

**Department of Commerce**  
**BUREAU OF INDUSTRY AND SECURITY**  
**FY 2006 Annual Performance Plan**

The mission of the Bureau of Industry and Security (BIS) is to advance U.S. national security, foreign policy, and economic interests. BIS's activities include regulating the export of sensitive goods and technologies in an effective and efficient manner; enforcing export control, antiboycott, and public safety laws; cooperating with and assisting other countries on export control and strategic trade issues; assisting U.S. industry to comply with international arms control agreements; and monitoring the viability of the U.S. defense industrial base.

The Bureau of Industry and Security's FY 2006 budget request has been formulated to strengthen the Bureau's export administration, export enforcement, and international programs and thereby improve its ability to support U.S. national security and foreign policy interests without imposing undue regulatory burdens on legitimate international trade. The ongoing transformation of the political, economic, and security landscape has created new challenges where business and security intersect. American technological prowess adds to the challenges of ensuring the Bureau's ability to promote trade and protect security as mutually reinforcing objectives. The area of "deemed" exports of knowledge to foreign nationals in the United States has also become much more important. The FY 2006 budget request will help BIS rise to the challenge by improving its ability to process license applications for proposed exports of dual-use items in an accurate, consistent, and timely manner. The programs contained in this budget will also permit BIS to maintain a robust enforcement program and to conduct a comprehensive outreach program to improve industry compliance with U.S. export control laws and international export control standards. In the process, these programs will allow BIS to make the improvements to its deemed export licensing, compliance, and outreach capabilities recommended by the Inspector General. In addition, the programs in this budget will help ensure that BIS can continue to meet its responsibilities in support of international treaty compliance and the U.S. defense industrial base.

The following BIS activities serve to advance economic growth and trade while protecting American security:

**Administering U.S. dual-use export controls:** BIS imposes controls on exports of dual-use goods and technology to counter proliferation of weapons of mass destruction, combat terrorism, and pursue other national security and foreign policy goals. BIS administers this export control system through the promulgation and implementation of a regulatory, licensing, and reporting regime.

**Enforcing U.S. export control, antiboycott, and public safety laws:** BIS enforcement agents investigate and help prosecute potential violations of U.S. export control, antiboycott, and public safety laws that carry civil and criminal sanctions. BIS also engages in preventive enforcement to deter potential violations.

**Ensuring compliance with arms control treaties imposing requirements on U.S. industry:** BIS serves as the lead agency for ensuring U.S. industry compliance with the Chemical Weapons Convention (CWC) and the Additional Protocol to the International Atomic Energy Safeguards Agreement, managing inspections by the Organization for the Prohibition of Chemical Weapons at U.S. industrial sites, and serving as the clearinghouse for CWC declarations filed by U.S. companies. BIS also works with U.S. industry in the context of the Biological and Toxin Weapons Convention.

**Assisting key countries that export or serve as transit points for sensitive commodities and technologies to develop effective export control systems:** The effectiveness of U.S. export controls is enhanced by strong controls in other nations that export or transship sensitive goods and technologies. In cooperation with other U.S. Government agencies, BIS directly provides technical assistance to a number of countries to establish effective export control programs of their own.

**Monitoring the viability of the defense industrial and technology base:** BIS works to ensure that the United States remains competitive in industry sectors and sub-sectors critical to the national security. To this end, BIS discharges responsibilities under the Defense Production Act and other laws, including administration of the federal government's Defense Priorities Allocations System, assessing threats to U.S. national security deriving from imports, and promoting U.S. defense companies competing for international sales opportunities.

#### **FY 2006 Budget Priorities/Management Challenges:**

##### **Advanced Technologies Initiative (8 Positions, 6 FTE, and \$2,581,000)**

The continued rapid development of technology presents great economic opportunities for the United States, but also raises significant potential risks to national and homeland security. A prime example of these opportunities and risks is the rise of the night vision/thermal imaging industry. Night vision and thermal imaging devices are used in a wide and growing range of civilian uses, including firefighting, search and rescue, medical diagnostics, predictive maintenance, automotive, and research applications. At the same time, they have important military and anti-terrorism applications and must be controlled for critical U.S. national security reasons. Licensed U.S. exports have quickly reached \$600 million and continue their rapid growth. Estimates are that they will grow to nearly \$1 billion by 2008.

As a result of the national security significance of these devices, the United States has extensive controls on the export of military and civilian night vision and thermal imaging systems. In fact, night vision cases now account for approximately 25 percent of the export license applications that BIS processes annually. The challenge in implementing export controls on these products, as well as other commodities and technologies, is to administer the controls efficiently to allow U.S. companies to compete globally, while also administering the controls effectively to ensure exports are not diverted to unauthorized users or uses. The night vision and thermal imaging industry is just one example of the challenges to the U.S. export control system posed by the rapid technological advances that also make America strong. Other sectors that are growing in size and complexity include advanced electronics, encryption, aviation, nanotechnology, and semiconductor manufacturing.

In March 2003, the Department of Commerce Office of Inspector General (OIG) issued a report, "Improvements Are Needed To Better Enforce Dual-Use Export Control Laws" (IPE-15155) that identified opportunities to improve BIS's ability to enforce these laws, including as they apply to new technologies. The proposed Advanced Technologies Initiative will significantly strengthen BIS's ability to successfully implement the OIG's recommendations and otherwise keep pace with the demands posed by America's vibrant high technology industries. This program has two components – licensing and outreach, and technology evaluation. The net effect of this proposal in FY 2006 is \$2,581,000 and 8 Positions.

**Justification:**

**Licensing and Outreach**

**Office: Export Administration (Total Cost: \$322,000 and 2 Positions)**

Summary

This program will help ensure that BIS's Export Administration (EA) meets its performance goals regarding license processing times and outreach to industry as they apply to fast growing technology sectors such as night vision/thermal imaging and advanced electronics.

Rationale

Between FY 2002 and FY 2004, the number of national security export license applications processed by EA's Office of National Security and Technology Transfer Controls (NSTTC) almost doubled to over 6,800. A major share of this increase is due to the burgeoning market for civilian night vision and thermal imaging devices – a trend that will continue for the foreseeable future, especially given the Administration's efforts to control night vision equipment developed from Amorphous Silicon based technology. During FY 2004, BIS processed over 3,000 night vision license applications, and expects to process up to 4,000 of these cases in FY 2005, with comparable increases in the future. It is also likely that other technologies will show rapid growth, adding to the export licensing volume. Given this growing workload, two additional licensing officers are essential if BIS is to meet its responsibilities under Executive Order 12981, to make initial license decisions within 39 days.

In addition, under National Security Presidential Directive 19 (NSPD-19), EA will begin referring commodity classification (classification of items subject to Commerce export licensing jurisdiction) requests to the Departments of State and Defense for review. Consulting with the Departments of State and Defense on commodity classifications will require NSTTC licensing officers to spend substantially more time on commodity classifications than they currently do, in addition to their license application processing duties.

The additional FTEs under this program will enable EA to meet its statutory requirement to process commodity classification requests in 14 days, a time frame that is a significant benefit to U.S. exporters.

Under this program, EA will hire two additional FTEs for NSTTC to process the increased volume of licenses, commodity classifications and jurisdiction requests, as well as licensing determination requests for the Bureau's Office of Export Enforcement and the Department of Homeland Security's Bureau of Immigration and Customs Enforcement; and, to do so in an accurate and timely manner that protects U.S. national and homeland security, while also helping U.S. exporters. This program also expands the travel budget for NSTTC by \$50,000, which will enable NSTTC to expand its outreach to the night vision industry, including licensing and enforcement training for U.S. exporters of night vision equipment.

**Technology Evaluation**

**Office: Export Administration (Total Cost \$2,259,000 and 6 Positions)**

Meeting the technological challenge to the dual-use export control system requires more than officers to process license applications under existing regulations. It requires the ability to identify emerging technologies with national security implications. By establishing the Office of Technology Evaluation (OTE), BIS

will be able to implement and maintain a more effective system of dual-use export controls that better protects U.S. national, homeland, and economic security by: (1) identifying sensitive new technologies for potential inclusion on the Commerce Control List; (2) assessing whether items currently controlled are available abroad or on a mass market basis; (3) conducting thorough, systematic reviews of the Commerce Control List to ensure that items are appropriately controlled for the protection of U.S. national security; and (4) reviewing the effectiveness of multilateral export control regimes and of control systems of regime members.

**Rationale:** To effectively manage the dual-use export control system, BIS needs the resources to stay abreast of the rapid technological change that is shaping goods and technologies. Currently, BIS lacks the dedicated expertise to systematically evaluate control lists, license applications, and other functions against the latest developments, but must divert other resources to deal with these developments on an ad hoc basis. For example, the GAO and OIG have found that BIS should strengthen its ability to conduct certain foreign availability assessments, analyze the cumulative effects of technology transfers to particular countries, or systemically review the Commerce Control List, in light of technological advances. In addition, President Bush has cited the need for “building high walls around technologies of the ‘highest sensitivity’” and “revitaliz[ing] multilateral cooperation to control the proliferation of the most ‘critical technologies,’” while “allowing companies to export products when those products are already readily available in foreign or mass markets.” To perform these responsibilities in the years ahead, BIS requires resources devoted to making such assessments and identifying such technologies.

The OTE will focus on three functional areas.

Function 1: Control of Items.

Commerce Control List (CCL) Review - The OTE will lead BIS’s review of the CCL as part of the U.S. government’s annual preparation of proposed revisions to the multilateral export control regimes. This review will cover all categories of items controlled pursuant to U.S. commitments to the four multilateral export control regimes – the Wassenaar Arrangement, the Nuclear Suppliers’ Group, the Australia Group, and the Missile Technology Control Regime. Each year, the U.S. government determines whether it should propose that items (goods, software, and technology) should be added to or removed from the control lists of the regimes. This effort requires technical expertise in dual-use items and their potential weapons applications. Keeping the multilateral control lists, which BIS implements domestically, current in light of technological developments and focused on those civilian items that can be used for weapons of mass destruction or conventional arms purposes will help ensure that the controls are effective but targeted.

Foreign Availability Determinations - The OTE will conduct foreign availability determinations to assess two factors. First, the determinations analyze the extent to which foreign suppliers produce the same or similar items as those controlled by the United States. Experts with engineering and scientific backgrounds are needed to accurately determine whether foreign products, such as encryption software, night vision and thermal imaging equipment, and gyros and accelerometers are truly technically equivalent to products made in the United States. Second, the determinations analyze the export control treatment of equivalent foreign products. Personnel with expertise in foreign export control systems will be needed for this part of the determination. Foreign availability determinations will help determine whether items should be controlled on a multilateral or unilateral basis.

Mass Market Determinations - The OTE will also conduct mass market determinations to identify whether a controlled item is available on such a widespread basis, through the normal chain of commerce, that controls are rendered ineffective. As with foreign availability determinations, the first step is to precisely identify the technical capabilities of the product or products being reviewed. The next step is a market analysis to determine the volume of sales, the modes of sales, and the uses of such items. The final step is consultation with BIS’s enforcement unit to review enforcement data and the enforceability of controls. Mass market determinations will help determine whether items should continue to be controlled. As with foreign availability determinations, specialized expertise, in this case technical and economic, will be needed to conduct thorough mass market determinations.

## Function 2: Multilateral Export Control Regime Analysis.

Review of Multilateral Export Control Regimes – The OTE will conduct a systematic review of the effectiveness of the four multilateral export control regimes to allow the U.S. to identify gaps in the international export control system and develop policy initiatives to close them. The OTE will conduct a comprehensive review of one regime per year focusing on control lists, guidelines, and procurement efforts by countries of concern and terrorist groups. The OTE will issue reports addressing the effectiveness of each regime, including policy proposals to strengthen it, which will inform U.S. policy initiatives within each regime.

Review of Regime Members' Export Control Systems - The OTE will also review other regime members' export control systems to identify weaknesses and other potential gaps. Such a review will allow U.S. policy makers to identify initiatives that could be undertaken on a bilateral or multilateral basis to harmonize the implementation of export controls among regime members. This will also help ensure that U.S. exporters of controlled items have a level playing field when competing with foreign companies. These reviews will require personnel with significant technical and export control expertise.

## Function 3: Technology and Industry Analysis.

Technology Evaluation - U.S. national security depends upon ensuring that potentially sensitive dual-use goods and technologies are subject to appropriate export controls. In many industry sectors, technology and market trends change rapidly. In some cases, new technologies emerge that require quick and thorough study to determine if they should be subject to export controls. The OTE will monitor global technology and market trends to identify new items to be proposed for inclusion on the export control list and for changes in technology that render current controls obsolete. The OTE also will identify very sensitive items that should be subject to heightened scrutiny in the licensing process or items that would be candidates for enhanced control through bilateral or multilateral agreement with other producer countries. In addition, the OTE will monitor global market trends to identify ways of doing business that warrant revised export control policies and procedures.

Critical Industry Analysis - It is vital that a mechanism exist within the U.S. Government to evaluate the impact of rapid technology advancements on the U.S. defense industrial base and other critical industry sectors. BIS currently performs a portion of one of these functions by assessing the health of certain sectors important to the defense industrial base. The OTE will provide BIS with the resources and expertise to monitor and evaluate technology developments on a comprehensive and systematic basis. OTE reviews will assess how these sectors are affected by technological developments, technology transfers, and foreign competition.

Export Control Policy Assessment – The OTE will conduct assessments of the impact of U.S. export control policies on industry sectors critical to the national security interests of the United States and the U.S. economy in general. These assessments will review the ability of the industrial sectors to compete for international sales, the significance of exports to the sectors' economic health, including the ability to conduct research and development, and whether export controls have affected the sectors' ability to produce cutting edge products and compete in the global market.

Under this program, EA proposes to hire six FTEs for the OTE. Some or all of these new hires will be technical, special rate employees. BIS will also employ highly qualified contractors. Together, this staff and detailees from other specialized agencies, such as the National Academy of Sciences, National Science Foundation, the Departments of Defense and State, the intelligence community, and the federal labs will conduct studies and analyses of emerging technologies. FTEs assigned to the OTE will be experts in export control policy, economics, technology, international trade and relations, and business and industry trends. The \$2,259,000 will fund the six positions and support their technical training and travel, which will be essential to stay current on the latest trends in technology development and operation of the multilateral export control regimes and the export control systems of other countries.

### **Enhanced Deemed Export Control Initiative (4 Positions, 3 FTE, and \$1,050,000)**

The ability of U.S. companies to develop leading-edge technologies often depends on the work of foreign nationals in U.S. companies, research institutes, and universities. The U.S. system of open access to talented and knowledgeable foreign nationals provides substantial economic benefits to the United States. As the Commerce Department's Inspector General (OIG) and others have pointed out, however, this system also creates potential risks to our national security if foreign nationals receive access to sensitive U.S. technology and then use it against our interests.

Knowledge controls thus play an essential role in allowing the United States to receive the economic benefit of foreign nationals working with U.S. high technology companies and other entities, while minimizing the risk that such access will adversely affect national security. Specifically, through its deemed export licensing requirement, BIS restricts the release of controlled dual-use technology in the United States to a foreign national of a country to which that technology is controlled, unless the foreign national is a permanent resident of the United States or has protected individual status. This release is "deemed" to be an export to the home country of the foreign national. A release can occur through disclosure of technical data in oral or written form, through plant inspections/visits, training on the use of equipment, or other similar activities. The release requires a BIS license if the technology involved would require a license for export to the home country of the foreign national. In this way, BIS can review the proposed release of the technology as it would review the proposed export of a controlled item.

Deemed exports are an emerging area of great importance to U.S. national, homeland, and economic security, so BIS is ramping up its efforts to meet the challenge of effectively managing deemed export controls. The Enhanced Deemed Export Control Initiative is essential to BIS's ability to do so. First, it will enable BIS to process an increased volume of license applications in a timely manner, in order to ensure that U.S. entities are able to gain access to the expertise of foreign nationals who do not pose security concerns. Second, the initiative enables BIS to ensure that U.S. entities are aware of and comply with U.S. deemed export license requirements through expanded outreach and enforcement activities. Both aspects are necessary if the control of deemed exports is to advance U.S. national, homeland, and economic security.

In March 2004, the OIG issued a report "Deemed Export Controls May Not Stop the Transfer of Sensitive Technology to Foreign Nationals in the U.S." (IPE-16176) that identified opportunities to improve BIS's ability to stop the transfer of sensitive technology to foreign nationals in the U.S. This initiative is an essential element of BIS's plan to successfully implement the OIG's recommendations.

This initiative has two components – licensing and compliance, and verification. The net effect of this proposal in FY 2006 is \$1,050,000 and 4 Positions.

**Justification:**

**Licensing and Compliance**

**Office:** Export Administration

**Proposal:** Deemed Exports (Total Cost: \$800,000 and 3 Positions)

**Summary**

This proposal helps ensure that Export Administration (EA) meets its performance goals regarding processing times for deemed export license applications and outreach to industry. It also addresses recommendations by the Government Accountability Office (GAO) and the Department of Commerce OIG related to deemed export license compliance and outreach.

**Rationale**

Deemed export outreach activities more than doubled from FY 2003 to FY 2004, with large increases projected into the foreseeable future. As the OIG report and BIS outreach activities sensitize the academic and business communities to the issue of deemed exports, these communities seek expanded outreach. To effectively respond to this need, BIS's Assistant Secretary for Export Administration is leading an intensive, high-level, dialogue with the university community. Such continued expansion of the deemed export outreach program is essential if BIS is to meet its responsibility to educate the regulated U.S. community regarding its legal obligations, as detailed in the OIG report.

Outreach is people-intensive. The expanded staffing and travel funding provided under this proposal will enable BIS's Office of National Security and Technology Transfer Controls (NSTTC) to increase its outreach to industries and other areas found to be deficient in the OIG's review, and to facilitate outreach initiatives intended to address existing and proposed technology transfer and technology export processes. The additional personnel will also allow the continuation of an aggressive outreach program to raise and maintain deemed export license level of awareness in all high technology sectors. For example, one of the additional requested licensing officers will be dedicated to the planning, coordination and execution of deemed export outreach activities to industry, academic and research centers and government agencies. In order to maintain a sufficient outreach presence and appropriate level of deemed export awareness, NSTTC plans to hold at least 150 such outreach events annually, up from 116 in FY 2004.

History shows that this expanded outreach will generate large increases in deemed export license applications. In FY 2004, for example, the number of deemed export licenses processed rose by almost 20 percent to 995 licenses. This increase is expected to continue and BIS projects it will process approximately 1,500 applications by FY 2006. The three additional licensing officers provided under this initiative will give needed workload relief for the increased licensing volume, as well as existing and anticipated outreach activities, and policy and regulatory initiatives related to the deemed export licensing process.

The additional personnel under this proposal will also augment BIS's existing technical expertise related to deemed export. Currently, BIS has one electrical engineer. Under this proposal, BIS will add one technical expert in the life sciences to address the increased licensing volume from the chemical and biological industry sector. In addition, this technical expert will address scientific research conducted by foreign nationals in the academic community, a concern identified in the recent OIG report.

Finally, this proposal will also provide increased travel funds and staffing for BIS's Special Intra-Company License (SIL) program and associated audit requirements. The SIL is a licensing initiative that will allow a company to transfer approved controlled technology throughout its organization, including foreign and domestic subsidiaries, with a single license mechanism. The SIL will assist exporters by consolidating both deemed export and technology export licenses into a single license and will help increase security through more consistent and streamlined license conditions. Under the current SIL proposal, a company would be required to undergo an export compliance audit conducted by representatives from NSTTC. One of the additional FTEs will participate in these audits. It is expected that a number of leading U.S. high technology exporters will avail themselves of this licensing process once it is instituted in FY 2005.

As a result of all of these required activities, it is essential to expand NSTTC's staff by three licensing officers and increase its travel budget by \$78,000. This will allow BIS to significantly expand the scope of deemed export outreach while processing the increased level of license applications that result.

### **Verification**

**Office:**           **Export Enforcement**

**Proposal:**       **Deemed Exports (Total Cost: \$250,000 and 1 Position)**

### **Summary**

Consistent with the Department of Commerce's goal of increasing national security while facilitating trade, BIS's Export Enforcement (EE) screens work and business visas for foreign nationals, most of whom are the subject of deemed export license applications. Improving checks and screenings is thus a key element of a robust deemed export control system. EE also conducts domestic end-use visits of a representative sample of companies that have requested such visas for foreign nationals with access to sensitive technologies.

### **Rationale**

Under this proposal, EE will devote one new FTE to analyzing intelligence and preparing investigative leads pertaining to deemed export technology transfers by screening foreign visitor and work visas, and analyzing known information associated with the visit. Currently, BIS annually screens some 55,000 foreign visa requests at headquarters, and BIS expects this number to increase by 10 percent in FY 2006. The additional FTE will be responsible for targeting visas of particular interest to BIS, based on red flags (i.e., previous enforcement history on the foreign party or U.S. sponsor) for potential deemed export and technology transfer violations. To support development of an actionable lead, the agent will conduct additional research in U.S. government and open sources to verify red flags associated with the foreign visit. This position will support BIS's effort to identify threats and protect U.S. technology in a manner consistent with U.S. national security, homeland security, and economic security goals.

### **Conclusion:**

BIS's Enhanced Deemed Export Control Initiative will enable BIS to implement the recommendations contained in the OIG report and otherwise continue to meet the challenge of efficiently and effectively controlling the transfer of sensitive technology, and in that way bolster a critical element of U.S. national, homeland, and economic security.

### **Human Capital Initiative (0 Positions, 0 FTE, and \$1,572,000)**

President Bush has stated that “We can promote a culture of achievement throughout the Federal Government.” Similarly, in February 2001, the Government Accountability Office added human capital management to the government-wide “high-risk list.” Even earlier, in 1998, McKinsey and Company published the *War for Talent*, which describes a competition for top people that will determine how successful an organization will be. It is thus no coincidence that *Strategic Management of Human Capital* is the first initiative in the President’s Management Agenda (PMA). BIS’s efforts to fully fund human capital development, in line with the PMA, reflect this broad consensus on the importance of fostering an organization’s people.

Even more than most organizations, BIS relies on a skilled, knowledgeable, diverse, and high performing workforce to achieve its mission of advancing U.S. national security, foreign policy, and economic interests. As a regulatory and law enforcement agency, BIS is human capital-intensive. Approximately 60 percent of its appropriation is devoted to salaries and benefits. An additional 23 percent covers equipment, rent, and other support structures. BIS does not fund grants or other large programs, so the best way to invest in BIS success is to invest in BIS people.

However, over time, the base budget on which BIS relies to fund human capital development has eroded. Thus, to maintain its high-level of performance, BIS is proposing to rebuild its base to include sufficient funding for a robust human capital program.

BIS’s Human Capital Initiative consists of three parts: continuous learning/employee development/performance incentives, recruitment/retention, and technology.

#### Part 1: Continuous Learning/Employee Development/Performance Incentives

BIS is requesting \$902,000 for continuous learning/employee development/performance incentives. The American Society for Training and Development (ASTD) states that most effective organizations invest at least one percent of their operating budget on training and one percent on awards. Another way of measuring training investments is that most effective organizations invest 62 hours in training current employees and 117 in training new employees. Using this methodology, BIS requests an additional \$670,000 for employee development and \$232,000 for performance incentives.

#### Part 2: Recruitment/Retention

BIS is requesting \$350,000 for recruitment and retention incentives in order to recruit and retain the highly qualified staff necessary to ensure BIS continues to meet its responsibilities. The incentives that BIS will use include recruitment bonuses, superior qualifications appointments, relocation and interview travel, career ladder promotions, and student loan repayment benefits. In this way, BIS should be able to reap the reward of their investments in talented people.

#### Part 3: Technology

BIS is requesting \$320,000 to provide its people with the technology they need to be successful. The President’s Management Agenda commits the Executive Branch to adopt information technology and knowledge systems to better carryout the organization’s mission. Under this proposal, BIS will ensure that its employees have the hardware, software, and communications devices they need for maximum productivity by having the ability to access information quickly and remotely.

BIS is committed to creating the supportive culture that will build and sustain the high performing workforce it needs to meet its vital national, homeland, and economic security mission. The BIS Human Capital Initiative provides the foundation for doing so.

### **Targeted Export Enforcement (5 Positions, 4 FTE, and \$1,710,000)**

The Bureau of Industry and Security (BIS) is responsible for enforcing the export control laws and regulations governing dual-use commodities. As part of BIS, Export Enforcement's (EE) special agents work to make sure that sensitive goods and technologies do not fall into the wrong hands, and investigate cases when they may have done so. BIS's ability to meet these responsibilities is constrained not by the number of potential cases, but by the resources BIS has to devote to them. To better meet the demand for investigative resources, and to make its agents even more effective, BIS proposes an increase of 5 positions and \$1.7 million to support: (1) additional staff and travel for its seized computer evidence recovery program; (2) additional investigative travel for field agents to conduct investigations and outreach; and (3) an enhanced end-use verification program.

#### **Justification:**

### **Seized Computer Evidence Recovery System**

#### **Office: Export Enforcement (Total Cost: \$909,000 and 4 Positions)**

#### **Summary:**

Under this proposal, BIS will fund two special agents, two analysts/technicians, training, equipment, and travel to support its Seized Computer Evidence Recovery System (SCERS).

#### **Rationale:**

Evidence seized from computers and other electronic storage media are an increasingly important part of the daily work of enforcement. Such evidence plays a critical role in the enforcement of laws such as export controls where the violations at issue are the result of business transactions conducted or documented electronically. BIS is developing the capability to obtain, process, and use such electronic evidence through a program staffed and funded with existing resources. Specifically, it has created a SCERS program, staffed by field agents who have developed expertise in computer evidence recovery. Almost all of these SCERS agents work out of the various EE field offices, with oversight and logistical support provided by a GS-14 supervisory special agent in the Headquarters Operations Division.

Notwithstanding the limited infrastructure and support, BIS's SCERS program has had notable success. Evidence recovered by SCERS agents has played an important role in many of the cases investigated by BIS last year. In addition, BIS's SCERS agents have been called on to assist other agencies – most notably, the FBI in the September 11 investigation. At one point, BIS had three SCERS agents – two on temporary duty assignments – assisting the FBI full-time in New York on this investigation.

Despite these accomplishments, the need for additional resources to support the SCERS program is overwhelming. In FY 2004, computer evidence was recovered in response to every one of the 47 search warrants executed by BIS, requiring SCERS specialists at each search site to seize computer drives and, once seized, to exploit them for relevant evidence. As one example of the amount of material that can be recovered in such a search, warrants executed in New York yielded 50 hard drives, including the drive for one mainframe computer. Warrants executed on the same case at related offices in Los Angeles yielded an additional 30 hard drives. SCERS agents are also frequently called on to assist in the analysis of computers recovered as a result of joint work with other law enforcement agencies. To avoid a significant backlog of computer evidence awaiting analysis, which delays the processing of cases and impedes potentially time-sensitive investigations, it is imperative to increase BIS's dedicated SCERS capability by at least 3 FTEs.

This proposal will provide additional people and \$909,000 to staff and support a BIS SCERS lab. The additional agents and two analysts requested in this initiative will also go far in alleviating the burden on the SCERS agents in BIS field offices. In addition to the benefit of better and speedier recovery of data, the initiative will also save resources in the field offices by freeing up agents currently devoted to SCERS recovery to devote greater time to the work that requires more case-specific knowledge.

### **Investigative Travel**

**Office: Export Enforcement (Total Cost: \$360,000)**

#### **Summary:**

Some 30 percent of BIS investigations require overnight travel. Increasing travel funds for BIS agents will increase their productivity and effectiveness by increasing the number of cases they can make.

#### **Rationale:**

During FY 2004, BIS continued to score significant accomplishments in enforcement actions and penalties. BIS investigations that resulted in criminal convictions of individuals and businesses increased from 21 in FY 2003 to 28 in FY 2004. BIS investigations also resulted in 11 individuals and companies being sentenced to criminal penalties in excess of \$2.9 million and, in some cases, incarceration. Additionally, EE investigative activity increased from 34 administrative enforcement cases with \$4.1 million in penalties against individuals and companies in FY 2003 to 63 administrative enforcement cases with penalties of \$6.2 million in FY 2004.

The substantial increase in the number of enforcement actions illustrates the need for a significant increase in funds required for investigative travel. BIS has eight field offices and one resident office, located in six states, with each office covering a large multi-state region, with associated travel costs. For example, the Chicago field office conducts investigations in a 10-state region. Investigations requiring travel can be expensive, with a single large investigation costing anywhere from \$5,000 to \$40,000.

For example, in FY 2004, an investigation/prosecution led by BIS's Boston field office revealed a worldwide network of illegal export activity. The investigation required significant travel to Denver and Washington, D.C., as well as to South Africa. The cost of the investigation to date is some \$43,000. The additional travel resources requested under this program are essential to BIS's ability to conduct such complex and important investigations.

### **Enhanced Sentinel/End-use Verification Program (Sentinel)**

**Office: Export Enforcement (Total Cost: \$441,000 and 1 Position)**

#### **Summary:**

BIS's Sentinel Program ("Sentinel") sends teams of two criminal investigators overseas to conduct on-site pre-license and post-shipment checks. The teams determine the disposition of licensed or otherwise controlled U.S.-origin commodities, particularly those of proliferation concern. The teams also assess the suitability of foreign end-users to receive U.S.-origin licensed goods and technology, and conduct educational outreach to foreign trade groups. This program

will help ensure that Export Enforcement (EE) maintains a robust enforcement program in dual-use export controls, and completes the implementation of recommendations contained in OIG report IPE-15155 and a December 2003 report by GAO.

#### Rationale:

BIS's counter-proliferation mission includes the prevention and detection of proliferation-related export control violations. One of BIS's primary methods for preventing and detecting these diversions is by aggressively conducting end-use verifications. Sentinel trips provide an opportunity for BIS to place two trained criminal investigators in a country to visit the end-users of sensitive controlled commodities and determine whether these items are being used in accordance with license conditions. Agents also visit prospective end-users listed on pending license applications to determine if there is a risk that commodities could be diverted if a license were approved. In this way, Sentinel trips help create the confidence needed to foster trade while strengthening U.S. security.

Sentinel trips are resource intensive. Each trip requires a team of at least two criminal investigators for approximately six weeks to perform target analysis, pre-departure technical training, actual travel, and the subsequent post-trip briefings and final report. The \$441,000 requested in this program is essential for BIS to meet its FY 2006 goals for Sentinel trips.

#### Unit Cost Measures

Currently, BIS does not have performance measures that can be shown in unit cost terms. However, BIS is working with its accounting service provider to develop a system to track expenditures associated with each performance measure. Once this tracking system is in place, BIS will develop unit cost performance measures, establish baselines, and project targets that are meaningful.

#### PART Assessment

The BIS Export Administration program was recently assessed in the Program Assessment Rating Tool (PART). The PART rating for the Export Administration program was "Adequate." It should be noted that the PART identified the need for "additional technological and analytical ability to maintain effective dual-use export controls."

The PART Summary of the Export Administration Program is as follows:

The Export Administration (EA) program, within the Bureau of Industry and Security, implements U.S export control policies for dual-use commodities. It issues regulations on export policies and processes export licenses.

- The Export Administration program is generally well managed, but needs to work with other government agencies on long-term strategic outcomes. In general, the EA program is necessary to control the export of dual-use goods from the U.S. It is active in several multilateral export control regimes and has consistently updated its control list to reflect changing priorities and to ensure items are adequately controlled. It generally compares favorably to the export-control programs of other governments.
- The program currently operates under an Executive Order. It would benefit from an updated, reauthorized Export Administration Act (EAA) to clarify some outdated control requirements, increase penalties for violations, and specify interagency licensing processes. Due to increases in workload and changes in technology, the program also requires additional technological and analytical ability to maintain effective dual-use export controls.

The program's long-term performance goals are under development. It does have adequate annual performance goals that emphasize both the timelines of the license process and updates to its regulations. The program also should consider an accuracy measure of the license process.

**In response to the findings:**

The EA program is developing long-term measures by: 1) working with the appropriate agencies to measure the interagency dual-use export control program's ability to protect national security; and 2) obtaining information on the market impact on U.S. companies of applying for an export license.

The FY 2006 Presidential Budget requests increases for an Office of Technology Evaluation to enhance the program's analytical ability to systematically evaluate its control list, identify sensitive technologies for inclusion on the control list, and conduct evaluations of the multilateral regimes.

**FY 2006 Program Changes**  
**(Dollars in Millions)**

The following program changes will: (1) strengthen BIS's ability to control exports in the expanding high technology industries, (2) enable BIS to process an increased volume of deemed export licenses and ensure that U.S. entities are aware of and comply with deemed export license requirements through expanded outreach and enforcement activities, (3) improve BIS employee recruitment, retention, and improve employee productivity, and (4) provide additional enforcement staff to strengthen the seized computer evidence recovery program, investigations and outreach, and the end-use verification program.

	Base		Increase/Decrease	
	FTE	Amount	FTE	Amount
<b>Advanced Technologies Initiative</b>				
Export Administration	198	\$34,211	6	\$2,581
<b>Enhanced Deemed Export Control Initiative</b>				
Export Administration	198	\$34,211	3	\$1,050
<b>Human Capital Initiative</b>				
Management and Policy Coordination (See Note)	25	\$5,078	0	\$1,572
<b>Targeted Export Enforcement</b>				
Export Enforcement	191	\$30,798	4	\$1,710

Target and Performance Summary

	FY 2001 Actual	FY 2002 Actual	FY 2003 Actual	FY 2004 Actual	FY 2005 Target	FY 2006 Target
Performance Goal 1: Protect the U.S. National Security and Economic Interests by Enhancing the Efficiency of the Export Control System						
Median Processing Time for Referrals of Export Licenses to Other Agencies (Days)	New	New	4	3	9	9
Median Processing Time for Export Licenses Not Referred to Other Agencies (Days)	New	New	9	9	15	15
Median Processing Time for Issuing Draft Regulations (Months)	New	New	7	2	3	3
Level of Exporter Understanding of BIS Export Control Requirements	Value of Information (average score on scale of 1-5)	New	4.2	4.2	4.2	4.2
	Percent Knowledge Gained (Index)	New	New	New	45%	45%
Percent of Industry Assessments Resulting in BIS Determination on Revising Export Controls	New	New	New	New	New	100%
Performance Goal 2: Ensure U.S. Industry Compliance with the Chemical Weapons Convention (CWC) Agreement						
Number of Site Assistance Visits Conducted to Assist Companies Prepare for International Inspections	New	16	12	12	12	24
Performance Goal 3: Prevent Illegal Exports and Identify Violators of Export Prohibitions and Restrictions for Prosecution						
Number of Investigative Actions That Result in the Prevention of a Violation and Cases Which Result in a Criminal and/or Administrative Prosecution	81	82	250	310	275	315
Number of Post-Shipment Verifications Completed	New	300	397	401	400	425
Performance Goal 4: Enhance the Export and Transit Controls of Nations Seeking to Improve Their Export Control System						
Number of Targeted Deficiencies Remedied in the Export Control Systems of Program Nations	New	25	39	41	40	40

Resource Requirements Summary

Performance Goal 1: Protect the U.S. National Security and Economic Interests by Enhancing the Efficiency of the Export Control System								
	FY 2001 Actual	FY 2002 Actual	FY 2003 Actual	FY 2004 Actual	FY 2005 President's	FY 2006 Base	Increase/ Decrease	FY 2006 Request
Management and Policy Coordination	1.1	2.2	0.0	0.0	0.0	0.0	0.0	0.0
Export Administration	22.8	24.7	27.9	22.4	20.5	27.3	4.4	31.7
Reimbursable <sup>1</sup>	0.1	0.7	1.5	1.1	1.0	1.0	0.0	1.0
Total Funding <sup>2</sup>	24.0	27.6	29.4	25.8	24.2	30.5	4.4	34.9
IT Funding	1.0	1.8	1.6	2.3	2.7	2.2	0.0	2.2
FTE <sup>3</sup>	164	156	190	163	186	186	9	195

<sup>1</sup> Reimbursable funding included in total funding.

<sup>2</sup> IT funding included in total funding.

<sup>3</sup> Includes reimbursable FTEs.

Notes: Totals may differ slightly due to rounding.

Total obligations may differ from those reported in other exhibits due to inclusion of restorations of prior year funds in the amounts cited above.

Performance Goal 2: Ensure U.S. Industry Compliance with the Chemical Weapons Convention (CWC) Agreement								
	FY 2001 Actual	FY 2002 Actual	FY 2003 Actual	FY 2004 Actual	FY 2005 President's	FY 2006 Base	Increase/ Decrease	FY 2006 Request
Management and Policy Coordination	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Export Administration	6.5	4.5	5.9	7.0	7.2	7.2	0.0	7.2
Reimbursable	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total Funding	6.5	4.5	5.9	7.0	7.2	7.2	0.0	7.2
IT Funding	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
FTE	22	22	29	22	23	23	0	23

<sup>1</sup> Reimbursable funding included in total funding.

<sup>2</sup> IT funding included in total funding.

<sup>3</sup> Includes reimbursable FTEs.

Notes: Totals may differ slightly due to rounding.

Total obligations may differ from those reported in other exhibits due to inclusion of restorations of prior year funds in the amounts cited above.

Performance Goal 3: Prevent Illegal Exports and Identify Violators of Export Prohibitions and Restrictions for Prosecution

	FY 2001 Actual	FY 2002 Actual	FY 2003 Actual	FY 2004 Actual	FY 2005 President's	FY 2006 Base	Increase/ Decrease	FY 2006 Request
Management and Policy Coordination	1.1	2.4	0.0	0.0	0.0	0.0	0.0	0.0
Export Enforcement	25.9	27.3	40.7	30.2	32.8	29.3	2.5	31.8
Reimbursable <sup>1</sup>	0.1	0.3	0.3	0.3	0.3	0.3	0.0	0.3
Total Funding	27.1	30.0	41.0	34.3	36.9	32.0	2.5	34.5
IT Funding <sup>2</sup>	1.0	2.0	2.1	3.8	3.8	2.4	0.0	2.4
FTE	178	171	226	173	198	198	4	202

<sup>1</sup> Reimbursable funding included in total funding.

<sup>2</sup> IT funding included in total funding.

<sup>3</sup> Includes reimbursable FTEs.

Notes: Totals may differ slightly due to rounding.

Total obligations may differ from those reported in other exhibits due to inclusion of restorations of prior year funds in the amounts cited above.

Performance Goal 4: Enhance the Export and Transit Control Systems of Nations that Lack Effective Control Arrangements

	FY 2001 Actual	FY 2002 Actual	FY 2003 Actual	FY 2004 Actual	FY 2005 President's	FY 2006 Base	Increase/ Decrease	FY 2006 Request
Management and Policy Coordination	1.5	1.4	2.2	1.9	1.7	1.5	0.0	1.5
Reimbursable <sup>1</sup>	3.8	4.1	7.0	4.7	10.8	5.0	0.0	5.0
Total Funding	5.3	5.5	9.2	6.8	12.7	6.6	0.0	6.6
IT Funding <sup>2</sup>	0.4	0.3	.5	.2	0.2	.1	0.0	0.1
FTE	9	9	9	7	11	11	0	11

<sup>1</sup> Reimbursable funding included in total funding.

<sup>2</sup> IT funding included in total funding.

<sup>3</sup> Includes reimbursable FTEs.

Notes: Totals may differ slightly due to rounding.

Total obligations may differ from those reported in other exhibits due to inclusion of restorations of prior year funds in the amounts cited above.

Grand Total	FY 2001 Actual	FY 2002 Actual	FY 2003 Actual	FY 2004 Actual	FY 2005 President's	FY 2006 Base	Increase/ Decrease	FY 2006 Request
Operations and Administration								
Management and Policy Coordination	3.7	6.0	2.2	1.9	1.7	1.5	0.0	1.5
Export Administration	29.3	29.2	33.8	29.4	27.7	34.5	4.4	38.9
Export Enforcement	25.9	27.3	40.7	29.3	32.8	29.3	2.5	31.8
Total Funding	63.1	67.6	76.7	73.9	81.0	76.3	6.9	83.2
Direct	59.1	62.5	67.9	67.8	68.9	70.0	6.9	77.0
Reimbursable <sup>1</sup>	4.0	5.1	8.8	6.1	12.1	6.3	0	6.3
IT Funding <sup>2</sup>	2.6	4.2	4.2	6.3	6.7	4.7	0	4.7
FTE <sup>3</sup>	373	358	454	365	418	418	13	431

<sup>1</sup> Reimbursable funding included in total funding.

<sup>2</sup> IT funding included in total funding.

<sup>3</sup> Includes reimbursable FTEs.

Notes: Totals may differ slightly due to rounding.

Total obligations may differ from those reported in other exhibits due to inclusion of restorations of prior year funds in the amounts cited above.

Human Capital Initiative Funding is included in "overhead" and distributed appropriately across all four BIS Goals.

### **Skill Summary:**

Extensive working knowledge of the Export Administration Act, Export Administration Regulations, and related Executive Orders pertaining to the control of dual-use commodities

Knowledge of world political/economic systems and current trends in U.S. trade and national security and foreign policy issues

Superior analytic abilities for complex licensing/policy decisions and regulatory interpretations

### **Performance Goal 1: Protect the U.S. National Security and Economic Interests by Enhancing the Efficiency of the Export Control System**

Corresponding Strategic Goal 1: Provide the Information and Tools to Maximize U.S. Competitiveness and Enable Economic Growth for American Industries, Workers, and Consumers

Corresponding General Goal / Objective 1.2: Advance Responsible Economic Growth and Trade While Protecting American Security

Rationale:

BIS serves U.S. companies engaged in international trade by analyzing export license applications for controlled commodities in accordance with Export Administration Regulations (EAR). BIS also serves U.S. companies in conjunction with the Departments of State, Defense, and Energy, by making prompt decisions on license and related applications and by providing guidance to exporters on how to conform to applicable laws and regulations. BIS is particularly vigilant in evaluating transactions involving advanced technologies and dual-use products that potentially can be diverted to use in missile programs or in chemical, biological, nuclear, or conventional weapons programs. BIS also implements the Defense Production Act by analyzing the defense industrial and technology base to ensure that the United States remains competitive in sectors that are critical to national security.

Responding to increased concern about the proliferation of weapons of mass destruction BIS continues to refine U.S. export controls in light of geopolitical and business realities. BIS also seeks to enhance the effectiveness of the EAR by educating exporters and other stakeholders in the export licensing process, thereby improving industry compliance with export control regulations. These efforts will increase the efficiency of the license processing system and thus enable exporters to be more competitive in the global economy while deterring transactions that threaten U.S. security interests.

Program Increases/Decreases:

Program Initiative	Funding Request	Anticipated Impact	Location in the Budget
Advanced Technologies Initiative	8 Positions, 6 FTEs, and \$2,581,000	The Advanced Technologies Initiative will strengthen BIS’s ability to implement the recommendations in OIG report IPE-15155, to keep pace with the demands posed by America’s vibrant high technology industries.	Export Administration See Page BIS-59.
Enhanced Deemed Export Control Initiative	4 Positions, 3 FTEs, and \$1,050,000	The Enhanced Deemed Export Control Initiative will enable BIS to continue to meet the challenge of efficiently and effectively controlling the transfer of sensitive technology, thus ensuring national security, and implement the recommendations contained in the OIG report IPE-16176.	Export Administration See Page BIS-68.

#### Measure 1a: Median Processing Time for Referral of Export Licenses to Other Agencies (Days)

This measure, which was developed using the timeliness factors in Executive Order 12981, tracks the median processing time of an export license application from its receipt to its referral to other agencies. Approximately 85 percent of all export licenses must be referred to other agencies as dictated by Executive Order 12981. BIS is reviewing whether to revise this measure to more clearly track the performance standard set forth in the Executive Order. Until the measure is formally revised, BIS will retain the target of 9 days in FY 2005 and FY 2006.

The continued rapid development of technology presents great economic opportunities for the United States but also raises significant potential risks to our national security. A prime example of these opportunities and risks is the rise of the night vision/thermal imaging industry. Night vision and thermal imaging devices are used in a wide and growing range of civilian uses, including firefighting, search and rescue, medical diagnostics, predictive maintenance, automotive, and a variety of research applications. At the same time, they have important military and anti-terrorism applications and must be controlled for critical U.S. national security reasons.

Licensed U.S. exports have quickly reached \$600 million and continue their rapid growth. Estimates are that they will grow to nearly \$1 billion by 2008. Night vision cases now account for approximately 25 percent of the cases that the Bureau processes annually. During FY 2004 BIS processed over 3,000 night vision license applications, and expects to process up to 4,000 of these cases in FY 2005, with comparable increases in the future. As a result of the national security significance of these devices, the United States has extensive controls on the export of military and civilian night vision and thermal imaging systems. The challenge in administering export controls on these products, as well as other commodities and technologies, is to administer the controls efficiently to allow U.S. companies to compete globally while also administering the controls effectively to ensure exports are not diverted for unauthorized uses, such as terrorist activity. The night vision and thermal imaging industry is just one example of the challenges to the U.S. export control system. Other sectors include advanced electronics, encryption, aviation, nanotechnology, and semiconductor manufacturing.

#### Measure 1b: Median Processing Time for Export Licenses Not Referred to Other Agencies (Days)

This is the other component of the license application inventory (about 15 percent of all applications received). As with measure 1.a., BIS is reviewing whether to revise this measure to more clearly track the performance standard set forth in Executive Order 12981. Until the measure is formally revised, BIS will retain the target of 15 days in FY 2005 and FY 2006.

#### Measure 1c: Median Processing Time for Issuing Draft Regulations (Months)

BIS routinely issues new and amended regulations to effectuate its responsibilities under the Export Administration Act (EAA). Whether regulations liberalize or restrict industry activity, their prompt promulgation benefits the United States from a trade, economic, and national security perspective. Regulatory changes can, for example, reduce the number of license requirements imposed on U.S. exporters, close loopholes in the regulations, implement international agreements, adapt controls to geopolitical developments, or address new export control challenges. The majority of BIS regulations issued implement changes agreed to in the four multilateral control regimes in which the United States participates: Wassenaar Arrangement (conventional arms and related sensitive dual-use goods), Nuclear Suppliers Group, Missile Technology Control Regime, and the Australia Group (chemical and biological controls). This measure will track the length of time it takes BIS to issue a draft regulation after regime changes have been received and analyzed. There is a significant amount of time that is spent analyzing each regime resolution before actual drafting of a regulation can begin. For example, BIS must determine the appropriate level of unilateral controls for items decontrolled by the Regimes before it can change its regulations. Due to the complexity of changes recently made by the multilateral control regimes, BIS will retain the target of 3 months in FY 2005 and FY 2006.

#### Measure 1d. Level of Exporter Understanding of BIS Export Control Requirements

This measure indicates the effectiveness of BIS's export control outreach program. BIS's export control outreach program is a means for transferring knowledge from the government to the private sector regarding export control requirements. The BIS outreach program to the domestic and international business communities is a form of preventive enforcement that encourages compliance with the EAR. Seminars also help to heighten business awareness of the U.S. Government's export control policy objectives and improve compliance with regulatory requirements. The first metric measures the overall value of information presented on a scale of 1 to 5 by calculating an average of all scores given to a set of questions. The second metric is an index that reflects the knowledge gained by exporters who attend BIS seminars. In FY 2004 BIS calculated the second metric by comparing the actual improvement in knowledge to the maximum improvement possible for each event attendee. The FY 2004 baseline score was 45 percent. BIS will retain the targets of 4.2 and 45 percent respectively for these measures in FY 2005 and FY 2006.

#### Measure 1e: Percent of Industry Assessments Resulting in BIS Determination on Revising Export Controls

The Office of Technology Evaluation (OTE), if funded and established, will be responsible for assessing the current status of technologies employed in U.S. industries whose products are subject to export controls – in order to determine if those technologies have changed in such ways that existing controls should be revised or new controls should be imposed, and in order to determine if the control criteria remain pertinent and relevant or should be altered so the controls achieve the greatest possible beneficial effect and avoid unintended consequences. Because all determinations by BIS concerning whether existing controls should be revised ought to be informed by rigorous assessments of the technology employed in producing the products to which the controls apply, BIS seeks to establish an OTE to conduct such assessments. BIS anticipates that such assessments will be of such importance to its decision making concerning revising existing or imposing new controls that 100 percent of the export control-focused industry assessments OTE conducts will be instrumental in determining whether – and, if so, how – to revise existing or establish new export controls.

#### Program Evaluations:

In March 2003, the Department of Commerce OIG issued a report, "Improvements Are Needed To Better Enforce Dual-Use Export Control Laws" (IPE-15155) that identified opportunities to improve BIS's ability to enforce these laws, including as they apply to new technologies. The proposed Advanced Technologies Initiative will significantly strengthen BIS's ability to successfully implement the OIG's recommendations and otherwise keep pace with the demands posed by America's vibrant high technology industries. This program has two components – licensing and outreach, and technology evaluation.

In March 2004, the OIG issued a report "Deemed Export Controls May Not Stop the Transfer of Sensitive Technology to Foreign Nationals in the U.S." (IPE-16176) that identified opportunities to improve BIS's ability to stop the transfer of sensitive technology to foreign nationals in the U.S. This initiative is an essential element of BIS's plan to successfully implement the OIG's recommendations.

In FY 2004, the GAO and the OIG continued their ongoing reviews of BIS's programs and activities. BIS's Office of Planning, Evaluation and Management (OPEM) conducted an annual review of the performance data to ensure that it was complete and accurate. In addition to the annual review, OPEM produces monthly performance reports for the performance measures tracked by ECASS and semiannual reports for other selected measures tracked by paper evidence. During this process, significant deviations from projected targets, if any, were discussed with the appropriate office so that program changes could be made to help meet BIS performance goals.

### Cross Cutting Activities:

#### Intra-Department of Commerce

BIS works with the International Trade Administration's U.S. and Foreign Commercial Service (US&FCS) offices located around the world to coordinate activities associated with planning and conducting export control seminars, Pre-License Checks (PLCs), and Post-Shipment Verifications (PSVs).

BIS employs a full-time export administration specialist in the Department of Commerce's Public Information Office in the Reagan International Trade Center. The specialist operates as an export counselor providing information in response to walk-in or telephone inquiries.

#### Other Government Agencies

Departments of State, Defense, Energy, Treasury, and Justice and the Central Intelligence Agency (CIA) – BIS works with these Executive Branch agencies to develop and implement U.S. export control policy and programs, including reviewing license applications, developing encryption policy and high-performance computer control policy, implementing sanctions, and participating in multilateral regimes such as the Wassenaar Arrangement, the Missile Technology Control Regime, the Nuclear Suppliers Group, and the Australia Group. BIS also coordinates intelligence and law enforcement operations with these agencies.

#### Government/Private Sector

Technical Advisory Committee – BIS consults with Committee members who are appointed by the Secretary of Commerce to advise the U.S. Government on matters and issues pertinent to implementation of the provisions of the EAA and the EAR, as amended, and related statutes and regulations. These issues relate to U.S. export controls for national security, foreign policy, nonproliferation, and short supply reasons.

### External Factors and Mitigation Strategies:

Compliance with export control laws may be compromised if exporters are not aware of changes in requirements pertaining to them. BIS mitigates this situation by ensuring that exporters have ready access to regulatory and policy changes through seminars, individual counseling, and the Internet.

### **Performance Goal 2: Ensure U.S. Industry Compliance with the Chemical Weapons Convention (CWC) Agreement**

Corresponding Strategic Goal 1: Provide the Information and Tools to Maximize U.S. Competitiveness and Enable Economic Growth for American Industries, Workers, and Consumers

Corresponding General Goal / Objective 1.2: Advance Responsible Economic Growth and Trade While Protecting American Security

### Rationale:

BIS is responsible for ensuring U.S. industry's compliance with the treaty requirements of the Chemical Weapons Convention (CWC). BIS collects, validates, and aggregates data from those U.S. companies that manufacture or use chemicals covered by the convention; educates those companies on their treaty rights and obligations; and serves as the lead U.S. Government agency for hosting international inspectors who are inspecting U.S. business facilities subject to Convention requirements. BIS's primary host team role is to ensure that confidential business information is protected during inspections of U.S. firms. In addition, with the

ratification by the U.S. Senate of the Additional Protocol to the International Atomic Energy Agency (IAEA) Safeguards Agreement, BIS serves as lead U.S. Government agency in U.S. industry's compliance with the Protocol, and will be required to discharge responsibilities similar to those imposed under the CWC.

Program Increases/Decreases: None

Measure 1a: Number of Site Assistance Visits Conducted to Assist Companies Prepare for International Inspections

BIS is responsible for overseeing industry compliance with the CWC and under the IAEA Protocol. This responsibility includes facilitating domestic visits of international inspection teams to determine compliance with the multilateral treaty obligations by covered U.S. facilities, and informing industry of its obligations under the treaty. Industry site assistance visits prepare covered facilities to receive a team of international inspectors. These visits are to ensure that the inspections run smoothly with no potential loss of proprietary business information.

Program Evaluations:

In FY 2004, the GAO and the OIG continued their ongoing reviews of BIS's programs and activities. BIS's OPEM conducted an annual review of the performance data to ensure that it was complete and accurate. In addition to the annual review, OPEM produces monthly performance reports for the performance measures tracked by ECASS and semiannual reports for other selected measures tracked by paper evidence. During this process, significant deviations from projected targets, if any, were discussed with the appropriate office so that program changes could be made to help meet BIS performance goals.

Cross Cutting Activities:

Intra-Department of Commerce: None

Other Government Agencies:

Governments of nations that conform to the CWC – BIS has negotiated bilateral and multilateral agreements that demonstrate compliance with the CWC.

Departments of State and Defense – BIS works with these Executive branch agencies to develop and implement U.S. policy and programs related to implementation of the CWC and to effectively coordinate industry site visits so that inspected companies comply with their statutory and regulatory obligations.

With the percent ratification of the Additional Protocol to the IAEA Safeguards Agreement BIS will be entering into interagency agreements with the Departments of State and Defense to ensure compliance with these new requirements.

Government/Private Sector:

American Chemistry Council and the Society of Chemical Manufacturers of America – BIS negotiates controls and policies that conform to the CWC while also protecting the valid concerns and interests of U.S. industry.

External Factors and Mitigation Strategies:

BIS conducts both informational seminars and outreach visits that help companies prepare for CWC inspections. The Organization for the Prohibition of Chemical Weapons (OPCW) establishes the number of CWC inspections based on (1) a mandated minimum number, and (2) risk assessments that the OPCW performs. BIS mitigates these potential problems by working closely with the OPCW to anticipate inspection requirements and properly address them in the budget planning process.

**Performance Goal 3: Prevent Illegal Exports and Identify Violators of Export Prohibitions and Restrictions for Prosecution**

Corresponding Strategic Goal 1: Provide the Information and Tools to Maximize U.S. Competitiveness and Enable Economic Growth for American Industries, Workers, and Consumers

Corresponding General Goal / Objective 1.2: Advance Responsible Economic Growth and Trade While Protecting American Security

Rationale:

To be effective, export controls must be enforced and violators punished. BIS enforces dual-use export controls for reasons of national security, foreign policy, nonproliferation, anti-terrorism, and short supply. The Bureau also enforces the antiboycott provisions of the EAR, the Chemical Weapons Convention Implementation Act (CWCIA), and the Fastener Quality Act. BIS special agents investigate potential violations of these laws, and build and present cases for criminal or administrative prosecution.

BIS enforcement personnel also conduct outreach and educational programs to train U.S. exporters to identify and avoid illegal transactions. A key element of BIS's preventive enforcement program is the on-site visits made to both current and potential foreign end-users of sensitive technology. In addition, BIS works with the international multilateral regimes for non-proliferation to encourage other governments to implement enforcement measures consistent with the Bureau's export enforcement efforts.

Program Increases/Decreases:

Program Initiative	Funding Request	Anticipated Impact	Location in the Budget
Targeted Export Enforcement	5 Positions, 4 FTEs, and \$1,710,000	Targeted Export Enforcement will provide staff to support the seized computer evidence recovery program, investigations and outreach, and enhanced end-use verification program.	Export Administration See Page BIS-82.

Measure 3a: Number of Investigative Actions That Result in the Prevention of a Violation and Cases Which Result in a Criminal and/or Administrative Prosecution

This performance measure will capture the actual number of EE leads and cases that result in a prevention of a violation. Prevention may be accomplished by an investigative lead which results in agent outreach to a business, a freight forwarder, or any party to an export, and deters or prevents an unauthorized export. This measure will also count preventions that are achieved through cases that result in a criminal penalty or administrative resolution, rather than simply investigations accepted for prosecution. This measure will reflect the actual number and type of preventive enforcement actions conducted including; detentions of suspect exports, seizures of unauthorized shipments, industry outreach and issuance of warning letters for first time and/or minor export offenses, screened licenses targeted for enforcement concerns, recommended denials of license applications based on diversion or false statement indicators, recommended placement of parties on the Unverified List and denials on visa requests, detection of violations of license conditions, and other preventive actions that identify and prevent suspect transactions. The implementation of this measure will allow BIS to gauge its overall effectiveness in terms of successful prosecutions and preventive enforcement.

In FY 2005, BIS will monitor and enhance compliance with license conditions, by detecting and prosecuting violations of such conditions. BIS will retain the FY 2005 target of 275. Resources requested for FY 2006 to focus on SCERS support, investigative travel and deemed export enforcement will increase the number of prevention cases from 300 to 315 in FY 2006. In FY 2005, the wording of this measure has been revised to more accurately reflect its meaning. However, the methodology used to compute the measure remains unchanged.

Measure 3b: Number of Post-Shipment Verifications Completed

The continued rapid development of technology presents great economic and trade opportunities for the United States but also raises significant potential risks to our national security and our ability to maintain a military and technological advantage. Industry sectors critical to homeland, national, and economic security include; advanced electronics and avionics, thermal imaging, encryption and security software, biological toxins and WMD pre-cursor chemicals, extended temperature range integrated circuits, and advanced semiconductor manufacturing equipment.

Consistent with the Department of Commerce's goal of increasing national security while facilitating trade, BIS's Office of Export Enforcement (EE) conducts end-use verification checks during Sentinel visits (formerly known as "Safeguards") conducted under the Sentinel Program. During Sentinel trips, EE agents attempt to verify bona fides of consignees named on a BIS license, and confirm that the equipment is being used in conformance with conditions on the license. By conducting post-shipment verifications (PSVs), BIS can provide a level of assurance that foreign end-users are aware of BIS license restrictions and comply with them. PSV's also identify diverted transactions and reveal untrustworthy end-users and intermediate consignees.

End-use checks are resource intensive. Each Sentinel trip requires a team of two special agents for nearly six weeks to perform target analysis, pre-departure technical training, actual travel, and the subsequent post-trip briefings and final report. The end-use check workload is likely to increase significantly. With the increase of trade and licensing applications in key sectors, and the increased number of requests from other U.S. Government agencies, BIS will maintain an increased target of 400, an increase of 25 over the FY 2004 target of 375. With the funding requested for FY 2006, BIS retains its goal to complete 425 Sentinel checks in FY 2006, a goal that is considered vital to the BIS mission.

### Program Evaluations:

BIS's Sentinel Program ("Sentinel") sends teams of two criminal investigators overseas to conduct on-site pre-license and post-shipment checks. The teams determine the disposition of licensed or otherwise controlled U.S.-origin commodities, particularly those of proliferation concern. The teams also assess the suitability of foreign end-users to receive U.S.-origin licensed goods and technology, and conduct educational outreach to foreign trade groups. This program will help ensure that Export Enforcement (EE) maintains a robust enforcement program in dual-use export controls, and completes the implementation of recommendations contained in OIG report IPE-15155 and a December 2003 report by GAO.

In FY 2004, the GAO and the OIG continued their ongoing reviews of BIS's programs and activities. BIS's OPEM conducted an annual review of the performance data to ensure that it was complete and accurate. In addition to the annual review, OPEM produces monthly performance reports for the performance measures tracked by ECASS and semiannual reports for other selected measures tracked by paper evidence. During this process, significant deviations from projected targets, if any, were discussed with the appropriate office so that program changes could be made to help meet BIS performance goals.

### Cross Cutting Activities:

#### Intra-Department of Commerce

BIS works with the Office of Chief Counsel for Industry and Security (OCC/IS) on administrative cases developed by BIS's enforcement agents.

BIS works with the Census Bureau on seminars and data sharing, including Shipper's Export Declarations (SED). BIS is also working with the Census Bureau on the Automated Export System, a joint venture with other U.S. Government agencies that seeks to implement electronic submission of SED data by the exporter.

BIS works with the ITA and the US&FCS offices located around the world to conduct PSVs.

#### Other Government Agencies

Departments of State, Justice (DOJ) and its Federal Bureau of Investigation (FBI), Homeland Security and its Bureau of Immigration and Customs Enforcement (ICE), U.S. Postal Service, and the intelligence community – BIS works with these agencies on law enforcement matters, including development of leads, intelligence coordination, implementation of export control policy, and coordination of export license, antiboycott, and fastener quality investigations. BIS field offices participate in interagency working groups with the FBI and the U.S. Postal Service, and shares data with ICE via the Treasury Enforcement Computer System.

Government/Private Sector: None

### External Factors and Mitigation Strategies:

Priorities and resources of DOJ and OCC/IS directly influence the achievement of this goal. BIS mitigates this situation by targeting investigations effectively, conducting them in a professional manner, and presenting them persuasively to prosecutors.

BIS may also have to rely on other agencies to conduct certain investigative activities. BIS mitigates this by maintaining regular communication with those agencies. BIS also diligently seeks opportunities to work cases jointly with other law enforcement agencies.

The increasing volume and complexity of international commerce directly increases the difficulty of applying and enforcing export controls and, consequently, the difficulty of preventing proliferation. BIS mitigates this situation by conducting visits overseas to educate foreign consignees about U.S. export laws and by sharing information with foreign export control officials. BIS attempts to focus investigative resources on areas that pose the greatest risk to national security.

#### **Performance Goal 4: Enhance the Export and Transit Controls of Nations Seeking to Improve Their Export Control System**

Corresponding Strategic Goal 1: Provide the Information and Tools to Maximize U.S. Competitiveness and Enable Economic Growth for American Industries, Workers, and Consumers

Corresponding General Goal / Objective 1.2: Advance Responsible Economic Growth and Trade While Protecting American Security

##### Rationale:

Strong enforcement of U.S. export regulations is critical to protect U.S. security interests. However, U.S. national interests can also be jeopardized if sensitive materials and technologies from other nations reach countries of concern or terrorists. For this reason, BIS's strategy includes promoting the establishment of effective export control systems by other nations. BIS has been assisting the countries of the former Soviet Union and the former Warsaw Pact nations of Central Europe to strengthen their export control and enforcement regimes. BIS is also now extending technical assistance to other countries considered export or transit proliferation risks.

Through a series of bilateral and regional cooperative activities co-sponsored with the State Department, BIS helps the nations with which it works to (1) develop the procedures and requirements necessary to regulate the transfer of sensitive goods and technologies, (2) enforce compliance with these procedures and requirements, and (3) promote the industry-government partnerships necessary for an effective export control system to meet international standards.

In FY 2005 the wording of this goal has been revised from "Enhance the Export and Transit Control Systems of Nations that Lack Effective Control Arrangements" to "Enhance the Export and Transit Control Systems of Nations Seeking to Improve Their Export Control System".

Program Increases/Decreases: None

Measure 4a: Number of Targeted Deficiencies Remedied in the Export Control Systems of Program Nations

This performance measure is intended to measure the achievement of BIS's international cooperation program in remedying deficiencies in the export control systems of key nations. The BIS program aims to enhance the export and transit control systems of nations are seeking to improve their export control systems. Each targeted deficiency represents a specific facet of an export or transit control system that BIS seeks to strengthen through its cooperative activities in participating countries. BIS's Model Country Program has identified 59 possible targeted deficiencies and matching remedial activities that are used to assess each country's export control program. Each targeted deficiency remedied shows how BIS can document the influence of its extensive bilateral and regional cooperative activities.

BIS bases and establishes future targets on the pace and timing of activities and the availability of resources to conduct the exchanges that produce outcomes. Because they require action on the part of sovereign governments, outcomes from BIS activities are often not immediately achieved. As a result, for many outcomes, there is an inherent time delay of as much as six months to two years between the performance of an export control technical exchange that addresses a specific desired outcome and BIS's ability to obtain confirming evidence that the outcome has been achieved. Estimates of future targets are based on historical experience related to the number of outcomes that have been addressed by past technical exchanges, but that have not yet been confirmed with evidence, and the number of new outcomes that will be addressed by technical exchanges during the current fiscal year. BIS expects a slightly higher level of activity in this area and increased reimbursable funding from other agencies. In FY 2004, 41 targeted deficiencies were remedied vice a target of 30. Accordingly, the target was raised from 30 to 40 in FY 2005 and in FY 2006.

#### Program Evaluations:

In FY 2004, the GAO and the OIG continued their ongoing reviews of BIS's programs and activities. BIS's OPEM conducted an annual review of the performance data to ensure that it was complete and accurate. In addition to the annual review, OPEM produces monthly performance reports for the performance measures tracked by ECASS and semiannual reports for other selected measures tracked by paper evidence. During this process, significant deviations from projected targets, if any, were discussed with the appropriate office so that program changes could be made to help meet BIS performance goals.

#### Cross Cutting Activities:

Intra-Department of Commerce

ITA and OCC/IS support BIS's program to assist key nations to establish strong, effective export controls.

Other Government Agencies

ICE and the CIA's Weapons Intelligence, Nonproliferation, and Arms Control Center – BIS coordinates with these agencies regarding export control cooperation technical exchanges and activities with other nations.

Departments of State, Defense, Energy, and Justice, ICE, and the FBI – BIS works with these agencies to coordinate assessments of the international export control system and to prioritize, design, and fund programs in which interagency resources are focused on specific national and regional issues.

Government/Private Section: None

#### External Factors and Mitigation Strategies:

BIS works with other agencies on the technical exchange and other activities relating to international export control cooperation. Two factors that drive the scheduling of technical exchange activities are (1) the interagency coordination process that enables agency experts to participate in the exchanges, and (2) the priorities of the countries involved. BIS mitigates these factors by conducting close and frequent consultations with pertinent U.S. agencies and client nation officials.

Unforeseeable shifts in U.S. policy (for example, suspension of activity with a particular country) or in the policies of client nations occasionally may preclude execution of funded, scheduled events or participation of certain national invitees. BIS mitigates these situations by designing fewer events that appeal to a broader range of potential participants. BIS also works with service providers to minimize cancellation costs.

Data Validation and Verification

BIS’s Office of Planning, Evaluation and Management (OPEM) conducts an annual review of the performance data to ensure that it is complete and accurate. During this process, significant deviations from projected targets, if any, are discussed with the appropriate office so that program changes can be made to help meet BIS’s performance goals.

The actual validation process is conducted following procedures similar to audit principles including sampling and verification of data. Case information is regularly downloaded from the management information systems and imported into databases and spreadsheets for analysis. In some cases, information is manually checked against actual paper files to ensure the accuracy of information in the management information systems. Additionally, documentation is reviewed and a determination is made on its adequacy and sufficiency to support claims that outcomes and outputs have been achieved.

Performance Measure	Data Source	Frequency	Data Storage	Internal Control Procedures	Data Limitations	Actions to be taken
Median Processing Time for Referrals of Export Licenses to Other Agencies (Days)	ECASS	Monthly	ECASS	BIS’s OPEM will perform two types of checks to ensure data are entered where they should be (system integrity) and to ensure that the data are accurate and valid	None	None
Median Processing Time for Export Licenses Not Referred to Other Agencies (Days)	ECASS	Monthly	ECASS	BIS’s OPEM will perform two types of checks to ensure data are entered where they should be (system integrity) and to ensure that the data are accurate and valid	None	None
Median Processing Time for Issuing Draft Regulations (Months)	Paper records such as official publications and draft regulations	Semi-annual	Office Files	BIS’s OPEM will validate the performance measure against supporting documentation	None	None

Performance Measure		Data Source	Frequency	Data Storage	Internal Control Procedures	Data Limitations	Actions to be taken
Level of Exporter Understanding of BIS Export Control Requirements	Value of Information (Average Score on a scale of 1-5)	Export Seminar Surveys	Monthly	Survey Results Database	BIS's OPEM will validate the performance measure against supporting documentation	Data is dependent on the voluntary responses of seminar participants and in based on respondent opinion. Opinion may, or may not be a factual indicator of performance.	None
	Percent Knowledge Gained Index	Export Seminar Surveys	Monthly	Survey Results Database	BIS's OPEM will validate the performance measure against supporting documentation	None	None
Percent of Industry Assessments Resulting in BIS Determination on Revising Export Controls		Written Determination to Impose, Revise, or Continue Controls Based on the Results to the Assessment	Semi-annual	Office Files	BIS's OPEM will validate the performance measure against supporting documentation	None	None
Number of Site Assistance Visits Conducted to Assist Companies Prepare for International Inspections		Site Assistance and Inspection Reports	Semi-annual	Office Files	BIS's OPEM will validate the performance measure against supporting documentation	None	None
Number of Investigative Actions that Result in the Prevention of a Violation and Cases Which Result in a Criminal and/or Administrative Prosecution		Export Enforcement IMS	Monthly	Export Enforcement IMS	BIS's OPEM will perform two types of checks to ensure data are entered where they should be (system integrity) and to ensure that the data are accurate and valid	None	None

Performance Measure	Data Source	Frequency	Data Storage	Internal Control Procedures	Data Limitations	Actions to be taken
Number of Post-Shipment Verifications Completed	ECASS	Monthly	ECASS	BIS's OPEM will perform two types of checks to ensure data are entered where they should be (system integrity) and to ensure that the data are accurate and valid	None	None
Number of Targeted Deficiencies Remedied in the Export Control Systems of Program Nations	Paper Records	Semi-annual	Office Files	BIS's OPEM will validate the performance measure against supporting documentation	None	None