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Office of Inspector General



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***BUREAU OF EXPORT
ADMINISTRATION***

*Most Allegations of Irregularities in
Nonproliferation Export Control Cooperation
Program Could Not Be Supported*

Final Inspection Report No. IPE-13313/February 2001

Office of Inspections and Program Evaluations





UNITED STATES DEPARTMENT OF COMMERCE
The Inspector General
Washington, D.C. 20230

FEB 27, 2001

MEMORANDUM FOR: William A. Reinsch
Under Secretary for Export Administration

FROM:

Johnnie E. Frazier

SUBJECT:

Final Inspection Report: *Most Allegations of Irregularities in Nonproliferation Export Control Cooperation Program Could Not Be Supported* (No. IPE-13313)

As a follow-up to our January 18 draft report, attached is our final report on our inspection of anonymous allegations made to the Inspectors General of the Commerce and State Departments concerning the Bureau of Export Administration's Nonproliferation Export Control Cooperation (NEC) program. This report includes comments from your February 14, 2001, written response to the draft report, which is included in its entirety as an appendix to the report.

We found the allegations, for the most part, could not be supported. However, we did find a few areas where some improvements are needed in BXA's management of the NEC program.

In response to our draft report, you asked that we indicate what action the State Department Inspector General has taken or will be taking on the allegations that were also sent to her. Although we coordinated parts of our review with that office, we did not ask for a formal response from State's Inspector General. We will be sending a copy of this final report to her.

Please provide us with your action plan addressing the recommendations within 60 calendar days. We thank the personnel in BXA for their assistance during our review. If you have any questions or comments, please contact me on (202) 482-4661, or have a member of your staff contact Jill Gross, Assistant Inspector General for Inspections and Program Evaluations, on (202) 482-2754.

Attachment

cc: Anne Sigmund
Acting Inspector General
U.S. Department of State

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EXECUTIVE SUMMARY

In December 1999, the Inspectors General of the Commerce and State Departments received an anonymous letter containing numerous allegations of irregularities in the Nonproliferation Export Control Cooperation (NEC) program, including alleged mismanagement by senior BXA officials. The letter alleged that BXA did not have legal authority for the NEC program; was improperly using State Department funds; may have risked national security in its contacts with foreign nationals; and, may have failed to adequately share the results of its export control policy discussions held during overseas trips with other national security agencies. The letter also claimed that BXA had set up an unauthorized unit to manage the NEC program, engaged in a number of illegal or inappropriate personnel practices in staffing this unit, hired personal services contractors in violation of the intent of Congress, and contrived to evade audit and program review by both the State and Commerce Department Inspectors General.

The NEC program was set up to help Russia and the New Independent States of the former Soviet Union, Central Europe, the Balkans, the Caucasus, and Asia develop export control programs by providing training and technical assistance on export controls and advice on drafting export control laws and regulations. BXA began the program in 1993 with Defense Department funding to assist the four former Soviet republics that have nuclear weapon capabilities (Belarus, Kazakhstan, Russia, and Ukraine) in dismantling their nuclear missiles, establishing secure communications and a hotline, and promoting export control cooperation. The overall Defense Department program also emphasized encouraging conversion of the defense industry and its scientists.

Since its initial work with these independent states of the former Soviet Union, BXA has expanded its original effort into what is now called the NEC program, principally supported by State Department funding under the authority of the FREEDOM Support Act of 1992, to establish programs for safeguarding against the proliferation of nuclear, biological, and chemical weapons and preventing the diversion of weapons-related scientific and technical information and expertise of the independent states to terrorist groups or third countries. The State Department funds the bulk of the NEC program's work through its appropriation under the Nonproliferation, Antiterrorism, De-mining, and Related Programs account. BXA attempts to accomplish this nonproliferation mission by conducting technical exchanges with these countries in the areas of export control policy, automation, licensing, legislation, regulations, and preventive enforcement. Although the State Department is now BXA's principal funding source for the program, the Defense Department and the U.S. Customs Service have also provided funding to BXA. Under interagency agreements, these agencies transfer funds to BXA, based on BXA's funding proposals, to carry out technical exchanges with the foreign governments.

We conducted a review of the specific allegations and related matters concerning the NEC program to determine if they had any merit. We did not perform an evaluation of the program's overall effectiveness. We interviewed the Under Secretary, the Deputy Under Secretary, and other senior BXA officials, including the principal staff of the NEC program office, and its contractors. In addition, we interviewed attorneys both with BXA's Office of the Chief Counsel, and the Department's Office of General Counsel, and officials with Commerce's Office of Budget. Furthermore, we interviewed several cognizant State Department officials who are responsible for the direct program management as well as departmental oversight of BXA's NEC program activities.

Based on our review, we concluded that (1) most allegations about BXA's conduct of the NEC program could not be supported, and (2) some relatively minor improvements are needed in BXA's management of the NEC program. Our specific findings are outlined below:

Most allegations about BXA's conduct of the NEC program could not be supported. For example, we determined that the issue of legal authority for the program had been addressed by both agency and departmental counsel, who concluded that appropriate authority existed (see page 11). We also found that BXA did not provide extra spending money for visiting foreign officials (see page 4); did not hold inappropriate, unaccompanied meetings with foreign officials overseas (see page 8); did not withhold information from other U.S. agencies on the results of policy discussions held overseas (see page 8); did not set up an unauthorized unit for the NEC program (see page 11); did not engage in illegal or inappropriate personnel practices (see page 11); did not violate the intent of Congress by hiring contractors (see page 11); did not lack expertise in export control matters (see page 11); and did not contrive to evade audit and program review by either the State or Commerce Department Inspector General (see page 11).

Some NEC expenditures are questionable. While we did not find lavish spending as alleged, we questioned BXA officials' approval of the expenditure of NEC funds for operating a snack bar for attendees at an overseas conference. We also questioned the appropriateness of using government funds to cover ground transportation expenditures, though minor in amount, to cover some side trips not related to two NEC workshops (see page 3).

Management oversight and controls over use of NEC funds should be improved. The Under Secretary's policy guidance on use of funds for official entertainment and representation needs to be clarified and should provide more specific examples of what expenditures are allowable. In addition, BXA should more closely monitor expenditures of federal funds for its NEC conferences and technical exchanges (see page 5).

BXA needs to modify its agreement with the State Department regarding NEC program activity with China. Documentation supporting an interagency agreement between BXA and the State Department inappropriately includes references to BXA's anticipated bilateral and multilateral export control work with China. This oversight can cause misunderstandings with Congress, which requires advance notification from the State Department of the intended use of the nonproliferation funds. BXA needs to work with State to modify the agreement to clearly exclude China from the list of countries that BXA will work with using State Department funding (see page 14).



In its written response to our draft report, BXA agreed with all of our recommendations and has already taken action on some of them. We summarize BXA's response in the body of the report, and BXA's complete response begins on page 17.

INTRODUCTION

This inspection report presents the results of our review of allegations concerning BXA's management of the Nonproliferation Export Control Cooperation program. In December 1999, the Inspectors General of the Commerce and State Departments received an anonymous letter containing numerous allegations of irregularities in the NEC program, including alleged mismanagement by senior BXA officials.

Inspections are special reviews that the OIG undertakes to provide agency managers with timely information about operational issues. One of the main goals of an inspection is to eliminate waste in federal government programs by encouraging effective and efficient operations. By asking questions, identifying problems, and suggesting solutions, the OIG hopes to help managers move quickly to address problems identified during the inspection. Inspections may also highlight effective programs or operations, particularly if they may be useful or adaptable for agency managers or program operations elsewhere.

The inspection was conducted in accordance with *The Quality Standards for Inspections* issued by the President's Council on Integrity and Efficiency, and was performed under the authority of the Inspector General Act of 1978, as amended, and Department Organization Order 10-13, dated May 22, 1980, as amended.

BACKGROUND

The NEC program was set up to help Russia, the New Independent States of the former Soviet Union, and Central Europe develop export control programs by providing training and technical assistance on export controls and advice on drafting export control laws and regulations. BXA initiated its export control cooperation efforts in 1993 with Defense Department funding to help with the dismantling of nuclear weapons installations and weapons production facilities following the collapse of the Soviet Union. The early program included BXA's participation in the U.S. government's efforts to assist the four former Soviet republics that have nuclear weapon capabilities (Belarus, Kazakhstan, Russia, and Ukraine) in dismantling their nuclear missiles, establishing secure communications and a hotline, and promoting export control cooperation. The overall Defense Department program also emphasized encouraging conversion of the defense industry and its scientists.

Since its initial work with these four countries, BXA has expanded its original Foreign Technical Assistance (FTA) team into what is now called the NEC program, supported by State Department funding under the authority of the FREEDOM Support Act of 1992. Under Section 504 of the

act, the Nonproliferation and Disarmament Fund, the State Department is authorized to establish programs for safeguarding against the proliferation of nuclear, biological, and chemical weapons and preventing the diversion of weapons-related scientific and technical information and expertise of the independent states to terrorist groups or third countries. The State Department funds the bulk of the NEC program's work through its appropriation under the Nonproliferation, Antiterrorism, De-mining, and Related Programs account. The primary difference between the expanded NEC program and its predecessor, the FTA, which was funded by the Defense Department under its Nunn-Lugar Cooperative Threat Reduction Program, is that it now includes other countries in Central Europe, the Baltics, Central Asia, and Caucasus. In addition, the objective of the NEC program is to curb the proliferation of weapons of mass destruction by focusing on commercial channels of diversion. BXA attempts to accomplish this by conducting technical exchanges with these countries in the areas of export control policy, automation, licensing, legislation, regulations, and preventive enforcement.

While the State Department is now BXA's principal funding source for the program, the Defense Department and the U.S. Customs Service have also provided funding to BXA. Under interagency agreements, these agencies transfer funds to BXA, based on BXA's funding proposals, to carry out technical exchanges with the foreign governments. The Department of Energy and the U.S. Coast Guard also participate in these nonproliferation efforts. BXA began the NEC program on an informal basis in 1993 with short-term assignments of BXA staff, then formalized its efforts in 1995 with the creation of the FTA. Currently, BXA has nine staff members assigned to the program. Funding levels for the program totaled nearly \$6 million dollars in FY 1999 and approximately \$5.6 million in FY 2000 (see attachment).

OBJECTIVES, SCOPE, AND METHODOLOGY

Our objective was to assess the validity of the allegations concerning the NEC program. The scope of the inspection was limited to the specific allegations and related matters; we did not perform an evaluation of the program's overall effectiveness. Our review methodology included conducting interviews with BXA officials named in the allegations, as well as other cognizant BXA, Commerce, and State Department officials. We also reviewed contract files, budget information, personnel documents, organizational orders, and NEC program files. During the review and at its conclusion, we discussed our findings with the Under Secretary for Export Administration, the Deputy Under Secretary, and the NEC program team leader. Although most of our field work was conducted in the Washington, DC, area from June 12 through September 1, we continued to receive additional information from BXA officials up until November 21, 2000.

OBSERVATIONS AND CONCLUSIONS

I. Management Oversight and Controls Over Use of NEC Funds Should Be Improved

Several of the allegations related to BXA's management of NEC program funds. Specific references were made to BXA officials' not only spending above the authorized per diem rate for hotels overseas, but also hosting lavish receptions and hospitality events during their stay. Another allegation was that BXA provided spending money and transportation to shopping malls to foreign officials visiting Washington on technical exchanges. Questions were also raised about the adequacy of BXA's and State Department's oversight of NEC expenditures.

In following up on these allegations, we did not find support for the allegations that BXA officials used government funds to host lavish receptions and stay in hotels that exceeded the per diem rate. However, we did find four cases in which BXA either did not comply with its own guidance on hosting dinners or did not conform with federal travel regulations or with departmental regulations for official entertainment and representation. BXA's lack of conformance was, at least in part, due to unclear guidance on the use of program and other funds for entertainment or related purposes. We were unable to determine whether there were other similar instances of inappropriate spending because of the lack of detail in the cost data that BXA was able to provide us. Our review of BXA's spending for these events focused on a sample of 8 events out of a total of 33 which BXA hosted during FY 1999 and FY 2000. We requested BXA officials to furnish us detailed cost estimates for the 8 events in our sample. Unfortunately, BXA officials could provide us with detailed cost data for only 2 of events, and an aggregated cost breakdown for the remaining 6 events.

A. *Some NEC expenditures are questionable*

The four BXA cases where we found questionable BXA expenditures involved a dinner and use of a college-run snack bar at an NEC conference in England and two local tours for workshop attendees in Tbilisi, Georgia, and Washington, DC. At the NEC's annual International Conference on Export Controls in Oxford in the fall of 1999, BXA officials hosted a dinner on September 30 for 49 people, including BXA personnel and foreign officials. BXA spent \$5,688 for the dinner including \$606 for alcoholic beverages (including hard liquor). It paid for the dinner with State's program funds by withholding the per diem funding of the attendees collectively, plus using \$3,000 in State Department funding which was listed in the interagency agreement as "hosted events." NEC officials told us that they considered it to be a "working event" scheduled as part of the conference program, and not official entertainment or

representation. They said that they included line items for hosted events and conference expenses in the budget proposal to State for the conference, and that the expenditure had been approved in advance by State Department officials.

A State Department senior official told us that BXA had discussed in advance the proposed expenditures for the conference with him. He also agreed that the dinner was a “working event” and says that State will customarily approve the expenditure of program funds for wine and beer in conjunction with a meal overseas, as well as occasional beverages and snacks, within reason. However, this official said that if he knew in advance of BXA’s intent to purchase hard liquor, he would not have approved State Department funding for the dinner. He said that he would have insisted that BXA pay for the event with BXA’s representation funds. However, the purchase of hard liquor also conflicts with the policy guidance of BXA’s Under Secretary (see page 5).

The second example of a questionable NEC expenditure involved an invoice we found for another food bill for the Oxford conference, which prompted us to raise some questions. We had difficulty in trying to determine the use of the approximate \$2,342 covered by this invoice, also for September 30, from the College Bar at Oxford’s St. Hugh’s College. At first, BXA told us that the invoice was for a luncheon it sponsored; then we were told that it was for a cocktail reception sponsored by BXA at the College Bar. However, based on information subsequently received from BXA on November 21, 2000, we were told that the \$2,342 actually represented the cumulative charges the conferees made at a dormitory snack bar (the “College Bar”) during the course of the conference. Although both BXA and State Department officials claimed that the availability of the College Bar to serve alcoholic and non-alcoholic beverages and snacks into the late evening allowed for extended periods of interaction and networking among the conferees, we believe such provision of the snack bar food and drinks for conference attendees violates federal travel regulations and should not have been allowed. In their planning for this event, BXA officials should have anticipated the needs of the conference participants, and arranged for them to use the College Bar facilities on a pay-as-you-go basis.

The third example of BXA not complying with appropriate guidelines or its questionable use of program funds occurred during a November 1999 NEC regional export control workshop held in Tbilisi, Georgia. The Georgian co-host asked the NEC staff to pay for a Tbilisi city tour to share Georgian cultural and historical information with workshop delegates. In response to our question on this matter, BXA officials stated that they did not consider this to be “official entertainment” for it did not involve members of the U.S. delegation. While a relatively small amount of program funds was used for this event (\$60), BXA should have obtained post approval for the expenditure as a representation event using its Operations and Administration (O&A) funds.

Regarding the allegation that BXA officials provided spending money and transportation for shopping trips for the foreign visitors attending technical exchanges in Washington, we found that BXA provided them with travel advances, based on the current per diem rate, within the authorized per diem allowance for meals and incidental expenses available to official travelers. We also found that BXA customarily provides transportation for the officials during their stay in Washington, including transportation to and from the airport, to their hotel, and between the Commerce, State, and Defense Departments for the technical exchanges. On the last day of their stay in Washington, the visitors are sometimes taken to a local shopping mall as a courtesy.

The fourth instance of a questionable BXA expenditure involved such transportation services. The NEC program was charged approximately \$200 for one “tour as directed,” for a group of foreign visitors attending a Tajikistan Licensing Workshop in April 2000. In response to our questions on this expenditure, BXA officials explained that the van stopped at a local electronics store en route to transporting the participants back to their hotel as a courtesy to enable the Tajikistan delegation members to purchase computer and other electronic office supplies. This stop added an hourly charge of \$48.34 to the basic cost of \$160.77 for the trip from the Commerce Department to the hotel. Our concern is with potential abuse if such transportation is viewed as a personal taxi service paid for with State Department funds. In the future, we believe that BXA may wish to negotiate its general ground transportation contract to allow for a modest side trip (at no additional cost) on the final day of the visitors’ stay in Washington. For any side trips beyond this level, BXA should encourage the visiting delegates to make separate arrangements with BXA’s contract transportation company, or any other carrier, and use their personal funds to cover those costs.

In conjunction with the finding mentioned below, we believe that BXA’s policy guidance on official entertainment and representation should be revised to clarify the do’s and don’ts and provide more examples of allowable expenditures, including those for meals, alcohol, transportation, and touring services.

B. Guidelines on use of funds for official entertainment and representation need to be clarified

The guidelines and process for Commerce agencies to use in obtaining approval to expend funds for official entertainment and representation are described in Department Administrative Order (DAO) 203-10. Official entertainment is “entertainment which furthers a departmental purpose directly associated with the Department’s statutorily mandated missions,” and the term is used to refer to domestic events only. Representation is “official entertainment abroad for the purpose of

furthering the interests of the United States.”¹ According to the DAO, a requestor must obtain prior written approval from an authorized official [Secretarial officers and heads of primary operating units] for all official entertainment and representation expenditures. This authority may be re-delegated to other authorized officials. BXA’s Under Secretary has re-delegated his authority to approve these requests to BXA’s Director of Administration. The requestor must describe and justify the request for official entertainment and include a cost estimate and list of guests or attendees. If the expenditures are for more than \$1,000, prior written approval must also be obtained from the Chief Financial Officer and Assistant Secretary for Administration. The requestor must identify the source of funds (and verify the availability of funds with the agency budget officer) to pay for these expenditures.

In a March 2, 1998, memorandum to all BXA senior officials, the Under Secretary provided more specific guidance to supplement DAO 203-10, stipulating that the State Department’s Nonproliferation and Disarmament Fund may not be used for official entertainment or representation activities in connection with BXA’s export control activities. The policy guidance states further that a separate approval is required if any of the Commerce Department’s official entertainment or representation funds are to be used for alcoholic beverages, and any such approval for alcoholic beverages only includes wine and beer, not hard liquor.

However, the Under Secretary’s policy supplementing DAO 203-10 does not provide clear guidance to BXA staff because it does not address several areas of official entertainment that are pertinent to the NEC program, and it differs from the DAO on at least one point. For example, the BXA policy prohibits the use of hard liquor, while the DAO guidance makes no distinction between the categories of alcoholic beverages that can be used for official entertainment. In addition, the Under Secretary’s policy guidance on official representation overseas only mentions receptions or gifts given to foreign dignitaries overseas; it does not address whether meals, food or drinks (luncheons, dinners, or snack bars) hosted by BXA officials overseas may be considered as official representation and how they should be handled. We believe the policy guidance should be revised to clarify any inconsistencies with the DAO and to cover the various types of events or entertainment that BXA uses for the NEC or its other programs.



In its written response, BXA concurred with our recommendation to revise its policy guidance on

¹ Definitions from Department Administrative Order, 203-10, Official Entertainment and Representation Authorizations.

official entertainment and representation to bring it into conformity with the DAO and to provide examples that will help clarify what are allowable expenditures.

C. BXA's reporting of NEC expenditures to State Department has improved

We interviewed State Department program officials to gain their perspective on the adequacy of reporting by BXA officials on the expenditures for the NEC program, which is funded by a State Department unit that handles export control and nonproliferation affairs. The State program manager position charged with overseeing the NEC activities is held by foreign service officers who rotate into this assignment approximately every two years. The previous State program manager complained to us that BXA had not been fully documenting the results of its NEC activities and providing a proper breakdown of expenditures. However, he added that State does not have the resources to do an adequate job of management oversight. Specifically, he was responsible for overseeing \$40 million of funding for nonproliferation programs spread among BXA and the other four agencies. To help him better oversee the programs under his jurisdiction, he recently developed project management software, with templates, that BXA can now use to report on its NEC program expenditures in sufficient detail to meet the State Department's needs. The current program officer told us that BXA was now using the reporting format, and it did provide him with the necessary information on program expenditures.

While we did not find serious problems with the expenditures of NEC program funds, we recommend that BXA managers increase their oversight of the use of program and O&A funds, including that of its contractors. BXA should ensure that the NEC program managers, staff, and contractors are aware of and comply with departmental regulations on expenditures of funds for official entertainment. The NEC program supervisor should also scrutinize the travel vouchers of NEC staff and contractors, and the billing statements of service providers, to ensure that NEC program activities are conducted in a cost-effective manner and in compliance with all applicable regulations, policies, and procedures.



In its written response, BXA officials concurred with our recommendation and stated that they have conducted refresher training for NEC staff members and contractors concerning applicable federal travel regulations and departmental regulations for expenditure of funds for official entertainment and overseas representation. BXA also said that it has taken steps to make sure that its contractors understand the need for and maintain detailed cost data.

II. NEC Staff Contacts With Foreign Officials Overseas Were Handled Properly

Another allegation was that BXA officials had improper contact with foreign government civilian and military officials and were not appropriately (a) debriefing embassy officials following these contacts and (b) sharing the results of their discussions with other appropriate U.S. officials. The risk implied in the allegation was that BXA officials might be unwittingly compromised by some of these foreign officials, including those who may have been involved in proliferation.

We found, however, that BXA officials have taken steps to increase their awareness of security issues when they meet with foreign military and other government officials. First, the BXA officials and NEC staff who travel overseas attend a security course offered by the State Department's Foreign Service Institute. Before traveling abroad, as necessary, they also receive a security briefing from the Commerce Department's Office of Security. During their travel, BXA personnel follow several steps to ensure that proper security measures are taken. Upon arriving in the foreign country, they are briefed by an American embassy official, generally the Deputy Chief of Mission or the Regional Security Officer. During those briefings, BXA personnel are given any pertinent background information on the foreign officials they will meet with, including any U.S. security concerns about the officials. Furthermore, BXA stated that it was standard policy for an appropriate American embassy officer to accompany them, at least on the first visit with foreign government officials in the host country. Following their meetings with foreign officials, BXA personnel brief embassy officials on the outcome of the meetings, and report the results of the meetings in a cable to cognizant agencies. We are satisfied that BXA is taking adequate steps through reporting cables and post-visit reports to properly share the results of its overseas policy discussions with other appropriate agency officials.

III. NEC Program Performance Measures Appear Adequate

Another allegation was that BXA had no tangible results to show for its expenditure of NEC program funds. While we did not conduct a program evaluation of the NEC program, we did look to see whether there were performance measures in place and whether BXA was reporting on its performance. We interviewed NEC and State Department officials and obtained documents and reports on the results of the NEC's program activities. The program's performance results were also favorably evaluated in two separate reviews conducted by the National Academy of Sciences/National Research Council (April 1997) and the Monterey Institute (Spring 2000).

Separately, a recently issued OIG audit of BXA's performance measures² states that although BXA senior management is committed to verifying and validating its performance data, there were inconsistencies found in the number of nonproliferation and export control international cooperative exchanges identified in BXA's performance report and in its financial statements. The report further states that BXA needs to strengthen its documentation of performance data.

We found that the NEC program's performance measures address its success in helping other countries develop export control regimes that meet international standards. Such regimes would include a legal and regulatory framework, licensing procedures and practices, enforcement mechanisms, industry-government relations, and program administration and automation support.

We believe that BXA is making a credible effort to measure NEC program performance. One of the program's most significant performance measures is the establishment of export control laws in participating countries that are a result of BXA's technical aid. BXA reported that it has helped several countries, to varying degrees, in establishing export control laws, and it also helped some countries in establishing regulations to support the laws. The nations in which BXA reported having helped establish export control laws include Russia, Lithuania, Latvia, Estonia, Poland, Romania, Bulgaria, Slovenia, Georgia, Kazakhstan, Kyrgyz Republic, Tajikistan, Czech Republic, Slovakia, and Belarus. BXA also tracks the number and type of seminars and technical exchanges it has with foreign delegations as a performance measure. State Department program officials reported that BXA's NEC program had made significant contributions to their overall nonproliferation efforts and complimented senior BXA officials on their responsiveness to State Department requests for information.

² *Reporting of Performance Measures Needs Improvement, Bureau of Export Administration, U.S. Department of Commerce, Office of Inspector General, Audit Report No. FSD-12487, September 2000.*

BXA's NEC program performance was also praised in the National Research Council report on proliferation concerns,³ which stated that the foreign participants in the technical exchanges expressed positive views about the program. It was also reported that the nonproliferation programs had been significant in helping these countries develop the legal bases for export controls and install systems for processing export license requests. As a result of the efforts of the Commerce Department and other U.S. agencies, some of the countries (Russia and Ukraine) had become members of two or more of the various international control regimes that address international movement of nuclear, biological, chemical, missile, and dual-use components and technologies. A table in the report identified 59 multilateral and bilateral export control cooperation activities conducted from 1994 through 1996, over 70 percent of which were led by Commerce teams. In summary, the report stated that if not for the active involvement of the U.S. specialists in the various agencies, it is unlikely that any of the countries would have given export controls its heightened level of priority.

Additionally, in a report published by the Monterey Institute, it was stated that "US export control assistance programs have significant accomplishments to their credit."⁴ The report discusses how the export control assistance programs have laid the legal and institutional ground work in Russia, Ukraine and Kazakhstan for nuclear, missile and dual-use export controls work.

³ "Proliferation Concerns: Assessing U.S. Efforts to Help Contain Nuclear and Other Dangerous Materials and Technologies in the Former Soviet Union," National Research Council, April 26, 1997.

⁴ Monterey Institute for International Studies, *The Nonproliferation Review*, Spring 2000, pages 117-118.

IV. Some Additional Allegations Are Also Largely Unsupported

The anonymous letter also made several other allegations about the NEC program, including one claiming that BXA does not have legal authority to conduct the NEC program. To assess the validity of this allegation, we interviewed senior officials in BXA and the Commerce and State Departments, as well as attorneys with BXA's Office of the Chief Counsel for Export Administration and the Department's Office of General Counsel. We also reviewed various statutes, legislative actions, and other relevant materials, including a legal opinion⁵ by BXA's Acting Chief Counsel regarding the legal authority issue. Based on this information, we are satisfied that the allegation is without foundation.

Other allegations about the NEC program included the following: (1) a Schedule C position was improperly converted to a career position, (2) the appointment of the Deputy Under Secretary for Export Administration was handled improperly, (3) Commerce was using State Department appropriations to pay for contractors—against the intent of Congress, (4) NEC program staff were guilty of inappropriate behavior while traveling overseas, (5) NEC staff lacked expertise in export control matters, (6) BXA has purposely evaded scrutiny and oversight of the program by both the Commerce and State Department Inspectors General, (7) the program does not have an authorized organizational structure, and (8) some foreign officials inappropriately attended multiple NEC technical exchanges in Washington.

After interviewing officials of the Department's Office of Human Resources Management and reviewing documents and information provided by that office, we found no evidence to support the allegations of inappropriate personnel actions involving the Schedule C or Deputy Under Secretary positions. Commerce is not restricted from hiring contractors with the funds transferred from the State Department's appropriation. The allegation that an NEC staff person had engaged in inappropriate behavior was true; however, BXA took appropriate disciplinary action regarding this incident, which occurred several years ago. The allegation that NEC staff lack expertise in export control matters is without foundation. We have no evidence that BXA officials purposely evaded scrutiny by the Commerce and State Department Inspectors General. Also, we determined that the Nonproliferation Export Control Cooperation Team is an official organizational unit within the Office of the Under Secretary for Export Administration.⁶

⁵ Memorandum from Acting Chief Counsel for Export Administration Cecil Hunt to Under Secretary for Export Administration Barry Carter, December 22, 1994.

⁶ Department Organization Order 50-1, Amendment 1, August 4, 1998.

Finally, although the allegation that some foreign officials may have attended several Washington technical exchanges is true, those repeat visits appear to be for legitimate purposes. According to BXA officials, although various officials in a foreign government's hierarchy typically will attend the program's technical exchanges, there are generally one or two representatives from each country with whom the NEC deals repeatedly. These key officials will sometimes attend successive technical exchanges; almost invariably these are not the same course, but rather a series of different courses. BXA officials view this redundancy as desirable, for these officials provide a much-needed continuity for a technical exchange program that extends over several years. In our review of attendees at a sample of technical exchanges the NEC staff conducted in Washington during the past two years, we found two foreign government representatives who had attended three different technical exchanges.

V. Other Issues

Although they were not part of the letter of allegations, during the course of our review, we identified two other relevant issues which we address in this section.

A. *BXA has developed a policy on the handling of its foreign visitors*

During our review, we had security-related concerns about how BXA handles foreign visitors to the Commerce Department who participate in the technical exchanges in the NEC training center and in other meetings with BXA officials. These visitors, some of whom are foreign intelligence officials, were not always escorted. Although escorts for these visitors are not required under existing departmental Office of Security guidelines,⁷ the Office of Security is expected to issue a new security manual by the end of March 2001 that will require Commerce agencies to provide escorts for all foreign visitors in the Commerce Building to protect against inadvertent disclosure of classified information. BXA has secured most offices handling classified information on a regular basis to limit access only to authorized persons, but the opportunity still exists for foreign officials to access other parts of BXA, and other agencies in the Department, including the International Trade Administration, which routinely handle classified information and depend on the use of safes and security containers to safeguard classified material not in use. We believe that some additional steps may help improve security involving foreign visitors to the building.

In addition to requiring escorts, the new security manual will have requirements for additional background information on foreign visitors in advance of their arrival. BXA also recognizes the need for improved security steps. On September 19, 2000, the Under Secretary for Export Administration issued a guidance memorandum to the Deputy Under Secretary, Chief Counsel for Export Administration, BXA Director of Administration, and NEC staff and contractors regarding access to Commerce Department buildings and facilities by foreign nationals participating in NEC activities. The memorandum requires BXA's NEC staff to submit specific information on each foreign visitor at least 30 days before the visit and identify what areas of Commerce facilities are to be visited. It also requires BXA/NEC to assign an escort for these foreign visitors while they are in any Commerce Department facility.

Following BXA's issuance of its foreign visitor policy for the NEC program, we sought the views of Office of Security officials on this policy. These officials stated that they were satisfied

⁷ Department Administrative Order 207-2, Personal Security Manual, 504c.(2)(c): ... " Foreign nationals may be admitted to Commerce facilities provided there are sufficient controls in place to prevent access to areas housing classified information and restricted technology."

with BXA's new policy of providing escorts for and furnishing advance background information on foreign visitors to OSY, although they believe it should cover more of BXA's operations than just its NEC program.

B. BXA needs to modify its agreement with the State Department regarding NEC program activity with China

We learned from our interviews with BXA officials that the interagency agreement between the State Department and BXA to carry out the NEC program with State's funding mistakenly identified future multilateral and bilateral export control work with China. Although the State Department is required to notify the Congress at least 15 days in advance of its plans to obligate funds from its nonproliferation appropriation, this notification is not necessary if BXA uses its own appropriations to fund NEC program activities that involve China. It appears that the mention of China in the two separate assistance plans attached to the interagency agreement between BXA and State covering both multilateral regional conferences and bilateral regional exchanges was an oversight by State and is not appropriate since the agreement only covers activities funded by the State Department. According to BXA, at the time the agreements were drafted, both State and Commerce officials understood that State's Congressional Notification to the Congress would include funds for BXA to conduct an interagency assessment of China's export control system. However, State's final Notification omitted this project. BXA intends to use its own funds for its activities with China, and there is no requirement that BXA report that work to Congress. We recommend that BXA work with State to modify the interagency agreement to clearly exclude China from the list of countries that BXA will work with using State Department funding.



In its written response, BXA officials stated that they have asked the State Department to modify the existing interagency agreement by removing the references to China.

RECOMMENDATIONS

We recommend that the Under Secretary for Export Administration take appropriate steps to:

1. Ensure that NEC staff members and contractors are aware of and follow applicable federal travel regulations and departmental regulations for expenditure of funds for official entertainment or overseas representation events (see page 3).
2. Revise the March 2, 1998, BXA policy guidance on official entertainment and representation to:
 - a. make it consistent with Department Administrative Order 203-10 or clarify the differences; and
 - b. clarify what expenditures are allowable for official entertainment and representation, and provide more examples of allowable and nonallowable expenditures, including those for meals, alcoholic beverages, transportation and touring services (see page 5).
3. Work with officials of the State Department to modify the existing interagency agreement to exclude China from the list of countries that BXA will work with using State's funds (see page 14).

APPENDIX II
Agency Response



UNITED STATES DEPARTMENT OF COMMERCE
The Under Secretary for Export Administration
Washington, D.C. 20230

February 14, 2001

MEMORANDUM FOR JILL W. GROSS

Assistant Inspector General
for Inspections and Program Evaluations

From: William A. Reinsch *WAR*
Under Secretary
for Export Administration

Subject: BXA Comments concerning Draft Inspection Report (IPE-13313)

This provides the Bureau of Export Administration (BXA) response to the Draft Inspection Report: *Most Allegations of Irregularities in Nonproliferation Export Control Cooperation Program Could Not be Supported* (IPE-13313) (hereinafter "draft Report").

Our comments track the draft Report's organization, as follows:

- Executive Summary
- Introduction
- I. Management Oversight and Controls
- II. NEC Staff Contacts with Foreign Officials
- III. NEC Program Performance Measures
- IV. Some Additional Allegations
- V. Other Issues
- Recommendations

BXA's Comments:

In the Executive Summary, page i, 2nd paragraph, 1st sentence: change "Newly" to "New".

Page i, 3rd paragraph, 1st sentence: It is desirable to clarify that these are the "independent states" of the former Soviet Union.

In the Background section on Page 1, 1st paragraph, 1st sentence: change "Newly" to "New" and delete references to "the Balkans, the Caucasus, and Asia" as the Balkans are a part of Central Europe and the nations with which BXA works in the other two regions are parts of the NIS.

In the first paragraph (under Background), penultimate sentence: At a minimum, Ukraine was dropped from the parenthetical phrase, and probably also the word "by" or the word "in" following the closing of that phrase after inserting "Ukraine)" - - though it appears that there



might have been a computer or transcription error and more words than that were erroneously omitted.

Page 2, 1st (incomplete) paragraph at top of page, 3rd to last sentence: the reference should be to "Central" rather than "Eastern" Europe.

I. Management Oversight and Controls.

The draft Report notes (page 3) that BXA officials provided detailed cost data for only two of the eight events selected for analysis, and supplied only an aggregated cost breakdown for the six remaining events.

The final Report should clearly state that BXA supplied all requested data that exist. Cost data that were provided were for the two activities (of the eight for which data were requested) where no contractor support was involved; however, the contractor involved in the other six activities did not *at the time those activities were conducted* maintain cost data to the same level of detail. We have taken steps to make sure that our contractors understand the need for and maintain detailed cost data.

As recommended, we will revise BXA's policy guidance on official entertainment and representation to bring it into conformity with the Departmental guidance, and to include examples that will help clarify what are allowable expenditures.

The draft Report states (page 6) that "[t]he previous State Department program manager complained to us that BXA had not been fully documenting the results of its NEC activities and providing a proper breakdown of expenditures." BXA recognizes that it can always improve performance and will strive to do so in the areas the draft Report suggests need improvement. However, with respect to reporting to State regarding the results of activities and expenditures, we note the following:

1) activities. The NEC team kept and continues to keep the State Department fully apprised of the activities it was/is conducting with State funds by means of: a) briefings at weekly and biweekly meetings of the State-chaired interagency group on export controls; b) invitation and clearance cables announcing technical exchanges four weeks or more in advance which were vetted by appropriate State organizations and desk officers before the cables were cleared and transmitted, c) having State personnel participate in the technical exchanges, whether held in Washington or overseas, and d) reporting cables providing detailed information about the activities that had been conducted, including discussion topics and the names of foreign participants.

2) expenditures. The NEC team provided extensive reporting to the State Department concerning financial expenditures by means of: a) reports on the status and results of individual Interagency Agreements (IAAs) funded under the Nonproliferation and Disarmament Fund (NDF), both at the completion of the last technical exchange funded by an IAA (as called for in

the instrument) and periodically for IAAs where not all technical exchanges had been completed; b) reports on the status and results of individual IAAs funded under the Nonproliferation, Antiterrorism, De-mining, and Related activities (NADR) on the date specified and, one week after each of those reports was submitted, using the abbreviated format developed and promulgated by State.

II. NEC Staff Contacts with Foreign Officials.

No comment.

III. NEC Program Performance Measures.

We acknowledge that there was a discrepancy as to whether in FY 1999 NEC completed 45 technical exchanges, as reported in BXA's FY 1999 Financial Statements, or 46 technical exchanges, as reported in the Department's FY 1999 Annual Program Performance Report. BXA has taken steps to avoid confusion in the future, not only in reporting on NEC performance but also in the other BXA program areas referenced in the cited Office of Inspector General (OIG) Audit Report.¹

On page 9, the first word in the fourth paragraph appears to be superfluous. The paragraph starts off "[w]hile we believe that BXA is making a credible effort to measure NEC program performance, . . ." and then cites certain facts without questioning NEC's measurement process or practice or results claimed. The draft Report elsewhere cites independent authority substantiating NEC's accomplishments. "While" at the beginning of the sentence should be deleted.

On page 10, 1st (incomplete) paragraph at top of page, 3rd to last sentence: the sentence should read "... some of the countries (Russia and Ukraine) had become members of two or more of the various international control regimes (that address international movement of nuclear, biological, chemical, missile, and dual-use components and technologies)."

IV. Some Additional Allegations.

We believe the title of Section IV. of the draft Report (page 11) conveys an implication that is not supported by the text on pages 11 and 12, which is that some of the allegations of impropriety contained in the letter are at least partially supported by the evidence. Since your draft Report text

¹ *Reporting of Performance Measures Needs Improvement, Bureau of Export Administration*, U.S. Department of Commerce, Office of Inspector General, Audit Report No. FSD-12487, September 2000, page 6.

confirms this is not the case--i.e., that although a few of the letter's allegations are true, they do not involve any impropriety--we suggest the title more appropriately could be worded:

"TV. Some Additional Allegations of Impropriety Are Unsupported," or

"IV. All But One of Additional Allegations of Impropriety Are Unsupported, And It Previously Was Appropriately Addressed."

On page 11, the second paragraph lists several allegations in the anonymous letter concerning the NEC program. One of the letter's allegations that was omitted from the draft Report claimed that the "NEC staff lacked expertise on export control matters."

We believe that this allegation, which was sufficiently lacking in any factual basis that it was not mentioned in the Report, should be added to the list of allegations in the second paragraph on page 11 and, as are the other allegations listed in that paragraph, found to be without merit in the following paragraph.

So many of the allegations the report recites--and then states were found to be lacking any basis in fact--suggests that it would be more accurate to change the title of the final Report to "*Nearly All Allegations . . .*" (instead of "*Most Allegations . . .*"). The same change should be made in the summary listing on page ii, second full paragraph. Further with respect to the title of the Report: it currently reads "Most Allegations of *Irregularities* in Nonproliferation Export Control Cooperation Program Could Not Be Supported." [emphasis added] The report, in fact, indicates that very few of the allegations involved "irregularities"--defining "irregularities" to be failures to comply with applicable law or regulation. Instead, most of the allegations were about guidance/supervision, procedures, and appropriateness of actions. Consequently, it would be preferable to use a different word than "irregularities" in the title -- perhaps "impropriety." If the OIG determines to retain the word "irregularities" in the title, it would be helpful for the Report to clarify the situation by including statements in the conclusory paragraphs throughout the report to the effect that none of the findings of the Report constitutes an irregularity. For example, in the first full paragraph on page ii, the first sentence could be revised to read, "Based on our review, we concluded that (1) most allegations about BXA's conduct of the NEC program could not be supported, (2) in no instance did BXA's actions constitute an "irregularity," and (3) some relatively minor improvements are needed in BXA's management of the NEC program."

On page 11, last (incomplete) paragraph, 2nd sentence: sentence should read "a foreign government" rather than "the foreign government."

On page 12, 2nd line: sentence should read: "... sometimes attend successive technical exchanges, almost invariably these are not the same course, but rather a series of increasingly complex courses addressing various important aspects of establishing a competent national export control program."

V. Other Issues.

At the time the State Department prepared the Interagency Agreements (IAAs) in draft, officials there and at the Commerce Department understood that the Congressional Notification would have included funds for one activity with China: an interagency assessment of China's export control system. However, the Congressional Notification State actually delivered to Capitol Hill omitted this activity. Accordingly, we have asked State Department officials to modify the existing Interagency Agreement by removing the reference to "China."

The draft Report language makes it clear that the Commerce Department is able to engage China in export control related activities using its own funding.

In a separate report,² the OIG cites BXA's NEC program as an example of Commerce agencies that need to improve their systems and procedures to assure full cost recovery under reimbursable agreements: ". . . BXA officials recently told us that they do not try to recover full costs for the salaries of the staff doing the work they were already paid for by BXA, such as consultations with foreign governments to establish or update foreign export controls."

There is a very simple and easily visible reason why BXA "does not try to recover full costs for the salaries" of the NEC and other BXA staff doing the international export control cooperative program work for which the programmatic expenses are paid by the State and the Defense IAAs: Both the State Department and Defense Department reimbursable agreements expressly prohibit using those agencies' funds to pay employees' salaries because authorizing or appropriating laws that govern or provide funds for these activities prohibit their use to pay federal salaries. This reality was conveyed to OIG staff by Commerce and State Department officials in interviews and discussions that formed the basis for the draft Report.

The draft Report indicates that the anonymous letter was sent to the Inspector General of the State Department as well as to the Commerce Inspector General. It would be useful, at some point in the Report, to note what action the State Department Inspector General has taken or will be taking: whether that was to defer to the Commerce IG, to agree with the Commerce IG Report findings, conducting its own investigation and issuing its own report, etc.

Draft Report Recommendations.

1. Re awareness training concerning applicable federal travel regulations and Departmental regulations for expenditure of funds for official entertainment or overseas representation: The Deputy Under Secretary and NEC leader have conducted refresher training for NEC members and contractors.

² *Improvements Are Needed in Commerce Agencies' Implementation and Oversight of Interagency and Other Special Agreements*, U.S. Department of Commerce, Office of Inspector General, Final Inspection Report No. IPE-9460, September 2000, page 49.

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2. As noted elsewhere, the March 2, 1998 policy guidance on official entertainment and representation is being amended to make it consistent with the recommendations in the draft Report.

3. We have asked State Department officials to modify the existing Interagency Agreement by removing the reference to "China" to reflect that "China" was not included in the Congressional Notification sent by the State Department.

Thank you for the opportunity to comment on the draft Report.

cc: SBunton
DHurley