

# Lack of Defined Processes and Procedures Impede Efforts to Monitor End-Use Check Performance

FINAL REPORT NO. OIG-20-019-A

MARCH 2, 2020



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



March 2, 2020

**MEMORANDUM FOR:** Cordell Hull  
Acting Under Secretary of Commerce for Industry and Security  
Bureau of Industry and Security

A handwritten signature in black ink that reads "Mark H. Zabarsky".

**FROM:** Mark H. Zabarsky  
Principal Assistant Inspector General for Audit and Evaluation

**SUBJECT:** *Lack of Defined Processes and Procedures Impede Efforts to Monitor  
End-Use Check Performance*  
Final Report No. OIG-20-019-A

Attached for your review is our final report on the audit of the Bureau of Industry and Security (BIS) regarding foreign end users and exports. Our objective was to assess the effectiveness of BIS' efforts to ensure foreign end users are suitable to receive and use controlled U.S. exports in accordance with the Export Administration Regulations. As a result of audit planning, we decided to focus on assessing BIS' plan to target end-use checks (EUCs). Specifically, we sought to identify whether BIS had criteria to target EUCs and assess how well it adhered to them in fiscal years 2015–2017.

We found the following:

- I. BIS is unable to adequately determine whether EUCs met its targeting criteria.
- II. BIS did not fully screen export transactions that used the Strategic Trade Authorization license exception.

On December 9, 2019, we received BIS' formal response to the draft report's findings and recommendations, which we include within the final report as appendix D. BIS generally agreed with all three report recommendations and noted actions it has taken and will take to address them.

Pursuant to Department Administrative Order 213-5, please submit to us an action plan that addresses the recommendations in this report within 60 calendar days. This final report will be posted on OIG's website pursuant to sections 4 and 8M of the Inspector General Act of 1978, as amended (5 U.S.C. App., §§ 4 & 8M).

We appreciate the cooperation and courtesies extended to us by your staff during our audit. If you have any questions or concerns about this report, please contact me at (202) 482-3884 or Terry Storms, Division Director, at (202) 482-0055.

Attachment

cc: Carol Rose, Chief Financial Officer and Director of Administration, BIS  
Jennifer Kuo, GAO/OIG Audit Liaison, BIS  
Dawn Taylor, GAO/OIG Program Manager, BIS



# Report in Brief

March 2, 2020

## Background

Within the Department of Commerce, the Bureau of Industry and Security (BIS) administers and enforces the Export Administration Regulations (EAR), which apply to dual-use items and technology, as well as various military items, in support of U.S. national interests. Export Administration and Export Enforcement handle BIS' two primary functions of licensing and enforcement, respectively. Within Export Enforcement, the Office of Enforcement Analysis (OEA) evaluates publicly available and government-privileged information to help adjudicate export control license applications; prevent the diversion or misuse of export controlled items abroad through end-use checks, outreach, and cooperation with foreign governments; and support law enforcement actions against violators of export control laws.

BIS conducts pre-license checks and post-shipment verifications—collectively known as *end-use checks*, or *EUCs*—on foreign end users for individual export transactions. Each EUC involves collecting relevant information about the export, a physical visit to the foreign end-user(s) by BIS or other U.S. government personnel, and a recommendation about the foreign end user following the visit. Once a recommendation is received, the OEA export compliance specialist provides a preliminary rating (favorable, unfavorable, or unverified) based on all available information, and the EUC undergoes a final supervisory review.

## Why We Did This Review

The objective of this audit was to assess the effectiveness of BIS' efforts to ensure foreign end users are suitable to receive and use controlled U.S. exports in accordance with the EAR. As a result of audit planning, we decided to focus on assessing BIS' plan to target EUCs. Specifically, we sought to identify whether BIS had criteria to target EUCs and assess how well it adhered to them in fiscal years 2015–2017.

## BUREAU OF INDUSTRY AND SECURITY

### Lack of Defined Processes and Procedures Impede Efforts to Monitor End-Use Check Performance

OIG-20-019-A

#### WHAT WE FOUND

Overall, we found that BIS needs to improve its efforts to effectively track and monitor EUC performance to ensure the appropriate foreign end users receive and use controlled U.S. exports in accordance with the EAR.

Specifically, we found the following:

1. BIS is unable to adequately determine whether EUCs met its targeting criteria.
  - Specialists used different methodologies for selecting export transactions for EUCs.
  - Data for some EUCs did not align with targeting criteria, were inaccurate, or were not entered timely.
  - Lack of a supervisory final rating left some EUCs open for years.
  - Regular screening for proscribed parties of unlicensed exports is not performed.
2. BIS did not fully screen export transactions that used the Strategic Trade Authorization license exception.

#### WHAT WE RECOMMEND

We recommend that the Under Secretary of Commerce for Industry and Security do the following:

1. Develop standard operating procedures for staff responsible for selecting and reviewing EUCs to ensure that (a) data are entered accurately, consistently, completely, and in a timely manner, and (b) EUCs are selected per targeting criteria.
2. Develop a process that ensures that reasons for selecting EUCs align with the criteria and that the reasons are recorded consistently and accurately in the Investigative Management System Redesign.
3. Develop a contingency plan to (a) conduct enhanced monitoring of certain export filings, should Automated Export System controls fail in the future, and (b) reinforce guidance for screening export transactions that used the Strategic Trade Authorization license exception whose consignees were associated with ineligible countries.

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

# Acronyms and Abbreviations

<b>AES</b>	Automated Export System
<b>ATS</b>	Automated Targeting System
<b>BIS</b>	Bureau of Industry and Security
<b>C.F.R.</b>	Code of Federal Regulations
<b>CBP</b>	Customs and Border Protection
<b>CUESS</b>	Commerce USXPORTS Exporter Support System
<b>EAR</b>	Export Administration Regulations
<b>ECCN</b>	Export Control Classification Number
<b>ECO</b>	export control officer
<b>EUC</b>	end-use check
<b>FY</b>	fiscal year
<b>IMS-R</b>	Investigative Management System Redesign
<b>ITA</b>	International Trade Administration
<b>OEA</b>	Office of Enforcement Analysis
<b>OIG</b>	Office of Inspector General
<b>PLC</b>	pre-license check
<b>PSV</b>	post-shipment verification
<b>STA</b>	Strategic Trade Authorization
<b>U.S.C.</b>	United States Code
<b>UVL</b>	Unverified List

# Introduction

Within the Department of Commerce, the Bureau of Industry and Security (BIS) administers and enforces the Export Administration Regulations (EAR), which apply to dual-use items and technology, as well as various military items, in support of U.S. national interests. Export Administration and Export Enforcement handle BIS' two primary functions of licensing and enforcement, respectively. Within Export Enforcement, the Office of Enforcement Analysis (OEA) evaluates publicly available and government-privileged information to help adjudicate export control license applications; prevent the diversion or misuse of export controlled items abroad through end-use checks, outreach, and cooperation with foreign governments; and support law enforcement actions against violators of export control laws.

BIS conducts pre-license checks (PLCs) and post-shipment verifications (PSVs)—collectively known as *end-use checks*, or *EUCs*—on foreign end users for individual export transactions. Each EUC involves collecting relevant information about the export, a physical visit to the foreign end-user(s) by BIS or other U.S. government personnel, and a recommendation about the foreign end user following the visit. Once a recommendation is received, the OEA export compliance specialist provides a preliminary rating (favorable, unfavorable, or unverified) based on all available information, and the EUC undergoes a final supervisory review.

Each year, BIS develops an internal document that lays out a high-level strategy for selecting EUCs on licensed and unlicensed EAR-controlled export transactions, including license applications under review. All export compliance specialists are required to use this guidance to target EUCs from export transaction data contained within internal and external information systems. EUC results are recorded in another internal system (see graphic on this page). For information on BIS' process for targeting and conducting EUCs, see appendix B.

The Export Control Reform Initiative,<sup>1</sup> which began in April 2010, brought about a number of changes to the EAR and BIS operations—of interest here, the transfer of jurisdiction concerning thousands of items from the U.S. Munitions List to the Commerce Control List, as well as the ability to ship certain former munitions to eligible countries under license exception.<sup>2</sup>

## Systems Used for EUCs (System Owner)

**AES**—Automated Export System (CBP\*): collects export transaction data

**ATS**—Automated Targeting System (CBP): compares export data against law enforcement data

**CUESP**—Commerce USXPORTS Exporter Support System (BIS): processes export license applications, classifies commodities, and issues license determinations

**IMS-R**—Investigative Management System Redesign (BIS): contains information on enforcement leads and cases; serves as the official system of record for recording EUCs

\* U.S. Department of Homeland Security, Customs and Border Protection

<sup>1</sup> The Export Control Reform Initiative was a three-phase effort enacted under the administration of former President Obama to streamline the nation's export control system by creating a single licensing agency, a single list of controlled items, a single information technology platform, and a single export enforcement coordination agency.

<sup>2</sup> For information on the License Exception Strategic Trade Authorization, see 15 C.F.R. § 740.20, *License Exception Strategic Trade Authorization*, and Supplement No. 1 to Part 740 – Country Group A, columns A:5 and A:6 (listing

Another result was a large increase in the number of license applications processed from fiscal years (FYs) 2013–2017. At the same time, however, the number of EUCs performed have remained relatively flat (see table I). The increase in licensed and unlicensed export transactions under BIS’ jurisdiction makes EUC targeting and selection even more important.

**Table I. BIS License Applications Processed and EUCs Completed, FYs 2013–2017**

	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
License Applications Processed	24,782	30,846	37,398	33,615	34,142
EUCs Completed	1,033	1,044	1,031	985	1,089

Source: BIS annual reports and budget justifications, FYs 2013–2019

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the 44 eligible countries), available at <https://www.govinfo.gov/content/pkg/CFR-2017-title15-vol2/pdf/CFR-2017-title15-vol2-part740-appNo-.pdf> (accessed February 20, 2019).



# Objective, Findings, and Recommendations

The objective of this audit was to assess the effectiveness of BIS' efforts to ensure foreign end users are suitable to receive and use controlled U.S. exports in accordance with the EAR. As a result of audit planning, we decided to focus on assessing BIS' plan to target EUCs. Specifically, we sought to identify whether BIS had criteria to target EUCs and assess how well it adhered to them in FYs 2015–2017. BIS has criteria that it uses to target EUCs and updates it annually.

Overall, we found that BIS needs to improve its efforts to effectively document and monitor EUC performance to ensure the appropriate foreign end users receive and use controlled U.S. exports in accordance with the EAR. Specifically, BIS is unable to adequately determine whether its EUCs met its criteria because the data are unreliable as recorded in IMS-R. Furthermore, we found that BIS did not fully screen export transactions that used a license exception to export former munitions and dual-use items.

We conducted our audit work from November 2017 to August 2018 using AES export transaction data filed during the period of October 1, 2014, through May 31, 2018, and IMS-R end-use check data for the period spanning FYs 2015–2017. See appendix A for additional information related to our scope and methodology.

## I. BIS Is Unable to Adequately Determine Whether EUCs Met Its Targeting Criteria

To determine how well BIS adhered to its performance targets, we obtained data from the IMS-R system. As noted previously, IMS-R is the system used by OEA export compliance specialists to manually record export transactions selected for EUCs and their results. However, we found IMS-R data unreliable because (a) the methods used by compliance specialists for selecting export transactions for EUCs differed and lacked justification for those differences, (b) the reasons for opening an EUC were entered inconsistently and inaccurately, and (c) some supervisory reviews were not finalized. As a result, IMS-R data could not be used to determine whether EUCs met the targeting criteria or complied with required deadlines. Further, OEA management cannot use IMS-R to monitor EUC activities and identify instances where an export was selected but an EUC did not occur.

### A. *Specialists used different methodologies for selecting export transactions for EUCs*

Compliance with OEA's targeting criteria cannot be determined because OEA does not have a formal operations manual or standard operating procedures for selecting EUCs and recording the justification for selection in IMS-R based on the criteria. Discussions with six of the seven export compliance specialists employed in OEA's International Operations Division found that they

1. used different methodologies for EUC targeting and
2. completed several IMS-R fields according to their personal conventions.

For example, when searching ATS, export compliance specialists use differing parameters to identify export transactions, such as whether to search licensed or unlicensed transactions, identify certain Export Control Classification Numbers (ECCNs), or review items controlled by multilateral agreements. Export compliance specialists were not consistent when selecting the “reason for opening” option (e.g., from selecting all applicable reasons to using nonspecific reasons such as “compliance” or “OEA Targeting”). In addition, they entered various levels of detail when filling out the EUC “justification” field. Furthermore, compliance specialists selected transactions from different time periods—between 1 month to 3 years prior to the search date.

Although some variability in selection processes is expected due to regional differences, applicable controls, and enforcement concerns, the lack of documented procedures makes it difficult to verify whether BIS targeting criteria were met. Further, selection processes developed by compliance specialists are not formalized and may be lost if the specialist leaves BIS employment or is on leave, leaving another specialist to assume these duties without written guidance.

*B. Data for some EUCs did not align with targeting criteria, were inaccurate, or were not entered timely*

It is important that BIS have accurate and timely EUC information to ensure that targeting criteria are met and to identify export transactions that violate EAR. We found the IMS-R data does not allow BIS to adequately monitor whether targeting criteria were adhered to. Inaccurate and untimely identification of exports for EUCs may result in unauthorized shipments of EAR-controlled items.

**Reasons for opening EUCs are not complete and did not align with targeting criteria.** For each EUC record in IMS-R, specialists selected the applicable reasons for targeting an export transaction from a drop-down list. However, the drop-down list did not completely align with the EUC targeting criteria even though it informs EUC selection. In addition, some of the reasons in the drop-down list lacked specificity.

To assess how accurately specialists were selecting the reasons for opening an EUC case, we chose five of the general targeting criteria that could be easily identified, using data points from an EUC record, such as the ECCN, country visited, license code, and justification comments. We then identified EUCs that met those criteria and reviewed whether the corresponding reason for opening was appropriately selected by the specialist. We found the criteria corresponded with the IMS-R field reason for opening no more than 66 percent of the time. As a result, we deemed the data on “reasons opened” unreliable in determining why an export transaction was selected for an EUC. One official acknowledged that specialists are not always selecting all of the reasons that could apply and that field is generally not checked for accuracy during supervisory review. The same official stated that manual examination of the documents linked to each check would be required for a comprehensive analysis of the EUCs.

**EUC results are not always recorded in IMS-R accurately or in a timely manner.** A Sentinel Program<sup>3</sup> trip covers multiple EUCs, and OEA specialists, as a matter of practice, wait until after the trip is completed before entering any information from the multiple EUCs into IMS-R. According to Office of Export Enforcement's *Special Agent Manual*, a post-trip report for each Sentinel Program trip containing details of each EUC visit and the agents' recommendations is due within 30 days of the trip's completion to the OEA point of contact and Office of Export Enforcement deputy director. However, we found no documented guidance prescribing a deadline for when OEA specialists must enter Sentinel Trip data into the system, and we found that EUC selections and results were not recorded in IMS-R in a timely manner.

Of the 39 Sentinel Program trips conducted between FYs 2015–2017, only 10 post-trip reports were submitted by the 30-day deadline. Of the remaining 29, EUCs from 7 trips were entered into IMS-R more than 1 year after the trips were completed. For 2 of those Sentinel Program trips, the results of EUCs were entered into IMS-R 463 days after the trips' completion. In one instance, a Sentinel Program team visited Israel in mid-November 2015. Although the post-trip report was submitted on December 14, 2015, 17 EUCs associated with the trip were entered and closed in the system more than 9 months later on September 30, 2016. In addition, another 25 EUCs that were associated with that trip were entered and closed between October 31 and December 6, 2016, with 2 entered on that last date, nearly a full year after the post-trip report was submitted. Since an EUC is not completed until the IMS-R data entry is complete, any delayed entry of Sentinel Program trip EUC results into IMS-R could adversely impact any necessary enforcement action.

In addition to the delayed entry of Sentinel Program trip data into IMS-R, the case open dates in IMS-R did not accurately reflect when an EUC was initiated. In a separate test, of the 3,106 EUCs completed in FYs 2015–2017, we identified 1,440 (approximately 46 percent) in which the "open date" and "close date" were the same. The inaccurate EUC opening dates makes it difficult for BIS management to easily identify which fiscal year's targeting plan a check was adhering to and assess timely completion of the EUC.

Specialists are also responsible for entering information into IMS-R for EUCs conducted by export control officers<sup>4</sup> (ECOs) and International Trade Administration (ITA) U.S. & Foreign Commercial Service officers<sup>5</sup> (commercial

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<sup>3</sup> The Office of Export Enforcement operates the Sentinel Program, whereby special agents visit foreign consignees and end-users of EAR-controlled items to conduct EUC visits, the results of which are entered into IMS-R.

<sup>4</sup> ECOs are stationed abroad and conduct PLCs and PSVs, perform outreach and educational activities, and liaise with foreign governments on export control issues. ECOs currently are posted in six cities in five countries: (1) Dubai, United Arab Emirates, (2) Beijing and Hong Kong, China, (3) Frankfurt, Germany, (4) New Delhi, India, and (5) Singapore. Officers in these five countries also perform EUCs in surrounding countries that comprise their respective areas of responsibility. A sixth ECO position in Frankfurt, Germany, providing coverage for Russia and Ukraine, is currently vacant.

<sup>5</sup> ITA's U.S. & Foreign Commercial Service posts officers in markets of U.S. commercial significance worldwide. Commercial officers advance U.S. commercial interests, identify opportunities for U.S. exports, clarify local

officers). We were unable to assess overall timeliness of EUCs conducted by ECOs versus commercial officers because in many instances relevant data—such as the dates the EUC was requested, the date of the actual visit, and the date of the response from the ECO or commercial officer—was not recorded in the system by the specialists. Without accurate EUC data recorded in a timely manner, BIS cannot ensure that specialists are targeting exports per its own criteria. They are also unable to use such an analysis to inform future iterations of its targeting criteria. In addition, BIS management approved some EUCs with inaccurate or incomplete information. Officials also stated that they review some EUCs to ensure they matched intelligence reports but have not used a methodological approach to review prior year EUCs.

*C. Lack of a supervisory final rating left some EUCs open for years*

All EUC results recorded in IMS-R must undergo supervisory review before a rating is considered final and the EUC marked as closed. EUCs with ratings other than favorable (i.e., limited, unverified, and unfavorable) may result in some form of enforcement action. For EUCs rated as unverified, BIS may request another EUC or consider placing the end-user on the Unverified List (see finding I.D.). For unfavorable EUCs, an investigative lead may be opened.

However, during our review of IMS-R data, we identified 27 EUCs for which the results of the visit were recorded—but they had not been closed as of April 26, 2018, the cut-off date for our data request. The 27 EUCs had received preliminary ratings by the specialist (14 rated as favorable, 8 limited, 3 unverified, and 2 unfavorable) but remained open because either the specialist did not submit the case for closure or OEA supervisors had not given final ratings. Two of the EUCs were opened as far back as FY 2012 for export transactions that were filed in 2010 and 2011.

EUCs with ratings that are unverified or unfavorable, and remain open, may result in possible export violations going unaddressed. If EUCs remain open for an extended period, the statute of limitations for prosecuting an EAR violation may lapse absent any tolling (i.e., extension) of the statute. As noted, two exports which had been selected for EUCs had dates of export as far back as 2010. The statute of limitations for initiating civil or criminal proceedings involving export violations is generally 5 years from the date the claim first accrued for civil proceedings or 5 years after the offense was committed for criminal prosecutions.<sup>6</sup> By not closing an EUC with a final rating in a timely manner, BIS could miss the opportunity to take action on an exporter or end user should an EUC yield evidence of a possible EAR violation.

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regulations and standards, resolve disputes with foreign local government officials, and counsel U.S. companies on local overseas markets.

<sup>6</sup> For the statute of limitations for civil and criminal proceedings, see 28 U.S.C. § 2462 and 18 U.S.C. § 3282, respectively. For the purposes of OIG's analysis, we started the statute of limitations period from the date of export.

We found that the inconsistent and inaccurate information in IMS-R occurred because BIS has not developed a formal manual or standard operating procedures for how export compliance specialists use ATS to select export transactions for EUCs, record the selections in IMS-R, and document the EUC results. The Government Accountability Office's *Standards for Internal Control in the Federal Government* requires management to develop policies for each operating unit that document its responsibility for an operational process's objectives and related risks, as well as control activity design, implementation, and operating effectiveness—including defining policies through day-to-day procedures and determining the policies necessary to operate the process.

*D. Regular screening for proscribed parties of unlicensed exports is not performed*

Parties to the Entity, Unverified, and Denied Persons Lists (hereafter referred to as *proscribed parties*) are individuals, businesses, and other organizations (1) who are prohibited from receiving some or all items subject to the EAR without a license,<sup>7</sup> (2) whose bona fides as end users could not be verified by BIS,<sup>8</sup> or (3) whose export privileges have been denied,<sup>9</sup> respectively. These lists are administered by BIS. Any changes to them are published in the *Federal Register* and updated regularly in AES, the Consolidated Screening List,<sup>10</sup> and CUESS (i.e., BIS' export licensing system). According to the EAR, exporters are responsible for determining the appropriate authorization for an export and recording the details of the transaction in AES. They are also responsible for ensuring that potential end-users are authorized to receive EAR-controlled items (see figure 1), which may be done by reviewing the Consolidated Screening List.

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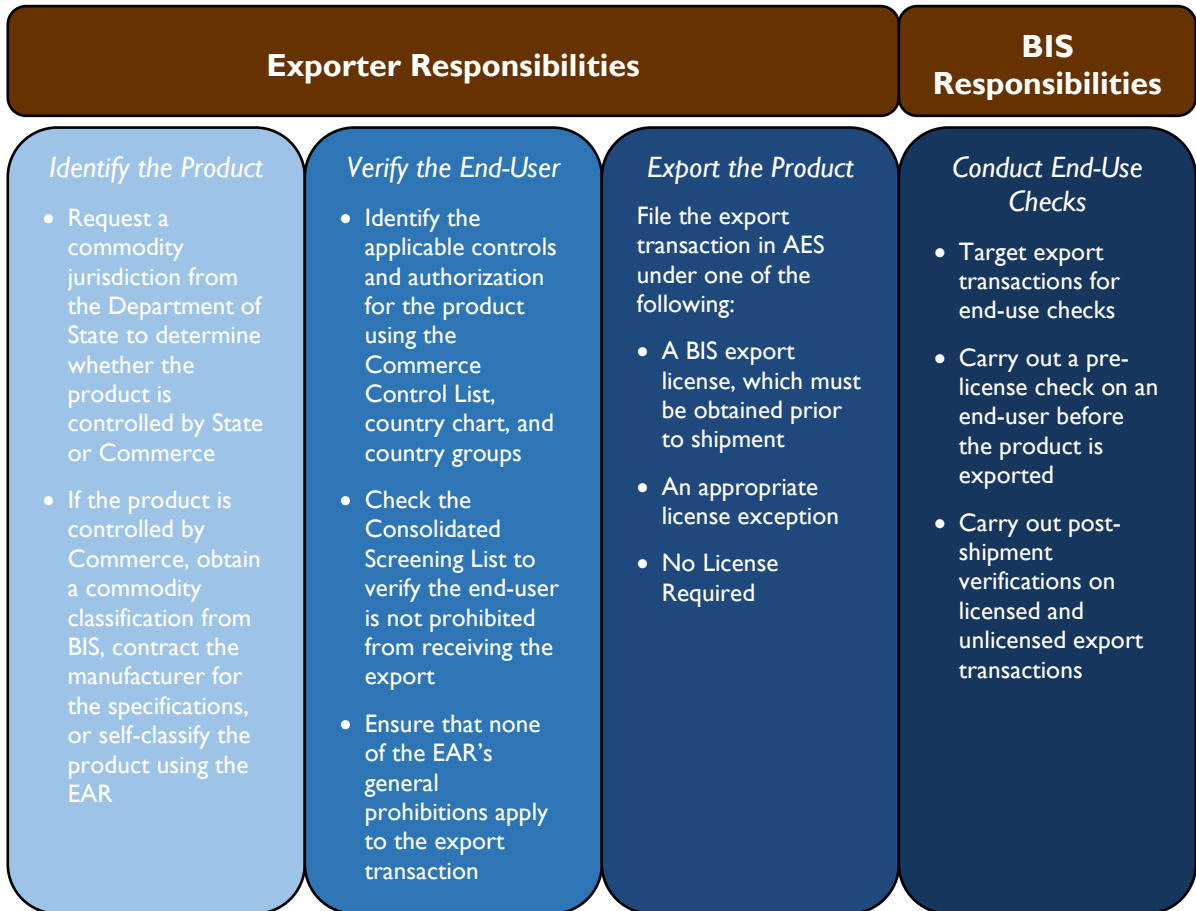
<sup>7</sup> The *Entity List* (15 C.F.R. § 744, Supplement No. 4) comprises a list of names of certain foreign persons and entities that are subject to specific license requirements for the export, re-export, and/or transfer (in-country) of specified items under Part 744 and Part 746 of the EAR. The EAR imposes additional license requirements on the use of and limits the availability of most license exceptions.

<sup>8</sup> Parties on the *Unverified List* (UVL) (15 C.F.R. § 744, Supplement No. 6) are parties whose bona fides could not be verified by BIS through an EUC for reasons outside the U.S. government's control. Restrictions and requirements on exports, re-exports, and transfers (in-country) to persons listed on the UVL are found in § 744.15 of the EAR.

<sup>9</sup> The *Denied Persons List* is a listing comprised of individuals and entities that have been denied export privileges, temporarily or permanently, in whole or in part through denial orders that are authorized under 15 C.F.R. § 764.3(a)(2). Any dealings with a party on this list that would violate the terms of its denial order are prohibited.

<sup>10</sup> ITA maintains the publicly available Consolidated Screening List at <https://www.export.gov/article?id=Consolidated-Screening-List>, which is composed of BIS' three proscribed parties' lists, as well as export screening lists from the U.S. Department of State and the U.S. Department of the Treasury.

**Figure I. Selection of Exporter and BIS Responsibilities Involving Exports and EUCs**



Source: OIG analysis of the BIS export process based on the EAR

BIS screens *licensed* export transactions against parties who may not export or receive EAR-controlled items within CUESS. OEA specialists confirmed that they do not routinely screen unlicensed transactions for proscribed parties within ATS. Although several specialists stated that they screen for proscribed parties sporadically when selecting EUCs, there is no systematic procedure or process in place to ensure unlicensed exports are monitored against the proscribed parties' lists. OEA officials stated that a complete screening against the three BIS lists is neither easy nor feasible, given OEA's limited resources. However, having standardized procedures for screening for proscribed parties among the unlicensed transactions could help identify and deter violations of the EAR.<sup>11</sup>

<sup>11</sup> We compared the names and associated countries (but not the addresses) from the three lists against AES data and found more than 1,300 potential matches, which we provided to BIS. The bureau reviewed a sample of 40 potential matches and stated that 39 did not have the same address between the proscribed party and the consignee, and no further action was taken. One match was a potential violation that had already been identified.

## II. BIS Did Not Fully Screen Export Transactions That Used the Strategic Trade Authorization (STA) License Exception

We used AES data to (1) determine the volume of transactions that used the STA license exception<sup>12</sup> (which was a focus of the targeting criteria), (2) determine how many of these exports were selected for EUCs, and (3) verify that the destination countries were eligible under the exception. According to the EAR, end users in only 44 countries are eligible to receive exports under this license exception.<sup>13</sup> Normally, AES is programmed to prevent an exporter from using the STA license exception if the export is destined to a country other than to the 44 eligible ones. However, we identified 9 export transactions filed between September 11, 2017, and December 22, 2017, that went to ineligible countries. We concluded the cause for these 9 exports was an issue within AES: the pre-programmed edits—which are created by BIS and ensure certain filings are either flagged or not accepted by the system—did not work as intended. On November 2, 2017, a senior analyst in BIS's Office of Technology Evaluation<sup>14</sup> reported 2 of these erroneous transactions, made in September 2017, to CBP, the AES system owner. However, the AES system was not fixed until late-February 2018. Of the 9 export transactions we identified, 4 were already part of ongoing enforcement cases, and 3 resulted in new investigative leads.<sup>15</sup> Given the creation of these new leads, it appears that BIS did not take sufficient measures to identify several export transactions to ineligible STA countries during the system edit failure. We confirmed that no additional exports shipped under the STA license exception were filed using ineligible country destinations from mid-February through May 2018.

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<sup>12</sup> The STA license exception (15 C.F.R. § 740.20) authorizes the export, re-export, and in-country transfer of specified items to destinations that pose relatively low risk that those items will be used for a purpose that license requirements are designed to prevent.

<sup>13</sup> See 15 C.F.R. § 740.20, *License Exception Strategic Trade Authorization*, and Supplement No. 1 to Part 740 – Country Group A, columns A:5 and A:6 (listing the 44 eligible countries), available at <https://www.govinfo.gov/content/pkg/CFR-2017-title15-vol2/pdf/CFR-2017-title15-vol2-part740-appNo-.pdf> (accessed February 20, 2019).

<sup>14</sup> Located within Export Administration, the Office of Technology Evaluation analyzes trade data to inform export policy decisions, assess the impact of export controls on U.S. industry, and analyze the foreign availability of critical products and technologies.

<sup>15</sup> Of the remaining two transactions, the exporter entered the incorrect destination country for one transaction, and for the other, a different exporter had previously been identified for a prior STA license exception violation.

On a separate issue involving the use of the STA license exception, we identified 46 exports whose ultimate destinations were STA-eligible countries, but the consignees were associated with ineligible countries. Exports shipped in such a manner may be at risk of diversion. Specifically, 11 exports had ultimate destinations in STA-eligible countries, but the ultimate consignee was tied to a country that was not eligible. According to BIS, in 7 cases this occurred because the exporter entered the wrong country code and BIS determined they were not violations. Of these 11 exports, 2 were already part of ongoing enforcement cases, and 2 resulted in new investigative leads. The other 35 exports had ultimate destinations in STA-eligible countries, but the intermediate consignee was tied to an ineligible country. BIS reviewed the 35 export transactions we identified and found that shipment through a non-STA eligible country for most of the exports was allowed under the EAR. However, 1 resulted in a new investigative lead.

An *intermediate consignee* acts as an agent for the principal party in interest and takes possession of the exported item for the purpose of effecting its delivery to the ultimate consignee. The *ultimate consignee* is the principal party in interest that receives the exported item and may be the end-user. (15 C.F.R. § 748.5)

The *country of ultimate destination* is the country where the item will be consumed, further processed, stored, or manufactured as known to the person or legal entity in the U.S. that receives the primary benefit from the export transaction at the time of export. (15 C.F.R. § 30.6(5))

Informal guidance for specialists recommends that they search AES export filings where, in general, the countries of the consignees and the destination are different. Given that the targeting criteria for selecting STA-eligible exports for EUCs focuses on the risk of diversion from some of the 44 STA-eligible countries (i.e., the ultimate destinations) and not the consignees, BIS may not identify exports that are shipped through ineligible countries for further scrutiny.

## Recommendations

We recommend that the Under Secretary of Commerce for Industry and Security do the following:

1. Develop standard operating procedures for staff responsible for selecting and reviewing EUCs to ensure that (a) data are entered accurately, consistently, completely, and in a timely manner, and (b) EUCs are selected per targeting criteria.
2. Develop a process that ensures that reasons for selecting EUCs align with the criteria and that the reasons are recorded consistently and accurately in IMS-R.
3. Develop a contingency plan to (a) conduct enhanced monitoring of certain export filings, should AES controls fail in the future, and (b) reinforce guidance for screening export transactions that used the STA license exception whose consignees were associated with ineligible countries.



# Summary of Agency Response and OIG Comments

We received BIS' formal response to our draft report on December 9, 2019. BIS generally agreed with all three report recommendations and noted actions it has taken and will take to address them. BIS also provided comments that we either (1) addressed in this final report, as we deemed necessary, or (2) provided further explanations in this section.

Regarding finding I.A., BIS stated that it provides specialists with written guidance for targeting EUCs. We acknowledge that fact and agree that the targeting criteria is essential for EUC selection. However, based on interviews with nearly all compliance specialists responsible for EUC selection, we found that each one has developed specific processes and methods for selecting EUCs for their geographical areas of operation based, in most cases, on many years of experience. We recommend that BIS document the specialists' institutional knowledge so that another specialist may be able to carry out these duties should the incumbent go on leave or separate from the bureau.

Regarding finding I.D., BIS stated that it would need assistance from CBP to implement our recommendation to routinely screen for proscribed parties given that the latter owns and administers ATS. We recognize this fact and acknowledge BIS' recent action of assigning Export Enforcement officials to assist with prioritized party screens at DHS' National Targeting Center. However, we maintain that having some form of standardized procedures for screening for proscribed parties among the unlicensed transactions could help identify and deter EAR violations.

We have included BIS' formal response as appendix D of this report.

## Appendix A: Objective, Scope, and Methodology

The objective of this audit was to assess the effectiveness of BIS' efforts to ensure foreign end users are suitable to receive and use controlled U.S. exports in accordance with the EAR. Specifically, we sought to identify whether BIS had criteria to target EUCs and assess how well it adhered to them in FYs 2015–2017. Audit fieldwork required us to obtain additional AES export transaction data for FY 2018, through May 31, 2018.

To conduct this audit, we did the following:

- Interviewed BIS staff to understand the EUC process for licensed and unlicensed exports and how EUCs are selected and carried out.
- Identified criteria used by BIS and its interagency partners for requesting an EUC on licensed and unlicensed exports.
- Interviewed IMS-R and AES system owners to understand how export transaction information is submitted and what may be derived from it.
- Interviewed CBP staff to understand their coordination with BIS to detect and prevent unauthorized exports using AES and ATS.
- Obtained AES data on export transactions shipped under the EAR for the period of October 1, 2014, through May 31, 2018.
- Obtained IMS-R data on EUCs completed in FYs 2015–2017 and on open and closed EUCs for the period of October 1, 2014, through April 26, 2018.
- Reviewed AES export transactions to identify filings that potentially used the STA license exception for exports to ineligible countries.
- Reviewed the parties listed in the Entity List, Denied Persons List, and Unverified List during FYs 2015–2017 to identify potential violations.
- Obtained information on the Validated End-User<sup>16</sup> program to assess (a) whether authorizations were approved appropriately and (b) determine the level of end user compliance.

During audit planning, we decided to exclude any fieldwork on the Validated End-User Program, because (a) no on-site reviews had been conducted on exports using this authorization during our period of review and (b) the criteria used for targeting EUCs did not apply to exports made under this program. While we identified and reported on internal control deficiencies in the processes and procedures used to select, document, and finalize end-user checks, no incidents of fraud, illegal acts, violations, or abuse committed by BIS were

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<sup>16</sup> Started in 2007, the Validated End-User program allows U.S. exporters to ship designated items to pre-approved entities located in eligible countries (currently, China and India) under a general authorization (as opposed to individual licenses) in return for agreed-upon compliance obligations.

detected within our audit. As a result of our fieldwork into the EUCs, BIS opened six investigative leads.

To complete our objective, we relied upon computer-processed data from AES and IMS-R, provided by the Census Bureau and BIS, respectively. We determined that AES has a widely accepted purpose and did not perform extensive testing for data reliability based on our testing needs. However, we conducted testing based on the filing date of export transactions and determined that, to our knowledge, no filings were missing from the AES raw data we received. We determined that AES data were sufficiently reliable for our testing purposes.

However, regarding EUC data contained in IMS-R, we identified several issues with data reliability including inaccurate EUC opening dates, illogical date relationships, and incomplete categorization of the reasons for opening an EUC. We determined that we did not receive a complete history of EUCs conducted in FYs 2015–2017. At least 86 EUCs were omitted in the data pull due to BIS excluding those that were given a “C” rating (cancelled). In addition, we could not find any evidence of EUCs that were conducted in 12 out of 20 targeted countries for Sentinel Program trips in FY 2017. BIS officials also stated that some EUCs that are identified are never entered into the system—and kept separately on an internal shared network drive. In addition to the inaccuracies of the EUC open dates and the reasons for opening an EUC, we determined that IMS-R data could not be used to assess how well BIS adhered to its criteria or whether the agency was meeting its internal reporting deadlines for completing EUCs.

We conducted this audit from October 2017 to August 2018 and performed fieldwork in Washington, DC. The audit was conducted under the authority of the Inspector General Act of 1978, as amended, and Department Organization Order 10-13, dated April 26, 2013. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence that provides a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

## Appendix B: BIS' Process for Targeting, Conducting, and Documenting End-Use Checks

The EAR allows BIS to conduct PLCs and PSVs (collectively known as *end-use checks*, or *EUCs*) on foreign end users for individual export transactions. A PLC verifies an end user's *bona fides* (i.e., legitimacy and reliability) and assesses its suitability to receive controlled U.S. items. A PSV ensures the end user (1) is using those shipped items according to its license's conditions and the EAR and (2) has not sent the items to unauthorized persons or companies.

### Targeting EUCs

For the period of our review (i.e., FYs 2015–2017), BIS used criteria that applies to exports during the current fiscal year but can be applied as far back as 5 years.

For each EUC selected, BIS requests documentation from the most appropriate party to the export transaction, such as the exporter or freight forwarder. Generally, if the documentation does not resolve the potential issues identified by the specialist, PSVs are initiated on end-users associated with exports that have already occurred.

To select PLCs, export compliance specialists use BIS' CUESS to identify foreign end-users listed on pending license applications.<sup>17</sup> To select PSVs, they use the system's licensing history module. Specialists also identify end-users for PSVs by reviewing past export transactions contained in outputs of AES data in ATS.<sup>18</sup>

### Conducting EUC visits

BIS or one of its interagency partners (primarily the Departments of Defense, Energy, and State) may request EUCs, which are performed by (1) BIS ECOs stationed overseas; (2) BIS special agents who visit end-users as part of the Sentinel Program;<sup>19</sup> and (3) commercial officers stationed overseas. EUCs may be conducted on both licensed and unlicensed exports (the latter are those shipped under license exception or a "no license required" designation). The exporter determines, based on the EAR, whether an export requires a license, does not require a license, or may be shipped under a license exception.

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<sup>17</sup> CUESS is a system developed by BIS that supports its licensing and enforcement functions, such as classifying commodities, issuing license determinations, and processing export license applications.

<sup>18</sup> AES is the primary instrument used for collecting Electronic Export Information owned and managed by CBP. AES collects data for each export transaction on the shipment, parties to the transaction, commodities, and transportation. ATS is a decision-support tool also managed by CBP that compares traveler, cargo, and conveyance information against law enforcement, intelligence, and other enforcement data using risk-based scenarios and assessments.

<sup>19</sup> Through the Sentinel Program, a pair of Office of Export Enforcement special agents visits foreign consignees and end-users of EAR-controlled items to conduct EUC visits, the results of which are entered into BIS' enforcement information system.

## Documenting EUCs

Specialists manually enter export information from AES, along with other case related data, into BIS' internal IMS-R, the tracking system of record for recording EUCs. After the visit is conducted and a recommendation is provided by (a) the ECO, (b) special agents, or (c) a commercial officer, an EUC is given one of the following ratings by the specialist who initiated it:

- **Favorable:** The party subject to the EUC is considered a reliable recipient of U.S.-origin items.
- **Unfavorable:** The party subject to the EUC is not considered a reliable recipient of U.S.-origin items and is subject to enforcement action.
- **Unverified:** The *bona fides* of the party subject to the EUC cannot be verified and may be subject to enforcement action.

The rating is considered final only after supervisory review by the director of OEA's International Operations Division, who then officially closes the EUC. Until that happens, a rating is subject to change.

## Appendix C: Description of Export Control Classification Numbers and Reasons for Control

EAR-controlled items are listed in the Commerce Control List under a specific ECCN or under the designation EAR99. Most items under Department of Commerce jurisdiction are classified as EAR99 and do not generally require a license unless they are destined for embargoed countries, parties of concern, or a prohibited end-use. Items specifically listed on the Commerce Control List are assigned an ECCN, which is a five-character alphanumeric designations (e.g., 3A001). The first digit corresponds to one of ten categories of items, the letter to one of five groups of item, and the last three digits to the type of control. Items that previously had been on the U.S. Department of State's U.S. Munitions List are referred to as "600-series" items, with the second digit being a "6" (e.g. 8A609). Spacecraft items are referred to as "9x515" items because the last three digits are denoted as such (e.g., 9A515).

Items on the Commerce Control List may be controlled for one or more reasons, such as the following:

- Anti-terrorism (AT)
- Chemical and biological weapons (CB)
- Crime control (CC)
- Firearms Convention (FC)
- Missile technology (MT)
- National security (NS)
- Nuclear nonproliferation (NP)
- Regional security (RS)

Controls are applied differently based on the destination country. An item's reason for control may apply to one group of countries (e.g., NS1) or to another group (e.g., CB2).<sup>20</sup>

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<sup>20</sup> For a complete overview of the Commerce Control List and Country Chart, see 15 C.F.R. part 738.

# Appendix D: Agency Response



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

December 9, 2019

MEMORANDUM FOR: Carol N. Rice  
Assistant Inspector General for Audit and Evaluation

FROM: Cordell Hull *CH*  
Acting Under Secretary for Industry and Security

SUBJECT: BIS Response to OIG Report on the Audit of the Bureau of  
Industry and Security Regarding Foreign End Users and Exports

Thank you for the opportunity to comment on the Office of Inspector General's (OIG's) report, *End-Use Check Data Are Unreliable, Impeding Performance Monitoring*. The Bureau of Industry and Security (BIS) recognizes that the OIG has a responsibility to ensure that audits and investigations are objectively conducted in a thorough and impartial manner, without undue influence by others, and there must be some level of collaboration to ensure that the information gathered and the associated findings are factual and based on a comprehensive review and analysis. BIS's response is intended to ensure that the final report is accurate and limits the exposure of the Bureau's investigative techniques, tools, and areas of special focus.

Should you have any questions or require additional information, please contact Kevin J. Kurland in the Office of Enforcement Analysis, at 202-482-2385 or [kevin.kurland@bis.doc.gov](mailto:kevin.kurland@bis.doc.gov).

Attachment



**Bureau of Industry and Security (BIS) Comments and Responses to Office of Inspector  
General (OIG) Report, *End-Use Check Data are Unreliable, Impeding Performance  
Monitoring***

**Comment**

*Title of Report:*

BIS objects to the title of this report implying the data related to end-use checks (EUCs) are “unreliable.” The report did not comment on the substance or results of EUCs, the targeting criteria, or the outcome and impact of the EUCs. Instead, the report focuses mostly on administrative categorization of data fields and how data are entered into the Investigation Management System-Redesign (IMS-R). As discussed with OIG over the past five months, BIS agrees that end-use check data entry requires enhancements to improve performance monitoring, but this action is separate from the actual reliability of the end-use check data itself.

**Comment**

*Page 1, third paragraph*

The report states that some export compliance specialists use the Office of Enforcement Analysis’s (OEA) targeting standard operating procedures, but in fact all export compliance specialists are required by their performance plans to use these procedures to target EUCs.

**Comment**

*Page 2, first paragraph and Table 1*

The information in this paragraph and table suggest a false relationship between license applications processed and EUCs completed. As BIS informed OIG, the majority of EUCs are not targeted at licensed items. License applications receive interagency reviews to determine the appropriateness of the item, end use, and end user in advance of an export. BIS focuses the majority of its EUC resources on targeting transactions that do not require a license. This is further evidenced by the Department’s recent elimination of the BIS EUC metric for monitoring licensed post-shipment verifications in order for BIS to focus its finite resources on unlicensed exports. Accordingly, there is no correlation between the two data sets identified in the table.

**Comment**

*Page 3, first paragraph*

This paragraph inaccurately suggests that the audit assessed the overall effectiveness of BIS EUCs in ensuring foreign end users are suitable to receive and use controlled U.S. exports in accordance with the EAR. While the report identifies potential weaknesses in some BIS procedures in accounting for EUCs, such as screening for proscribed parties and screening for license exception Strategic Trade Authorization (STA) usage, BIS notes that the audit made no evaluation of BIS efforts to choose appropriate targeting criteria or evaluate substantive information about end users and end use.



**Comments**

*Page 3, second paragraph*

BIS disagrees with characterization of the findings of the audit as stated in the first sentence. As noted above, OIG did not review the substantive results from EUCs or pinpoint any ways in which BIS EUCs were ineffective in identifying suitable or non-suitable foreign end users.

As also noted above, the second sentence's statement about data being "reliable" is inaccurate. For example, the actions taken during end-use checks and results entered into IMS-R reliably form the basis for enforcement actions.

**Comment**

*Page 4, second paragraph*

The OIG comment that selection processes developed by compliance specialists are not formalized and may be lost because there is no written guidance is not factual. OEA's written targeting guide provides the selection criteria and priorities that analysts are to follow in identifying checks. As BIS informed OIG, it is not possible to have one standard operating procedure (SOP) or a standardized checklist for targeting EUCs that applies to all analysts given the country-by-country disparities in threats and technology needs.

**Comment**

*Page 6, first paragraph*

The report inaccurately claims that IMS-R data do not identify EUCs conducted by commercial officers. All EUCs require a "conducted by" field to be completed, and FCS/FSO, which stands for Foreign Commercial Service/Foreign Service Officer, is one of the available options. All checks conducted by commercial officers are identified in this way.

**Comment**

*Page 6, second paragraph*

The report inaccurately claims that BIS management did not instruct analysts to correct inaccurate data entry. In general, staff are instructed to correct all errors and inaccuracies when identified by supervisors. BIS management acknowledged it has not instructed analysts on how to enter information in certain sections of IMS-R, but this was because there was no set standard to harmonize data entry between analysts. BIS began implementing data entry standards in Fiscal Year 2020, and analysts are being provided with a SOP and training on data entry that directly links to the targeting guide. In addition, BIS does not understand the statement made at the end of this paragraph, as the sentence seems to combine several disparate and unrelated actions.

**Comment**

*Page 6, fourth paragraph:*

With respect to the 27 EUCs for which the results of the visit were recorded but not closed, BIS acknowledges the error but believes the report's failure to explain the consequences of the error may lead to a mistaken impression about the severity of this issue. The EUC rating of limited, which is no longer in use, was used to indicate the item in question was not seen by the officials conducting the EUC, but everything else was in order. At the time, a limited rating was considered a type of favorable check and would not have resulted in an enforcement action. In addition, one of the EUCs was mis-rated as unverified and was actually favorable. Therefore,

only four (4) of the 27 EUCs were rated other than favorable – 0.1 percent of all EUCs reviewed by OIG. Of those four (4) EUCs, two (2) were connected to leads so enforcement actions were still taken.

**Comment**

*Page 7, second paragraph*

BIS disagrees with the statement that it “has not developed a formal manual or standard operating procedures for selecting export transactions for EUCs.” As noted in the introduction, OEA updates its targeting guide for selecting EUCs annually, which includes procedures for targeting EUCs using, inter alia, export data.

**Comment**

*Page 8, first paragraph*

BIS agrees with the OIG conclusion that “having standardized procedures for screening proscribed parties among the unlicensed transactions could help identify and deter violations of the EAR,” however, BIS informed the OIG that BIS does not own the system for placing such screens on export transactions. The Automated Targeting System is owned and administered by the Department of Homeland Security (DHS), and this action cannot be implemented without DHS support. The language in the report does not accurately reflect the responsibilities of BIS vis-a-vis DHS with regard to this effort. As an interim step, BIS informed the OIG in discussions on the September 2019 revised report, which included edits not in this final report, that two Export Enforcement officials have been assigned part-time to DHS’s National Targeting Center to assist with establishing prioritized party screens.

**Response to OIG Recommendations**

Recommendation 1: Develop standard operating procedures for staff responsible for selecting and reviewing EUCs to ensure that (a) data are entered accurately, consistently, completely, and in a timely manner, and (b) EUCs are selected per targeting criteria.

Response:

BIS agrees that SOPs are important tools for establishing and maintaining cohesive processes. BIS already has SOPs for selecting end-use checks. There are additional SOPs that can be developed to improve the accuracy and consistency of data entered into IMS-R, and BIS has begun to develop those SOPs.

BIS also agrees it is important for EUCs to be entered into IMS-R in a timely manner. Analysts are required to close unfavorable and unverified EUCs within five (5) days of receiving the report. This timeline is a requirement in their performance plans. BIS agrees that favorable EUCs can be closed in a timelier manner and will work with analysts to develop a process improvement to do so.

With respect to the second part of the recommendation, each analyst in the Office of Enforcement Analysis’ International Operations Division is responsible for supporting an Export Control Officer and covering a geographic area of responsibility. There are different concerns

and requirements for each geographic region, and checks are conducted at different frequencies in each country. As BIS informed OIG, it is not possible to have one SOP or a standardized checklist for targeting EUCs that applies to all analysts given the country-by-country disparities in threats and technology needs. The OEA targeting plan, which is updated annually, serves as a guide for analysts to follow when selecting export transactions for EUCs.

Recommendation 2: Develop a process that ensures that reasons for selecting EUCs align with the criteria and that the reasons are recorded consistently and accurately in IMS-R.

Response:

BIS agrees that a better process is needed to ensure the reasons for selecting EUCs in IMS-R align with the targeting criteria. Work has already begun to update the reasons for opening EUC data fields and make them more dynamic and in-line with the targeting priorities. The new reasons for opening were made operational at the start of Fiscal Year 2020. Analysts are being provided with an SOP for what these reasons for opening mean, when to use them, and how they align with the targeting guide, and they will receive training to ensure proper selection when creating EUCs in IMS-R.

Recommendation 3: Develop a contingency plan to (a) conduct enhanced monitoring of certain export filings, should AES controls fail in the future, and (b) reinforce guidance for screening export transactions that used the STA license exception whose consignees were associated with ineligible countries.

Response:

BIS agrees that monitoring the use of license exception STA is an important part of its compliance and enforcement efforts. Several offices in Export Administration are involved in evaluating STA compliance, and possible violations of STA requirements are sent to Export Enforcement for further evaluation and action. BIS is also in communication with DHS about AES and the pre-programmed edits that prevent certain filings from being accepted by the system. Since the OIG audit occurred, BIS created and implemented an automated compliance system that includes license exception STA. This system allows analysts to more clearly and frequently identify filing errors in AES, including where consignees are associated with ineligible countries. As part of the STA compliance review, errors are communicated with DHS, if necessary, and possible violations are sent to Export Enforcement. Upon becoming aware of AES edit failures, BIS will institute manual enhanced screening of high risk export filings until DHS corrects the problem. Additionally, BIS is amending its EUC targeting criteria for Fiscal Year 2020 to complement these actions.