throughout the complex should remain open because it was incomplete.



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Regarding the two additional recommendations resulting from this review, we determined that:

- NNSA management should expedite action, such as issuing a directive or modifying the Department of Energy Acquisition Regulation, to fully implement the open recommendation; and,
- Energy Order 142.3, "Unclassified Foreign Visits and Assignments," should be revised to reflect the current Energy process for reviewing foreign national visitors and assignees from state sponsors of terrorism.

In addition to this inspection, the Office of Inspector General is conducting a separate review of Energy's audit resolution and follow-up process. The latter review covers corrective actions taken by management to address identified control weaknesses in other Department of Energy programs and administrative activities.

MANAGEMENT REACTION

Management of NNSA and the Chief Health, Safety and Security Officer agreed with our recommendations. Management's comments are provided in their entirety in Appendix D of the report.

Attachment

cc: Chief of Staff
Director, Office of Intelligence and Counterintelligence
Director, Office of Internal Review (CF-1.2)
Director, Policy and Internal Controls Management (NA-66)

REVIEW OF STATUS OF PRIOR EXPORT CONTROL RECOMMENDATIONS AT THE DEPARTMENT OF ENERGY

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Overview

INTRODUCTION AND OBJECTIVES

The National Defense Authorization Act (NDAA) for Fiscal Year 2000 provided that beginning in the year 2000 and ending in the year 2007, the President shall annually submit to Congress a report by the Inspectors General of, at a minimum, the Departments of Energy (Energy), Commerce (Commerce), Defense (Defense), and State (State) of the policies and procedures of the United States Government with respect to the export of technologies and technical information with potential military application to countries and entities of concern. To date, the Energy Office of Inspector General (OIG) has issued 7 reports under this requirement and has made 17 recommendations to Energy, including the National Nuclear Security Administration (NNSA), towards improving Energy's export control efforts. A listing of these and other export related reports is contained in Appendix B.

The objective of this inspection was to determine the status of all 17 prior export control recommendations. Details on the recommendations and managements' responses are provided in Appendix C.

OBSERVATIONS AND CONCLUSIONS

We concluded that the actions taken by Energy regarding the 14 closed recommendations appeared to be responsive and that these recommendations should remain closed. We also concluded that two of the three remaining open recommendations should be closed. Finally, we made two additional recommendations based upon this review. Regarding the three open recommendations, we determined that:

- The two recommendations pertaining to NNSA and Commerce's Export Control Automated Support System should be closed because NNSA has found alternate ways to access the necessary data; and
- The one recommendation to ensure that export control guidance is disseminated and implemented throughout the complex should remain open because it is incomplete.

Regarding the two additional recommendations, we determined that:

- NNSA management should expedite action, such as issuing a directive or modifying the Department of Energy Acquisition Regulation (DEAR), to fully implement the open recommendation; and
- Energy Order 142.3, "Unclassified Foreign Visits and Assignments," should be revised to reflect the current Energy process for reviewing foreign national visitors and assignees from state sponsors of terrorism.

Presently, the OIG is conducting an audit of the Department's unclassified foreign visits and assignments program, which includes issues that were covered in our previous reports and recommendations. The OIG is also conducting an inspection of foreign national access to computers, which also relates to foreign visits and assignment activities. Although our office has conducted several reviews on foreign visitor-related topics, the reviews above may identify additional areas for improvement.

Details of Findings

BACKGROUND

The principal legislative authorities governing the export control of nuclear-related, dual-use¹ items are the Export Administration Act of 1979 and the Nuclear Non-Proliferation Act of 1978. The provisions of the Export Administration Act have been updated by Executive Order, most recently by Executive Order 12981, which grants the Secretary of Commerce the authority to refer export license applications to other agencies for review and gives agencies such as Energy the authority to look at any export license application submitted to Commerce.

Energy's export control efforts, as coordinated by NNSA's Office of International Regimes and Agreements (OIRA), includes the review of export license applications for nuclear, chemical, biological, and missile-related commodities. In addition to reviewing licenses, OIRA participates in working level groups with other Federal agencies for licensing and nonproliferation activities. Also, Energy's Office of Foreign Visits and Assignments establishes Energy policies for the review and processing of visits and assignments by foreign nationals to Energy and NNSA facilities. Reviews of foreign visits and assignments are relevant to Energy's export control efforts because any release of technology or software subject to U.S. Export Administration Regulations to a foreign national is "deemed to be an export" to the foreign national's home country.

ACCESS TO THE COMMERCE EXPORT LICENSE DATABASE

We determined that the two recommendations pertaining to NNSA and Commerce's Export Control Automated Support System should be closed because NNSA has found alternate ways to access the necessary data.

During March 2005, we issued a report entitled "The Department of Energy's Review of Chemical and Biological Export License Applications," DOE/IG-0682, which had two recommendations regarding access to and training on Commerce's Export Control Automated Support System (ECASS). We had determined that although information from ECASS was obtained by officials at the Los Alamos National Laboratory for Energy's export license reviews, only one OIRA Headquarters official had access to ECASS and no OIRA Headquarters officials were trained in ECASS. We were advised by OIRA officials during 2005 that a lack of direct access to and training in ECASS was a problem for the timely and

¹ Some controlled commodities are designated as "dual-use," that is, goods and technologies that have both civilian and military uses. The U.S. Government designates some dual-use commodities as "nuclear dual-use" items, which are controlled for nuclear nonproliferation purposes.

efficient review of export licenses by OIRA Headquarters officials. Accordingly, we made the ECASS recommendations. Both recommendations remained open when we initiated this review.

Since these two recommendations were made, OIRA Headquarters officials have made continual efforts to receive access to and training on ECASS. Although Commerce has provided access to ECASS, access has not been effective because of recurring problems in maintaining connectivity with ECASS by OIRA Headquarters. We were advised by OIRA officials that these connectivity problems resulted from computer system changes at Commerce. OIRA officials further advised that they have not received ECASS training; however, due to the lack of connectivity, the training was not currently a concern. Because of these connectivity problems, OIRA Headquarters officials employed other means to obtain the information needed to conduct timely and effective export license reviews. Specifically, OIRA Headquarters officials obtained initial export license application information through the link to ECASS at the Los Alamos National Laboratory and obtained any further export license information on specific cases through formal and informal means, such as through its participation in various interagency groups and periodic contact with Commerce officials.

Accordingly, OIRA Headquarters officials have been able to obtain the information necessary for them to conduct their required reviews in a timely and effective manner without having access to and training on ECASS. OIRA officials advised us that they will continue to pursue ECASS connectivity and training. However, as discussed above, the recommendations requiring access to and training on ECASS have become of limited additional value to OIRA's export license review process. Based upon our current review, we closed these two open recommendations.

EXPORT CONTROL GUIDANCE

We determined that the one recommendation to ensure that export control guidance is disseminated and implemented throughout the complex should remain open because it is incomplete.

During April 2004, we issued a report entitled "Contractor Compliance with Deemed Export Controls," DOE/IG-0645, which recommended that NNSA ensure that export control guidance, including deemed export guidance, was disseminated and consistently implemented throughout Energy. Although NNSA management had taken some action regarding this

recommendation, it had not been fully implemented when we initiated this review.

IMPLEMENTATION OF RECOMMENDATION

We determined that NNSA management should expedite action, such as issuing a directive or modifying the DEAR, to fully implement the open recommendation to ensure that export control guidance is disseminated and consistently implemented throughout the Energy complex.

Based upon our prior recommendation, OIRA initiated several export control site reviews and determined that some contractors lacked funds and staff to consistently implement the existing informal guidance that had been prepared by OIRA in 1999. Also based upon this recommendation, OIRA revised existing informal export control guidance for dissemination throughout the Energy complex. However, Energy and NNSA General Counsel officials informed OIRA that issuing revised informal guidance would not be the most effective way to ensure consistent export control compliance across the Energy complex. OIRA was informed that a formal order or possible modification to the DEAR would be more effective ways to ensure compliance with export control requirements by all Energy and NNSA contractors.

OIRA prepared a justification for issuing a formal order on export controls, which is currently under NNSA management review. NNSA is also considering a modification to the DEAR as an alternative to issuing an order. We believe that a directive or modification to the DEAR would be effective ways to implement our recommendation. We, therefore, recommend that NNSA management expedite action, such as issuing a directive or modifying the DEAR, to implement our prior recommendation.

REVISION TO ORDER 142.3

We determined that Energy Order 142.3, “Unclassified Foreign Visits and Assignments,” should be revised to reflect the current Energy process for reviewing foreign national visitors and assignees from state sponsors of terrorism. Our prior recommendations concerning Energy policy for unclassified foreign visits and assignments were closed as a result of the issuance of Order 142.3 and will remain closed. However, the process listed in Order 142.3 states that all access requests for nationals of countries designated as state sponsors of terrorism to unclassified Energy programs, information and technology be reviewed by a Headquarters Management Panel. The Panel consisted of the Directors of the Energy Offices of Security, Counterintelligence, and Intelligence, and representatives designated

by the Under Secretary of Energy, Science and Environment and the Under Secretary for Nuclear Security/Administrator for the NNSA. Since the issuance of this order, Energy reorganized and has a structure with three Under Secretaries: the Under Secretary for Energy; the Under Secretary for Science; and the Under Secretary for Nuclear Security/Administrator for the NNSA. Additionally, the Offices of Intelligence and Counterintelligence were consolidated into a single Office of Intelligence and Counterintelligence. Consolidation of these offices has not substantively affected the review process; however, based upon an administrative change to existing Order 142.3, representatives of all three Under Secretaries are now part of the panel.

An Office of Foreign Visits and Assignments official advised that the parties involved in the review process determined that it was of little value for representatives of all three Under Secretaries to participate in every panel review. The official advised that, instead, the current practice is to have access requests reviewed by the Office of Security, the Office of Intelligence and Counterintelligence, and the Under Secretary with cognizance over the program requesting access. The official advised that Order 142.3 should be revised to reflect the current practice of involving only the cognizant Under Secretary in a panel review. Based on the above, we recommend that Order 142.3 be revised to reflect Energy's actual practice.

RECOMMENDATIONS

We recommend that the Deputy Administrator, Defense Nuclear Nonproliferation:

1. Expedite actions, such as issuing a directive or modifying the DEAR, to ensure compliance with export control requirements throughout the Energy complex.

We recommend that the Chief Health, Safety and Security Officer:

2. Revise Order 142.3 to reflect the actual process for reviewing access requests for nationals of state sponsors of terrorism.

MANAGEMENT COMMENTS

In comments on our draft report, management agreed with our recommendations and identified timelines for completing corrective actions. The comments from both organizations are included in their entirety at Appendix D.

INSPECTOR COMMENTS

We found management's comments to be responsive to our report recommendations.

Appendix A

SCOPE AND METHODOLOGY

We conducted fieldwork for this review in January and February 2007. We interviewed Federal and contractor Energy officials, including NNSA employees and contractors. We also reviewed relevant export control regulations and Energy policies relevant to export controls. As part of our review, we evaluated Energy's implementation of the "Government Performance Results Act of 1993."

This inspection was conducted in accordance with the "Quality Standards for Inspections" issued by the President's Council on Integrity and Efficiency.

Appendix B

PRIOR EXPORT CONTROL RELATED REPORTS

- “The Department of Energy’s Review of Export License Applications for China,” DOE/IG-0723, April 2006;
- “The Department of Energy’s Review of Chemical and Biological Export License Applications,” DOE/IG-0682, March 2005;
- “Contractor Compliance with Deemed Export Controls,” DOE/IG-0645, April 2004;
- “Safeguards Over Sensitive Technology,” DOE/IG-0635, January 2004;
- “Inspection of Status of Recommendations from the Office of Inspector General’s March 2000 and December 2001 Export Control Reviews,” INS-L-03-07, May 2003;
- “The Department’s Unclassified Foreign Visits and Assignments Program,” DOE/IG-0579, December 2002;
- “Follow-up Inspection of the Department of Energy’s Export Licensing Process for Foreign National Visits and Assignments,” INS-L-02-06, June 2002;
- “Inspection of the Department of Energy’s Automated Export Control System,” DOE/IG-0533, December 2001;
- “Inspection of the Department of Energy’s Role in the Commerce Control List and the U.S. Munitions List,” INS-O-01-03, March 2001;
- “Inspection of the Department of Energy’s Export License Process for Foreign National Visits and Assignments,” DOE/IG-0465, March 2000;
- “The Department of Energy’s Export Licensing Process for Dual-Use and Munitions Commodities,” DOE/IG-0445, May 1999; and
- “Report on Inspection of the Department’s Export Licensing Process for Dual-Use and Munitions Commodities,” DOE/IG-0331, August 1993.

Appendix C

STATUS OF RECOMMENDATIONS FROM PRIOR NATIONAL DEFENSE AUTHORIZATION ACT REPORTS

Section 1204 of the National Defense Authorization Act (NDAA) for Fiscal Year 2001 amended Section 1402(b) of the NDAA for Fiscal Year 2000 to require the specified Office of Inspectors General (OIGs) to include in each annual report the status of the implementation or other disposition of recommendations that have been set forth in previous annual reports under Section 1402(b). To date, seven reports have been completed by the Energy OIG under this requirement. Two reports: “Inspection of Status of Recommendations from the Office of Inspector General’s March 2000 and December 2001 Export Control Reviews,” INS-L-03-07, May 2003, and “Inspection of the Department of Energy’s Role in the Commerce Control List and the U.S. Munitions List,” INS-O-01-03, March 2001, did not contain recommendations. The following is the status of the recommendations from the other five reports. Of 17 total recommendations, 14 have already been closed and the remaining 3 are to be closed as a result of this current report.

“The Department of Energy’s Review of Export License Applications for China,” DOE/IG-0723, April 2006

Recommendation 1. We recommended that the Deputy Administrator, Defense Nuclear Nonproliferation expedite the development and implementation of the new Lawrence Livermore National Laboratory database for processing end-user reviews.

Energy management stated that the end-user database at the Lawrence Livermore National Laboratory is up and running to support all new incoming export license applications received from Commerce. This database is being enhanced to help ensure a complete search capability for entities by incorporating standard names for the facilities names. The Energy OIG agreed to close this recommendation.

Recommendation 2. We recommended that the Deputy Administrator, Defense Nuclear Nonproliferation coordinate with the Director, Office of Intelligence and Counterintelligence ensure personnel affiliated with the Office of Defense Nuclear Nonproliferation who conduct export license reviews have continual access to Sensitive Compartmented Information computers and be able to hand carry Sensitive Compartmented Information documents.

Energy management stated that both offices have met and coordinated regarding this recommendation. Access has subsequently been granted to contractor staff affiliated with the Office of Defense Nuclear Nonproliferation to use Sensitive Compartmented Information computers and hand carry Sensitive Compartmented Information. The Energy OIG agreed to close this recommendation.

“The Department of Energy’s Review of Chemical and Biological Export License Applications,” DOE/IG-0682, March 2005

Recommendation 1. We recommended that the Deputy Administrator, Defense Nuclear Nonproliferation take appropriate action to ensure that Energy licensing officers have access to the Department of Commerce’s Export Control Automated Support System (ECASS).

As discussed in the findings section of this report, we are closing this recommendation.

Recommendation 2. We recommended that the Deputy Administrator, Defense Nuclear Nonproliferation take appropriate action to ensure that Energy licensing officers are properly trained in the use of this system.

As discussed in the findings section of this report, we are closing this recommendation.

“Contractor Compliance with Deemed Export Controls,” DOE/IG-0645, April 2004

Recommendation 1. We recommended that the Director, Office of Security and Safety Performance Assurance expedite issuance of a draft unclassified foreign visits and assignments Order 142.X that addresses training requirements and responsibilities for hosts of foreign nationals.

Energy management reported that Energy Order 142.3 was approved on June 18, 2004. The Energy OIG determined that Energy Order 142.3 included training requirements and responsibilities for hosts of foreign nationals and agreed to close this recommendation.

Recommendation 2. We recommended that the Deputy Administrator, Defense Nuclear Nonproliferation ensure that export control guidance, including deemed export guidance, is disseminated and is being consistently implemented throughout the Energy complex.

As discussed in the findings section of this report, this recommendation will remain open.

“Inspection of the Department of Energy’s Automated Export Control System,” DOE/IG-0533, December 2001

Recommendation 1. We recommended that the Assistant Deputy Administrator for Arms Control and Nonproliferation coordinate with the Departments of Commerce and Treasury to ensure access by Energy to information within the Automated Export System regarding the purchase and/or shipment of commodities under an approved export license, and develop guidelines for Energy’s access to the information.

Energy management reported that the National Nuclear Security Administration (NNSA) has taken actions as far as its cognizant authority allows. All remaining actions are contingent on

other Government agencies. NNSA recommended that the interagency OIG group involved with export controls make specific recommendations to individual agencies in order to effect change. While actions are not completed, NNSA can no longer report meaningful status. The Energy OIG agreed to close this recommendation.

Recommendation 2a. We recommended that the Assistant Deputy Administrator for Arms Control and Nonproliferation coordinate with State to improve communications regarding review of export license applications for munitions commodities.

Energy management reported that NNSA has taken actions as far as its cognizant authority allows. All remaining actions are contingent on other Government agencies. NNSA recommended that the interagency OIG group involved with export controls make specific recommendations to individual agencies in order to effect change. While actions are not completed, NNSA can no longer report meaningful status. The Energy OIG agreed to close this recommendation.

Recommendation 2b. We recommended that the Assistant Deputy Administrator for Arms Control and Nonproliferation coordinate with State to ensure access by Energy to information maintained by State regarding final disposition (i.e., approval/denial of license applications and the purchase and/or shipment of commodities) of export license applications and develop guidelines for Energy's access to the information.

Energy management reported that NNSA has taken actions as far as its cognizant authority allows. All remaining actions are contingent on other Government agencies. NNSA recommended that the interagency OIG group involved with export controls make specific recommendations to individual agencies in order to effect change. While actions are not completed, NNSA can no longer report meaningful status. The Energy OIG agreed to close this recommendation.

“Inspection of the Department of Energy’s Export License Process for Foreign National Visits and Assignments,” DOE/IG-0465, March 2000

Recommendation 1. We recommended that the Acting Deputy Administrator for Defense Nuclear Nonproliferation ensure that senior Energy officials work with senior Commerce officials to assure clear, concise, and reliable guidance is obtained in a timely manner from Commerce regarding the circumstances under which a foreign national’s visit or assignment to an Energy site would require an export license.

Energy management was advised by the Commerce Assistant Secretary for Export Administration that extensive guidance regarding compliance with the deemed export rule was available on the Commerce Web site and that Commerce would continue to strengthen its outreach training programs for Energy’s National Laboratories. The Energy OIG agreed to close this recommendation.

Recommendation 2. We recommended that the Director, Office of Security and Emergency Operations ensure that a proposed revision of the Energy Notice concerning unclassified foreign visits and assignments includes the principal roles and responsibilities for hosts of foreign national visitors and assignees.

Energy management reported that Energy Order 142.3 was approved on June 18, 2004. The Energy OIG determined that Energy Order 142.3 included the principal roles and responsibilities for hosts of foreign national visitors and assignees and agreed to close this recommendation.

Recommendation 3. We recommended that the Director, Office of Security and Emergency Operations, include a requirement for Energy and Energy contractor officials to enter required foreign national visit and assignment information in the Foreign Access Records Management System, or a designated central database, in a complete and timely manner.

Energy management reported that a new Energy-wide information system, the Foreign Access Centralized Tracking System (FACTS), was developed and implemented. Energy management further advised that draft Order 142.X includes a requirement for Energy sites to enter required foreign national visit and assignment information into FACTS in a complete and timely manner.

Because Energy management's corrective action addressed usage of FACTS by all Energy Federal and contractor employees, the Energy OIG agreed to close this recommendation and track this issue under recommendation 8.

Recommendation 4. We recommended that the Manager of Energy's Oak Ridge Operations Office ensure that requests for foreign national visits and assignments at the Oak Ridge site are reviewed by the Y-12 National Security Program Office to assist in identifying those foreign nationals who may require an export license in conjunction with the visit or assignment.

Energy management reported that, to ensure requests for foreign national visits and assignments at the Oak Ridge National Laboratory receive appropriate export license consideration, Oak Ridge National Laboratory initiated a system of reviews. Under the system, requests are reviewed by five separate disciplines (Cyber Security, Export Control, Classification, Counterintelligence, and Security). In addition, requests associated with concerns are referred for resolution to the Non-citizen Access Review Committee. Energy management further reported that while each of the reviews can involve the National Security Program Office, the Oak Ridge National Laboratory Export Control Officer is responsible for referring requests to the National Security Program Office as necessary. The Energy OIG agreed to close this recommendation.

Recommendation 5. We recommended that the Director, Office of Security and Emergency Operations ensure that the requirements in the revised Energy Notice for unclassified foreign national visits and assignments are clearly identified and assigned to responsible officials or organizations.

Energy management reported that Energy Order 142.3 was approved on June 18, 2004. The Energy OIG determined that Energy Order 142.3 included clear identification of requirements for foreign national visits and assignments, and identifies responsible officials and organizations and agreed to close this recommendation.

Recommendation 6. We recommended that the Acting Deputy Administrator for Defense Nuclear Nonproliferation ensure that guidance issued by the Office of Nuclear Transfer and Supplier Policy to advise hosts of their responsibilities regarding foreign nationals includes the appropriate level of oversight to be provided by the host during the period of the visit or assignment.

Energy management reported that DOE Order 142.3 was approved on June 18, 2004. The Energy OIG determined that Energy Order 142.3 included the principal roles and responsibilities for hosts of foreign national visitors and assignees and agreed to close this recommendation.

Recommendation 7. We recommended that the Director, Office of Security and Emergency Operations revise the Energy policy regarding foreign national visits and assignments to ensure that Energy sites are maintaining consistent information about foreign nationals visiting or assigned to work at the site.

Energy management reported that DOE Order 142.3 was approved on June 18, 2004. The Energy OIG determined that Energy Order 142.3 included the requirement for documentation in FACTS for all visit and assignment requests in a timely manner and agreed to close this recommendation.

Recommendation 8. We recommended that the Director, Office of Security and Emergency Operations require that all Energy sites with foreign national visitors or assignees enter information regarding the visits or assignments into Foreign Access Records Management System, or a designated central Energy database.

Energy management reported that DOE Order 142.3 was approved on June 18, 2004. The Energy OIG determined that Energy Order 142.3 included the requirement that all sites having foreign national visitors or assignees are required to enter information regarding the visits and assignments into FACTS and agreed to close this recommendation.

Appendix D

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