

DOE/IG- 0465

**INSPECTION
REPORT**

**INSPECTION OF THE
DEPARTMENT OF ENERGY'S
EXPORT LICENSE PROCESS
FOR FOREIGN NATIONAL
VISITS AND ASSIGNMENTS**



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

MARCH 2000

March 23, 2000

MEMORANDUM FOR THE SECRETARY

FROM: Gregory H. Friedman (signed)
Inspector General

SUBJECT: INFORMATION: Report on "Inspection of the Department of Energy's
Export License Process for Foreign National Visits and Assignments,"
DOE/IG-0465

BACKGROUND

The Fiscal Year 2000 National Defense Authorization Act provided that not later than March 30 of each year, beginning this year, the President shall submit to Congress an annual report on the United States (US) Government's policies and procedures with respect to the export of technologies and technical information with potential military applications to countries and entities of concern. Under the Act's provisions, to assist in this process, annual audits in this area are to be conducted by the Inspectors General of the Departments of Energy, Commerce, Defense, and State. An interagency working group, comprised of representatives from the Offices of Inspector General of Energy, Commerce, Defense, and State, selected the export license process for foreign national visitors and assignees, referred to as the "deemed" export license process, as the topic for the year 2000 audit. Any release to a foreign national of technology or software that is subject to the Export Administration Regulations is "deemed to be an export" to the home country of the foreign national. Release includes, among other things, visual inspection by foreign nationals of US-origin equipment and facilities and oral exchange of information.

The purpose of our inspection was to review actions by the Department of Energy (DOE) in response to selected concerns regarding deemed exports identified by this office during an interagency inspection of the Federal Government's export license review process, which was completed in June 1999. The objectives of our current inspection were to review actions taken by the Department to resolve issues associated with DOE's deemed export license process, and to review actions taken at selected DOE sites to implement new procedures regarding the deemed export license process.

RESULTS OF INSPECTION

Although DOE management has improved the process for determining whether an export license application may be required for the visit or assignment of a foreign national to a DOE site, we concluded that additional actions are needed. We found that the Department has not received clarification of guidance from the Department of Commerce regarding when a visit or assignment would require an export license. Also, the Department's policy implementation needs clarification regarding roles, responsibilities, and accountability for obtaining an export

license for the visit or assignment of a foreign national. We noted that the current DOE Notice on foreign visits and assignments does not provide clear guidance regarding certain roles, responsibilities, and requirements in the export license arena. These include, among others, the responsibilities of the hosts of foreign nationals and the requirement to enter information on foreign national visits and assignments into the Department's central database.

In addition, we learned that DOE officials, because of shortcomings in DOE's formal data gathering system, are not aware of the precise number of foreign nationals visiting the Department's laboratories. This parallels an issue identified in our May 28, 1999, report on the Department's export license process titled "The Department of Energy's Export Licensing Process for Dual-use and Munitions Commodities," DOE/IG-0445. That issue was the source of concern to the Chairman of the Senate Governmental Affairs Committee, as expressed during a June 1999 hearing on the Department's export license process. We also found that, even though an export license application was not submitted, the assignments of several foreign nationals at one of the four locations included in our review might have required export licenses because of the information being accessed or the citizenship or affiliation of the individuals. Again, this parallels a critically important finding in our May 28, 1999, report.

In FY 2000, the Department established the National Nuclear Security Administration (NNSA). A number of the program offices, Operations Offices, and National Laboratories, which were included in this inspection, are now part of the NNSA organization. References in the report to the Department of Energy and its activities include, as well, the NNSA.

MANAGEMENT REACTION

Management concurred or partially concurred with the recommendations and has initiated, or is in the process of initiating, appropriate corrective actions.

Attachment

cc: Deputy Secretary
Under Secretary
Acting Under Secretary for Nuclear Security

INSPECTION OF THE DEPARTMENT OF ENERGY'S EXPORT LICENSE PROCESS FOR FOREIGN NATIONAL VISITS AND ASSIGNMENTS

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Overview

INTRODUCTION AND OBJECTIVE

Exports of commodities or technologies, without regard to whether they may significantly contribute to the military potential of individual countries or combination of countries or enhance the proliferation of weapons of mass destruction, may adversely affect the national security of the United States (US). The National Defense Authorization Act for Fiscal Year 2000¹ contained a provision that not later than March 30 of each year beginning in the year 2000 and ending in the year 2007, the President shall submit to Congress an annual report to include, as a minimum, an audit by the Inspectors General of the Departments of Commerce, Defense, Energy and State of the policies and procedures of the US Government with respect to the export of technologies and technical information with potential military applications to countries and entities of concern. An interagency working group, comprised of representatives from the Offices of Inspector General of Commerce, Defense, Energy and State, selected the export license process for foreign national visitors and assignees, referred to as the “deemed” export license process,² as the topic for the year 2000 audit.

The purpose of our inspection was to review actions by the Department of Energy (Energy) in response to selected concerns regarding deemed exports identified by this office during an interagency inspection of the Federal Government’s export license review process. The interagency review was completed in June 1999. The objectives of our current inspection were to: 1) review actions taken by Energy officials to resolve issues associated with Energy’s deemed export license process, and 2) review actions taken at selected Energy sites to implement new procedures regarding the deemed export license process.

¹ The National Defense Authorization Act for Fiscal Year 2000 also established the National Nuclear Security Administration (NNSA) with responsibilities for counterintelligence, intelligence, and security. A number of Department of Energy program offices, Operations Offices, and National Laboratories report, in whole or in part, to the NNSA. Any reference to the Department of Energy includes the NNSA.

² Release to a foreign national of technology or software that is subject to the Export Administration Regulations is “deemed to be an export” to the home country of the foreign national. Release includes, among other things, visual inspection by foreign nationals of US-origin equipment and facilities and oral exchange of information.

Overview

OBSERVATIONS AND CONCLUSIONS

Although Energy's management has improved the process for determining whether an export license application may be required for the visit or assignment of a foreign national to an Energy site, additional actions are needed. Energy officials have not received clarification of guidance from the Department of Commerce (Commerce) regarding when a visit or assignment would require an export license. Also, Energy's policy implementation needs clarification regarding roles, responsibilities, and accountability for obtaining an export license for the visit or assignment of a foreign national, which is evidenced by the lack of clarity in the Energy Notice on foreign visits and assignments of certain roles, responsibilities, and requirements. These include, among others, the responsibilities of the hosts of foreign nationals and the requirement to input information on foreign national visits and assignments into Energy's central database. In addition, we found that, even though an export license application was not submitted, the assignments of several foreign nationals at one of the four locations included in our review might have required an export license because of the information being accessed or the individuals' citizenship or affiliation. This parallels a critically important finding in our May 28, 1999, report titled "The Department of Energy's Export Licensing Process for Dual-use and Munitions Commodities," DOE/IG-0445. We also learned that Energy officials cannot provide the precise number of foreign nationals visiting Energy laboratories. Again, this parallels an issue that was identified in our May 28, 1999, report and which was the source of concern to the Chairman of the Senate Governmental Affairs Committee, as expressed during a June 1999 hearing on Energy's export license process.

BACKGROUND

As part of an interagency review of the US Government's export licensing process, this office issued a report in May 1999 concerning the Department's export license process for dual-use and munitions commodities. In that report, we discussed: 1) the lack of clarity in Commerce guidance (as promulgated in the Export Administration Regulations) and Energy guidance regarding when a deemed export license would be required for an assignment regarding a foreign national; 2) concerns that some hosts at Energy laboratories³ were not aware of, or did not understand, the requirements for deemed export licenses, did not appear to appropriately exercise their host responsibilities, or had not submitted export license applications for certain foreign national assignees, even though an export license may have been required; and 3) our inability to determine which Energy organization had management responsibility for the deemed export license process. As a result of our review, the Under Secretary of Energy established an Export Control Task Force to review issues we had identified regarding the deemed export license process. Since we issued our report, Energy has established the Office of Security and Emergency Operations. This office includes, among other organizations, the Energy Office of Foreign Visits and Assignments, which is responsible for promulgation of policy and guidance on foreign visits and assignments.

³ The OIG review included four Energy laboratories: Los Alamos National Laboratory, Lawrence Livermore National Laboratory, Oak Ridge National Laboratory, and Sandia National Laboratory-Albuquerque.

Results of Inspection

KEY ISSUES REGARDING THE DEEMED EXPORT LICENSE PROCESS

We concluded that Energy management has made improvements in Energy's process for determining whether an export license application may be required for a foreign national visit or assignment to an Energy site. Training has been implemented for hosts of foreign nationals regarding deemed export issues and associated host responsibilities; awareness has been heightened among Energy and Energy contractor employees regarding export control concerns and requirements regarding the deemed export license process; requests for visits and assignments of foreign nationals that involve sensitive countries or sensitive subjects are subjected to reviews for security, counterintelligence, intelligence, and export control concerns; and information is being disseminated within Energy concerning the subject of deemed exports. Despite these positive steps, however, additional improvement is required.

Commerce Guidance Requires Clarification

We found that guidance regarding deemed export licensing requirements was not clear in all respects. Specifically, Energy officials had not yet received clarification from Commerce of certain guidance regarding deemed exports. We recommended in our May 28, 1999, report that Energy coordinate with Commerce to obtain guidance regarding when a visit or assignment of a foreign national would require an export license. Energy officials have held discussions with Commerce and received some limited additional guidance. Also, Commerce Bureau of Export Administration representatives provided guidance at a meeting of the Energy contractors' Export Control Coordinators Organization in June 1999. Energy officials, however, felt that some of the Commerce guidance provided at the meeting was in conflict with the current understanding that public domain information and fundamental research are outside the scope of the Export Administration Regulations. On November 10, 1999, Energy formally requested that Commerce review and concur with the guidance on deemed exports provided by the Commerce representatives at the June 1999 meeting. As of March 23, 2000, Energy officials had not received a response from Commerce. We understand that, because Energy has not received a clearer definition of deemed exports from Commerce, the Deputy Secretary has convened a group to prepare a definition of deemed exports that will be sent to Commerce. This definition will be used as the working definition until Commerce provides additional guidance.

Based on our current and prior reviews, we concluded that deemed export policy, specifically regarding public domain information and fundamental research, is a key consideration for Energy

Results of Inspection

activities. Thus, we recommend that the Acting Deputy Administrator for Defense Nuclear Nonproliferation:

1. 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 Guidance Requires Additional Clarification

We also found that recently issued Energy guidance for foreign national visits and assignments requires additional clarification regarding deemed exports. Although revised Energy Nuclear Transfer and Supplier Policy (NTSP) Division⁴ guidelines, which were issued in July 1999, included a discussion of when a deemed export license might be required for foreign national visits and assignments, we found that certain roles and responsibilities that impact on the deemed export process were not clearly delineated in the recently issued Energy Notice, Department of Energy Notice (DOE N) 142.1, "UNCLASSIFIED FOREIGN VISITS AND ASSIGNMENTS," approved July 14, 1999.⁵

As we found in our earlier review, the host is the focal point for ensuring that a deemed export license is received prior to a visit or assignment. However, the Energy Notice does not specifically state that the host may be required to apply for an export license for a visit or assignment of a foreign national. We believe that providing a comprehensive outline of primary host responsibilities and requirements in the Energy Notice would ensure the requirements are incorporated into Energy's contracts, thereby enabling Energy officials to hold contractors accountable for implementation of the requirements.

Also, we could find no specific requirement that Energy officials and Energy contractors were responsible for entering information into Energy's central tracking system for foreign national visits and assignments to Energy facilities. Therefore, Energy NTSP Division officials, who review certain information that is "flagged" in the system, may not be receiving complete information on

⁴ The NTSP Division, within the Office of the Acting Deputy Administrator for Defense Nuclear Nonproliferation, plays a major role in the formulation of US nuclear proliferation and export control policies and conducts export license review activities for nuclear dual-use and munitions commodities.

⁵ DOE N 142.1 cancelled DOE Order 1240.2B, "UNCLASSIFIED FOREIGN VISITS AND ASSIGNMENTS BY FOREIGN NATIONALS."

Results of Inspection

certain foreign national visits and assignments for their deemed export review.

The Energy Office of Foreign Visits and Assignments is responsible for managing a central tracking system for visits and assignments to Energy facilities. Currently, this system, the Foreign Access Records Management System (FARMS), flags certain information on foreign national visits and assignments for review by Energy's NTSP Division. Of the four Energy laboratories that we visited, only Lawrence Livermore National Laboratory (LLNL) and Oak Ridge National Laboratory (ORNL) appeared to be entering complete information into FARMS, while Los Alamos National Laboratory (LANL) and Sandia National Laboratory-Albuquerque (SNL-Albuquerque) were entering little, if any, information into FARMS. In the absence of complete data in FARMS, the Energy NTSP Division was unable to perform a review of requests from those laboratories for foreign national visits and assignments involving sensitive countries or sensitive subjects. As a consequence, decisions whether these foreign nationals might require a deemed export license in conjunction with a visit or assignment to either of the two laboratories are being made without the input or knowledge of the Energy NTSP Division.

We were advised that Energy is developing a revised Notice covering foreign visits and assignments. Based on the concerns discussed above, we recommend that the Director, Office of Security and Emergency Operations, ensure that the revised Energy Notice:

2. Includes the principal roles and responsibilities for hosts of foreign national visitors and assignees, and
3. Includes a requirement for Energy and Energy contractor officials to enter required foreign national visit and assignment information into FARMS, or a designated central data base, in a complete and timely manner.

Foreign Nationals Might Have Needed An Export License

We also reviewed a small, judgmental sample at each of the four Energy laboratories of the documentation⁶ processed for proposed assignments of foreign nationals from sensitive countries. As we found in our earlier review, the assignments of several foreign nationals at one of four laboratories included in our review might have required an export license application because of the information being accessed or the individual's citizenship.

⁶ DOE Form IA-473, "Request for Foreign National Unclassified Visit or Assignment," or its equivalent.

Results of Inspection

Our judgmental sample, which was limited to foreign nationals from countries on the Energy “Sensitive Countries List” issued in July 1999, consisted of the documentation for the proposed visits and assignments of 6 foreign nationals at LANL, 10 foreign nationals at LLNL, 9 foreign nationals at ORNL, and 6 foreign nationals at SNL-Albuquerque. The documentation was reviewed by Energy analysts who are involved in reviewing export license applications for Energy’s NTSP Division. The Energy analysts did not believe an export license would have been required in conjunction with the proposed assignments of foreign nationals at LANL, LLNL, or SNL-Albuquerque. However, Energy analysts in the Y-12 National Security Program Office at the Oak Ridge site said that the proposed assignments of 4 of the 9 foreign nationals at ORNL might have the potential for requiring an export license. According to a Y-12 National Security Program Office official, his office had not previously reviewed the requests for the proposed assignments of the 9 foreign nationals.

Therefore, we recommend that the Manager, Oak Ridge Operations Office:

4. Ensure that requests for foreign national visits and assignments at the Oak Ridge site involving sensitive countries or sensitive subjects are reviewed by the National Security Program Office to assist in identifying those foreign nationals who might require an export license in conjunction with their visit or assignment.

ADDITIONAL ISSUES CONCERNING DEEMED EXPORT

We found that the current Energy Notice does not always identify the individual or organization responsible for a required action. For example, as in our earlier review, we are still unable to determine, with certainty, which Energy organization, if any, has management responsibility for the deemed export license process. Although the Energy Notice assigns responsibilities for the implementation of the unclassified foreign visits and assignments process, there is no indication which Energy organization is responsible for the deemed export license process. Also, although the Energy Notice requires organizations that sponsor unclassified foreign national visits and assignments to report certain information to “DOE Headquarters to support the Departmental information needs,” the Energy Notice does not identify the Headquarters organization that is to receive the information. In addition, the Energy Notice requires coordination of certain foreign national visits and assignments⁷ with, among others, the

⁷ Visits and assignments that require access by a foreign national to a security area or a sensitive subject, or require access to a site by a foreign national from a sensitive country.

export control organization. However, the Energy Notice does not clearly identify the “export control organization,” or the role of the organization in the coordination process, resulting in confusion and possibly incomplete reviews of foreign national visit and assignment requests. (See Appendix B for a detailed discussion of this issue.)

Therefore, we recommend that the Director, Office of Security and Emergency Operations:

5. 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.

We interviewed hosts⁸ at each of the four Energy laboratories and found that, in general, the hosts were aware of their responsibilities and had received guidance and/or training regarding the deemed export process. However, we also found that guidance may be required regarding the appropriate level of oversight that a host should provide for the foreign national being hosted. At LLNL, for example, we were told that it is not uncommon for some hosts to have little contact with individuals they hosted. Of the nine LLNL hosts that we interviewed, one acknowledged having had no contact with the foreign national who was hosted. While we recognize that the level of oversight of a foreign national provided by a host needs to be considered on a case by case basis, some guidance in this area would be helpful. Because of the reliance on the host for actions relating to deemed export license decisions, the appropriate level of oversight provided by hosts is, in our judgment, an important matter.

Therefore, we recommend that the Acting Deputy Administrator for Defense Nuclear Nonproliferation:

6. Ensure that guidance issued by the NTSP Division 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.

⁸ We interviewed a total of 37 hosts. Some had been interviewed for our previous inspection. The remainder were individuals that hosted foreign nationals since July 14, 1999, the effective date of the current Energy Notice.

OTHER MATTERS

In June 1999, the Senate Governmental Affairs Committee held a hearing on Energy's dual-use and munitions export control process. The Energy Inspector General testified at that hearing and our 1999 report on export control issues was a primary topic at the hearing. During the hearing, the Committee expressed concern with Energy's inability to provide the precise number of foreign nationals visiting certain Energy laboratories. We addressed this subject during our current review and found that Energy still was unable to provide this information.

We were advised by an official in Energy's Office of Foreign Visits and Assignments that Energy cannot obtain the number of foreign nationals who have visited or have been assigned, or who are currently visiting or assigned, to Energy laboratories or other entities. According to the official, the current Energy policy does not require the laboratories to enter data into the FARMS database. Further, we were told that some Energy laboratories contend they do not have the resources to enter data into both Energy's database as well as their own. We were advised that even if Energy officials requested information from each of the laboratories pertaining to the number of foreign national visitors/assignees for a specific period, the numbers would be unreliable because each laboratory records the information differently.⁹

We recommend, therefore, that the Director, Office of Security and Emergency Operations, revise Energy policy regarding foreign national visits and assignments to ensure that:

7. Consistent information is being maintained by Energy sites regarding foreign nationals visiting or assigned to work at the site, and
8. All Energy sites having foreign national visitors or assignees are required to enter information regarding the visits or assignments into FARMS or a designated central Energy database.

⁹ Some Energy laboratories do not record visits/assignments of foreign nationals who perform work outside the property protection area, which is the fenced-in area surrounding the laboratory that serves to protect government property.

**MANAGEMENT
REACTION**

In comments dated March 10, 2000, to our draft report, the Acting Deputy Administrator for Defense Nuclear Nonproliferation stated that our report accurately depicts the scope of the “deemed export” challenge to the Department and “highlights the need for clarity of responsibilities in the Energy Notice, speedy establishment of a functioning FARMS data base, and Commerce clarification of its ‘deemed exports’ rule” The Acting Deputy Administrator concurred with Recommendation 1 and stated that Energy has drafted guidance for discussion by Energy senior management with Commerce counterparts. This interaction is intended to establish a precedent for future Energy-Commerce cooperation to provide further, more detailed guidance. Also, the Acting Deputy Administrator concurred, in part, with Recommendation 6. She stated, however, that NTSP Division guidance cannot substitute for the on-site site supervision of export control/tech transfer officials at the laboratories and that site security officials must oversee and enforce limits placed on visitors. She believed that any other arrangement would usurp the responsibility of laboratory managers and operations office managers in ensuring appropriate oversight of visitors.

In comments dated February 28, 2000, to our draft report, the Director, Office of Foreign Visits and Assignments, concurred with the findings and recommendations of the draft report. Specifically, he concurred with the recommendations concerning issues of foreign visit and assignment policy and stated that the corrective or remedial action(s) recommended are consistent with the current and ongoing initiative to update and clarify foreign visit and assignment policy. He also concurred with the recommendations on issues related to the data system supporting the foreign visit and assignment program and stated that “the corrective or remedial actions recommended, are consistent with the current and on-going initiative to update FARMS and concurrently to develop a new centralized tracking system to improve the accuracy, consistency, and accessibility of data maintained for foreign visits and assignments throughout the DOE [Energy] complex.” Regarding recurring and crosscutting deficiencies identified in the draft report related to the maintenance and management of foreign visit and assignment information, he stated that “the findings, conclusions and recommendations of the draft report lead to improvements which will in turn, greatly enhance and improve the overall quality of information managed through the Office of Foreign Visits and Assignments.”

In comments dated March 16, 2000, to our draft report, the Chief Financial Officer, Oak Ridge Operations Office, concurred with

Recommendation 4. She stated that the recommendation will be implemented through a new organizational arrangement effective April 1, 2000.

**INSPECTOR
COMMENTS**

We believe the actions by management are responsive to our recommendations. Regarding the comments on Recommendation 6 by the Acting Deputy Administrator for Defense Nuclear Nonproliferation, we do not disagree that laboratory managers and operations office managers are ultimately responsible for ensuring appropriate oversight of visitors. However, we believe that guidance from the NTSP Division regarding factors that managers should consider when determining the appropriate level of oversight of foreign national visitors or assignees would ensure consistency in the degree of oversight provided for foreign nationals across the Energy complex.

Appendix A

SCOPE AND METHODOLOGY

We conducted the fieldwork portion of our review during the period of October 1999 to December 1999 at Department of Energy (Energy) Headquarters and four Energy laboratories: Lawrence Livermore National Laboratory (LLNL), Los Alamos National Laboratory (LANL), Oak Ridge National Laboratory (ORNL), and Sandia National Laboratory - Albuquerque (SNL-Albuquerque). At Energy Headquarters, we interviewed officials from the following organizations:

- Nuclear Transfer and Supplier Policy Division, Office of Nonproliferation and National Security [now the Office of Defense Nuclear Nonproliferation], which is responsible for developing export control guidance.
- Foreign Visits and Assignments Office, Office of Security and Emergency Operations, which has the principal responsibility for promulgation of policy and guidance on foreign visits and assignments.
- Office of Counterintelligence, which performs indices checks for visitors and assignees from sensitive countries.
- Office of Independent Oversight and Performance Assurance, which has responsibility for oversight of the foreign visits and assignments process.
- Energy's Export Control Task Force, which was charged with addressing export control issues.

We also interviewed Energy operations office personnel and Energy laboratory contractor officials who were responsible for foreign visits and assignments and/or export controls, and members of Energy's Export Control Coordinator's Organization, which shares ideas and information about policies and procedures on export control issues. In addition, we interviewed hosts of recent foreign national visitors and assignees and re-interviewed hosts who were interviewed by the Office of Inspector General (OIG) as part of an earlier OIG review of Energy's export licensing process for dual-use and munitions commodities.

We reviewed the applicable laws, Executive orders, regulations, and departmental guidance regarding foreign visits and assignments and deemed exports. In addition, we analyzed data from samples of applications for visits and assignments of foreign nationals to selected Energy laboratories. Those samples included applications from LANL, LLNL, ORNL, and SNL-Albuquerque

Appendix A

for visits and assignments of foreign nationals from sensitive countries.

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

Appendix B

ENERGY NOTICE GUIDANCE REQUIRES CLARIFICATION

The following examples illustrate the need to clarify roles and responsibilities in Energy Notice 142.1, “UNCLASSIFIED FOREIGN VISITS AND ASSIGNMENTS.” For example, the Energy Notice requires coordination of certain foreign national visits and assignments with, among others, the export control organization. However, the Energy Notice does not clearly identify the “export control organization,” or the role of the organization in the coordination process. The lack of clear guidance regarding this requirement has led to confusion and possibly incomplete reviews of foreign national visits and assignments requests.

An official who managed foreign national visits and assignments at one of the Energy laboratories said that the lack of roles and responsibilities in the Energy Notice has led to confusion, as different offices are defining their own roles and responsibilities. He said, for example, that Nuclear Transfer and Supplier Policy (NTSP) Division officials feel that they are charged with export control review for sensitive subjects and their concurrence is required. He also said that officials in the Energy Office of Defense Programs (now the Office of the Acting Deputy Administrator for Defense Programs) feel they have a concurrence role. According to the Energy Notice, however, the laboratory director is the approving authority and no concurrence is required.

Also, although laboratories had final approval authority for foreign national visits and assignments, we were told by an Energy NTSP Division official that her office wanted to review foreign national visits and assignments involving sensitive countries or sensitive subjects for nonproliferation and export control concerns. These visits and assignments were to be flagged in the Foreign Access Records Management System (FARMS) for review by the NTSP Division. This requirement is not reflected in the current Energy Notice. An official in the Office of Foreign Visits and Assignments said, however, that only foreign national visits and assignments involving sensitive countries and sensitive subjects are flagged in FARMS for NTSP Division review. Therefore, only foreign national visits and assignments that involve both a sensitive country and a sensitive subject are being flagged for NTSP Division review. As a result, visits and assignments that involve either a sensitive country or sensitive subject might not be reviewed by the NTSP Division.

In addition, the current Energy Notice does not assign an Energy organization the overall responsibility for the deemed export license process. A concern raised in the May 28, 1999, Office of Inspector General (OIG) report¹⁰ was the inability of the OIG to determine which Energy organization, if any, had management responsibility for the deemed export license process. We do not believe the current Energy Notice adequately addresses this concern. For example, the Energy Notice assigns responsibility for implementation of the unclassified foreign visits and assignments process to line management; responsibility for program reviews to the Office of Foreign Visits and Assignments and the Office of Counterintelligence; and responsibility for independent oversight of

¹⁰ “The Department of Energy’s Export Licensing Process for Dual-use and Munitions Commodities,” DOE/IG-0445.

Appendix B

the overall performance of the Foreign Visits and Assignments Program to the Office of Independent Oversight and Performance Assessment. However, the Energy Notice does not address the OIG's earlier concern regarding which Energy organization is responsible for the deemed export license process.

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