

DEPARTMENT OF HOMELAND SECURITY

Office of Inspector General

Review of Controls Over the Export of Chemical and Biological Commodities (Redacted)



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Office of Audits

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U.S. Department of Homeland Security
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Homeland
Security

Preface

The Department of Homeland Security (DHS) Office of Inspector General (OIG) was established by the Homeland Security Act of 2002 (Public Law 107-296) by amendment to the Inspector General Act of 1978. This is one of a series of audit, inspection, investigative, and special reports prepared by the OIG as part of its DHS oversight responsibility to promote economy, effectiveness and efficiency within the department.

This report represents a public summary of our limited official use report assessing Customs and Border Protection's controls over the export of chemical and biological commodities. Our findings were based on selected tests, interviews with employees and officials of relevant agencies and institutions, direct observations, and a review of applicable documents.

The recommendation contained in this report has been developed to the best knowledge available to the OIG, and has been discussed in draft with appropriate management officials. It is our hope that this report will result in more effective, efficient, and economical operations. We express our appreciation to all of those who contributed to the preparation of this report.

A handwritten signature in cursive script that reads "Richard L. Skinner".

Richard L. Skinner
Acting Inspector General

Introduction

In response to the National Defense Authorization Act that requires the review of the controls over the export of militarily sensitive technologies to countries and entities of concern, we assessed the Bureau of Customs and Border Protection's (CBP) enforcement practices at U.S. ports of exit. This review is part of a series of interagency OIG reviews on the transfer of militarily sensitive technologies¹. In concert with the interagency audit objective to assess whether the current export licensing process can help deter the proliferation of chemical and biological commodities, we evaluated the department's enforcement practices to determine whether they are in place and working effectively to prevent the illegal export of chemical and biological commodities. Following is an abbreviated, public version of our report.

Background

The United States (U.S.) controls the export of dual-use² commodities and munitions³ under the authority of several laws, primarily the Export Administration Act of 1979 and the Arms Export Control Act of 1976. CBP is responsible for enforcing licensable export controls for both the Department of Commerce (Commerce) and the Department of State (State) through authority provided in the Export Administration Regulations (EAR)⁴ and the International Traffic in Arms Regulations (ITAR).⁵ Certain chemical and biological commodities are subject to the licensing requirements contained in the EAR for dual-use, which Commerce issues, or the ITAR for munitions, which are issued by State. ITAR defines a chemical agent as a substance having military application, which by its ordinary and direct chemical action produces a powerful physiological effect. ITAR further defines a biological agent or biologically derived substances as those capable of producing casualties in humans or livestock, degrading equipment, or damaging crops, and which have been modified for the specific purpose of increasing such effects.

The Arms Export Control Act⁶ authorizes the President to control the import and export of defense articles and defense services. This authority has been delegated to the Secretary of State, and is administered by State's Directorate of Defense Trade Controls, which approves and issues licenses for the export of munitions. To legally ship commodities represented on the State Department's United States Munitions List (a list of munitions and associated commodities requiring a license), an exporter must be issued an export license administered by the Directorate of Defense Trade Controls. To legally export dual-use items subject to the EAR, an exporter must obtain a license

¹ Section 1402 of the National Defense Authorization Act (NDAA) for Fiscal Year 2000, Public Law 106-65 requires annual interagency reviews of the transfer of militarily sensitive technologies to countries and entities of concern by the OIGs at the Departments of Commerce, Defense, Energy and State, and in consultation with the Director of the Central Intelligence Agency and the Director of the Federal Bureau of Investigation.

² Dual-use commodities are goods and technology items that have both military and civilian application.

³ Munitions are defense articles or technical data.

⁴ Title 15 Code of Federal Regulations (CFR), Part 758.7

⁵ Title 22 CFR Part 127.4

⁶ Title 22 United States Code Section 2778

from Commerce's Bureau of Industry and Security, which enters all license information electronically into Commerce's Export Control Automated Support System.

As the enforcement arm at U.S. ports for both State and Commerce, CBP is responsible for ensuring that licensable exports, via their Outbound program, in this case chemical and biological commodities, are processed in accordance with applicable laws and regulations. CBP uses the Bureau of Immigration and Customs Enforcement's Exodus Command Center (ECC) as a liaison with State and Commerce to answer questions that may arise as to whether a shipment is licensable, and CBP officers are directed to send any such questions to the ECC for resolution.

CBP Enforcement Practices

CBP does not consistently enforce federal export licensing laws and regulations at all U.S. ports of exit. CBP's ability to effectively and efficiently control exports licensed by State and Commerce is limited by inadequate information and staff resources.

CBP does not consistently document the location of State Licenses in its Automated Export System. Exporters physically lodge State licenses with CBP at the port where shipments are expected primarily to occur; however, exports may be made through any authorized U.S. port of exit. Such license information is necessary to determine whether an individual shipment is being made in compliance with the associated license conditions. When a port receives notification of an export to be shipped against a license lodged at another port, enforcement personnel must locate the port of lodging and verify the authenticity of the export information to the original license. However, CBP is not required to document the location of State licenses in the Automated Export System, which makes it difficult for enforcement personnel at the port of shipping to readily obtain license information. As a result, CBP's ability to enforce State licensed exports in a timely and efficient manner is reduced.

Also, CBP needs to improve its enforcement of license requirements for shipments that have been processed against Commerce licenses.

We recommended that the Commissioner of CBP evaluate the Outbound program, including information requirements, staffing needs, and consistency of enforcement practices, and make adjustments necessary to ensure that all of CBP's enforcement responsibilities are accomplished.

Appendix 1
Major Contributors to this Report

Alexander Best Jr., Director, Border and Transportation Security
Ethel Taylor-Young, Audit Manager
Joseph L. Hardy Jr., Auditor-In-Charge
Gary Alvino, Management Analyst
Marshall Toutsis, Senior Auditor
Nadine F. Ramjohn, Senior Auditor

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