



Report to the Chairman, Committee on  
Foreign Affairs, House of  
Representatives

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May 2015

# NONPROLIFERATION

## State Should Minimize Reporting Delays That May Affect Sanctions on Trade with Iran, North Korea, and Syria

# GAO Highlights

Highlights of [GAO-15-519](#), a report to Chairman, Committee on Foreign Affairs, House of Representatives

## Why GAO Did This Study

The United States uses sanctions to curb weapons of mass destruction proliferation. Under INKSNA, the President is required every 6 months to provide reports to two congressional committees that identify every foreign person for whom there is credible information that the person has transferred certain items to or from Iran, North Korea, or Syria. INKSNA authorizes the President to impose sanctions on the identified person and requires him to provide justification to the two committees if sanctions are not imposed. The President has delegated this authority to State. State's Deputy Secretary makes determinations about whether to impose sanctions.

GAO was asked to review State's INKSNA implementation. This report (1) examines State's timeliness in providing INKSNA reports, (2) reviews State's reporting process, and (3) identifies the potential impact of its reporting timeliness on the imposition of sanctions.

GAO analyzed data and met with officials from the Departments of State, Defense, and Energy, and met with officials from the Department of Commerce.

## What GAO Recommends

GAO recommends that the Secretary of State reconsider State's INKSNA process to ensure that it (1) complies with INKSNA's 6-month reporting cycle, and (2) minimizes delays in its ability to opt to impose sanctions. State concurred with the recommendation but expressed concerns about the difficulty of conducting its process. The GAO report highlights some process efficiencies that State should consider.

View [GAO-15-519](#). For more information, contact Thomas Melito at (202) 512-9601 or [melitot@gao.gov](mailto:melitot@gao.gov).

May 2015

## NONPROLIFERATION

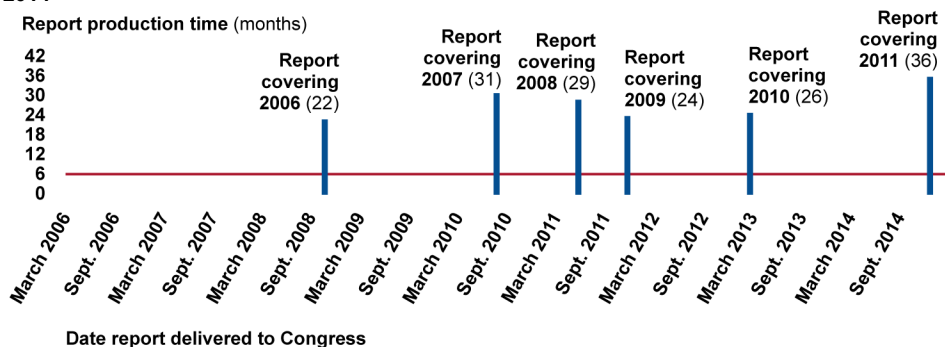
### State Should Minimize Reporting Delays That May Affect Sanctions on Trade with Iran, North Korea, and Syria

## What GAO Found

The Department of State (State) is not providing reports to congressional committees in accordance with the 6-month reporting requirements of the 2006 Iran, North Korea, and Syria Nonproliferation Act (INKSNA). Since 2006, it has provided six reports covering a 6-year period (2006 through 2011), instead of 18 reports covering a 9-year period (2006 through 2014), as required by INKSNA. State provided these six reports at irregular intervals averaging 16 months. It provided its most recent report in December 2014, 22 months after it had provided the prior report.

State has not established a process that would allow it to comply with the 6-month reporting cycle required by INKSNA. It uses a complex and lengthy process that involves multiple interagency and internal reviews. Because it processes cases in calendar-year groups, State delays providing a report to the committees until it has resolved all concerns and determined whether to impose sanctions for each transfer in the group. It begins preparing a new report every December, regardless of whether it has completed all previous reports, with the result that State officials sometimes work on several reports simultaneously and may delay work on one report to work on another. State required nearly 3 years to prepare its December 2014 report on transfers that first came to its attention in 2011. Officials told GAO that negotiations and relations with countries can delay the process and assessing transfers in annual groups reduces prospects for confusion among the parties involved in the process (see figure).

**State's Delays in Reporting on Transfers and Acquisitions Reportable under INKSNA, 2006-2014**



Source: GAO analysis of State data. | GAO-15-519

By not complying with INKSNA's 6-month reporting cycle, State may have limited its ability to minimize delays in choosing to impose INKSNA sanctions. INKSNA requires State to identify foreign persons in a report before opting to impose sanctions on them. As a result, State did not impose INKSNA sanctions on 23 persons for 2011 transfers until December 2014, when it provided its report addressing 2011 transfers. While officials told GAO that threats of possible sanctions can deter questionable transfers, prolonged delays in eventually imposing potential INKSNA sanctions could erode the credibility of such threats and INKSNA's utility as a tool in helping to curb weapons of mass destruction proliferation associated with Iran, Syria, and North Korea.

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Figure 3: State's Delays in Reporting on Transfers and Acquisitions Reportable under the Iran, North Korea, and Syria Nonproliferation Act (INKSNA), 2006-2014

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**Abbreviations**

Commerce	Department of Commerce
D	Office of the Deputy Secretary of State
DOD (JCS)	Department of Defense (Joint Chiefs of Staff)
DOD (OSD)	Department of Defense (Office of the Secretary of Defense)
DOE	Department of Energy
H	State Bureau of Legislative Affairs
HFAC	House Committee on Foreign Affairs
IC	Intelligence Community
INA	Iran Nonproliferation Act of 2000
INKSNA	Iran, North Korea, and Syria Nonproliferation Act
IPC	Interagency Policy Committee
ISN	State Bureau of International Security and Nonproliferation
ISN/MBC	State Bureau of International Security and Nonproliferation/State Office of Missile, Biological, and Chemical Nonproliferation
ISNA	Iran and Syria Nonproliferation Act
MBC	State Office of Missile, Biological, and Chemical Nonproliferation
NSC	National Security Council
SFRC	Senate Committee on Foreign Relations
State	Department of State
Treasury	Department of the Treasury
WMD	weapons of mass destruction

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May 22, 2015

The Honorable Edward R. Royce  
Chairman  
Committee on Foreign Affairs  
House of Representatives

Dear Mr. Chairman:

The advent of global terrorism has heightened concerns about the threat of proliferation of weapons of mass destruction (WMD) and missiles. The United States uses export control regimes and sanctions to combat proliferation by restricting exports of sensitive goods, services, and technologies and to punish those persons that violate such restrictions.<sup>1</sup> It imposes WMD-related sanctions under legal authorities that include the Iran, North Korea, and Syria Nonproliferation Act (INKSNA).<sup>2</sup>

INKSNA requires the President to transmit a report to the Senate Committee on Foreign Relations and the House Committee on Foreign Affairs every 6 months in which she or he identifies foreign persons for which there is credible information indicating they have transferred to, or acquired from, Iran, North Korea, or Syria certain WMD or conventional or

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<sup>1</sup>For purposes of the Iran, North Korea, and Syria Nonproliferation Act (INKSNA), a “person” is (1) a natural person that is an alien; (2) a corporation, business association, partnership, society, trust, or any other nongovernmental entity, organization, or group, that is organized under the laws of a foreign country or has its principal place of business in a foreign country; (3) any foreign government, including any foreign governmental entity; and (4) any successor, subunit, or subsidiary of any entity described above, including any entity in which any entity described in any such subparagraph owns a controlling interest.

<sup>2</sup>Iran, North Korea, and Syria Nonproliferation Act (Pub. L. No. 106-178, §§ 1-7, 114 Stat. 38, Mar. 14, 2000 [codified as amended at 50 U.S.C. § 1701 note]). Congress amended the Iran Nonproliferation Act of 2000 (INA) to include transactions involving Syria in 2005, and amended the Iran and Syria Nonproliferation Act (ISNA) to include transactions involving North Korea in 2006.

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missile-related items.<sup>3</sup> INKSNA also authorizes the President to impose sanctions on foreign persons identified in the reports. If the President chooses not to do so, the President must notify the committees and include a written justification that supports the decision not to sanction. The President has delegated INKSNA authorities to the Department of State. The Deputy Secretary of State is responsible for making sanctions determinations, and authorizing delivery to the two cognizant congressional committees.

Because of concerns regarding the timeliness of State's provision of INKSNA reports to the committees, you asked us to review State's implementation of INKSNA. This report (1) examines State's timeliness in providing INKSNA reports, (2) reviews State's reporting process, and (3) identifies the potential impact of State's reporting timeliness on its imposition of sanctions.

To address these objectives, we reviewed INKSNA and related legislation. We also obtained and analyzed Department of State data on report publication dates and processing timelines and assessed relevant documents from the Departments of State, Defense, and Energy. In addition, we interviewed officials involved in the INKSNA process from the Departments of State, Energy, Defense, and Commerce. Appendix I provides a detailed description of our scope and methodology.

We conducted this performance audit from September 2014 to May 2015 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

INKSNA requires the President to provide reports on March 14 and September 14 of each year to the Senate Committee on Foreign

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<sup>3</sup>These items include goods, services, or technology listed on four multilateral export control regimes and one treaty (see table 1), as well as other goods, services, or technology having the potential to make a material contribution to the development of nuclear, biological, chemical, or conventional weapons, or of ballistic or cruise missile systems.

Relations and the House Committee on Foreign Affairs, in which he or she identifies every foreign person for whom there is credible information that the person has transferred to or from Iran, North Korea, or Syria certain goods, services, or technologies mostly those controlled through four multilateral export control regimes and one treaty.<sup>4</sup> Table 1 provides details on the purpose and items restricted in each one.<sup>5</sup>

**Table 1: Purpose and Control Items or Activities Restricted by the Four Multilateral Export Control Regimes and the Treaty Referenced in the Iran, North Korea, and Syria Nonproliferation Act (INKSNA)**

Regime/treaty (member states)	Purpose	Controlled items or activities
<a href="#">Nuclear Suppliers Group Guidelines</a> (48)	To ensure that nuclear trade for peaceful purposes does not contribute to the proliferation of nuclear weapons or explosive devices while not unjustly hindering such trade and cooperation	The export of nuclear and nuclear-related dual-use items <sup>a</sup>
<a href="#">Missile Technology Control Regime</a> (34)	To limit the risks of proliferation of weapons of mass destruction (WMD) (i.e., nuclear, chemical, and biological weapons), by controlling transfers that could make a contribution to delivery systems (other than manned aircraft) for such weapons	Transfer of missiles, rockets, and unmanned air vehicles capable of delivering WMDs, and related equipment, software, and technology
<a href="#">Wassenaar Arrangement list of Dual Use Goods and Technologies and Munitions</a> (41)	To contribute to regional and international security and stability, by promoting transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies, thus preventing destabilizing accumulations	Trade in conventional weapons and related items with dual-use (military and civilian) applications

<sup>4</sup>The committee report accompanying the bill that became the Iran Nonproliferation Act of 2000 stated that “credible information” was intended to be a very low evidentiary standard—information that is sufficiently believable that a reasonable person would conclude that there is a substantial possibility that a transfer has occurred (H. R. Rep. 106-315, at 65 (Sept. 14, 1999)).

<sup>5</sup>Multilateral export control arrangements are referred to as “regimes” and are voluntary, nonbinding arrangements among like-minded supplier countries that aim to restrict trade in sensitive technologies to peaceful purposes. See GAO, Nonproliferation: Strategy Needed to Strengthen Multilateral Export Control Regimes, [GAO-03-93](#), (Washington, D.C.: October 25, 2002).

Regime/treaty (member states)	Purpose	Controlled items or activities
Australia Group	To ensure that the industries of the participating countries do not assist, either purposefully or inadvertently, states seeking to acquire a chemical and biological weapons capability	Trade in <ol style="list-style-type: none"> <li>1. chemical weapons precursors;</li> <li>2. dual-use chemical manufacturing facilities and equipment, and related technology and software;</li> <li>3. dual-use biological equipment and related technology and software;</li> <li>4. Human and animal pathogens and toxins;</li> <li>5. Plant pathogens.</li> </ol>
(42)		
Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction	A treaty to outlaw the production, stockpiling, and use of chemical weapons and their precursors, including toxic chemicals and precursors listed in Schedule One or Schedule Two of the convention	Chemical weapons and their precursors
(190)		

Sources: GAO, Nonproliferation: Strategy Needed to Strengthen Multilateral Export Control Regimes, [GAO-03-43](#) (Washington, D.C.: Oct. 25, 2002), and websites for each of the regimes and treaty. | GAO-15-519

<sup>a</sup>Dual-use items within the Nuclear Suppliers Group guidelines are those that can make a major contribution to an unsafeguarded nuclear fuel cycle or nuclear explosive activity, but which have non-nuclear uses as well.

In addition to these controlled items, INKSNA also includes a category of reportable items for goods, services, or technology, on a case-by-case basis, have the potential to make a material contribution to the development of nuclear, biological, conventional, or chemical weapons, or of ballistic or cruise missile systems.<sup>6</sup> According to State officials, INKSNA's broad list of reportable transfers and acquisitions and discretionary authority to impose sanctions provide the U.S. government an important and flexible tool to achieve its nonproliferation objectives and sanctioning capabilities found in no other U.S. law.<sup>7</sup> INKSNA's scope

<sup>6</sup>According to State, the act of one or more foreign persons transferring to or acquiring from another person or persons goods, services, or technologies potentially reportable under IKSNA in a single transaction constitutes one transfer. A case consists of the information the U.S. government has compiled related to each transfer in the process of determining whether or not the transfer is reportable.

<sup>7</sup>While the U.S. government could use other nonproliferation authorities to sanction (some) transfers identified in its INKSNA reports, most of these other sanctions authorities require judgments as to the end use of the item; these judgments are not part of INKSNA reporting requirements.



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includes any transfers to or from Iran on or after January 1, 1999; Syria on or after January 1, 2005; and North Korea on or after January 1, 2006.

INKSNA also authorizes the President to apply a range of measures against any foreign person the President has identified in a report he or she has provided to the congressional committees. The measures include (1) a prohibition on U.S. government procurement of goods or services from the person and a ban on imports of products produced by that person, except to the extent the Secretary of State otherwise may determine; (2) a prohibition on U.S. government provision of assistance, except to the extent the Secretary of State otherwise may determine; (3) a prohibition on U.S. government sales of any item on the U.S. Munitions List, and the termination of any ongoing sales of any defense articles, defense services, or design and construction services controlled under the Arms Export Control Act; and (4) that new licenses will be denied, and any existing licenses suspended, for transfers of items controlled under the Export Administration Act of 1979 or the Export Administration Regulations. Once imposed, INKSNA sanctions are in effect for 2 years at State's discretion.

In addition, INKSNA requires the President to notify the congressional committees of his or her rationale for not imposing sanctions against foreign persons identified in the report. Under INKSNA, the President cannot apply sanctions to reported persons if he or she finds that (1) the person did not "knowingly transfer to or acquire from Iran, North Korea, or Syria" reportable items; (2) the goods, services, or technology "did not materially contribute to the efforts of Iran, North Korea or Syria, as the case may be, to develop nuclear, biological, or chemical weapons, or ballistic or cruise missile systems, or weapons listed on the Wassenaar Arrangement Munitions List," (3) the person is subject to the jurisdiction of a government that is an adherent to "one or more relevant nonproliferation regimes" and the transfer was consistent with such regime's guidelines; or (4) the government of jurisdiction "has imposed meaningful penalties" on the identified person.

The President has delegated INKSNA authorities to State. The Deputy Secretary of State exercises this authority by making sanctions determinations, and authorizing delivery of INKSNA reports to the committees. State arranges to have the names of the foreign persons deemed to have engaged in the sanctioned transfers or acquisitions published in the *Federal Register* soon after it delivers the reports to the committees.

From 2006 to May 2015, State imposed sanctions on 82 foreign persons under INKSNA deemed to have engaged in reportable transfers to or acquisitions from Iran, North Korea, and Syria, primarily on persons located in China, Iran, Syria, and Sudan (see table 2). Seventeen of these foreign persons had INKSNA sanctions imposed on them more than once.

**Table 2: Location of Foreign Persons Sanctioned under the Iran, North Korea, and Syria Nonproliferation Act (INKSNA), by Date**

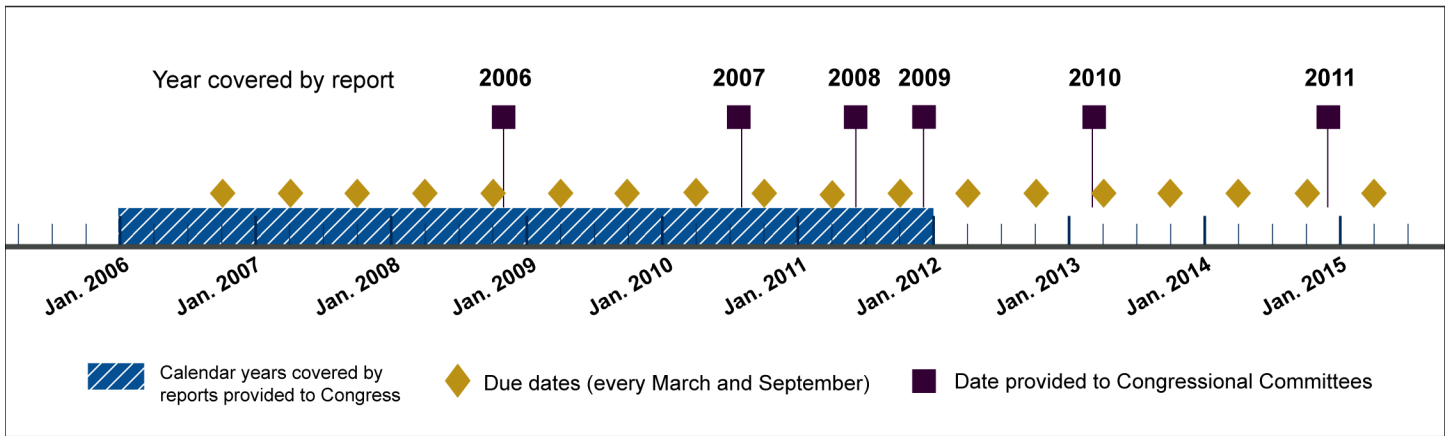
Location of foreign persons	Calendar year of report (effective date of sanctions)						Total
	2006 (10/23/08)	2007 (7/14/10)	2008 (5/23/11)	2009 (12/20/11)	2010 (2/5/13)	2011 (12/19/14)	
China	3	4	4	3	5	3	22
Iran	1	2	6	2	3	3	17
Syria	1		2	1	1	5	10
Sudan	2				2	5	9
Belarus		1	2	1	2	1	7
North Korea	2	1	1	1		1	6
Russia	1					4	5
Other	3		1		1	1	6
<b>Total</b>	<b>13</b>	<b>8</b>	<b>16</b>	<b>8</b>	<b>14</b>	<b>23</b>	<b>82</b>

Source: GAO analysis of Department of State data. | GAO-15-519

## State Is Not Providing Reports to Congressional Committees Every 6 Months as Required by INKSNA

State is not providing reports to the two cognizant congressional committees in accordance with INKSNA's 6-month reporting requirements. Since 2006, it has provided six reports covering a 6-year period (2006 through 2011), instead of 18 reports covering a 9-year period (2006 through 2014), as required by INKSNA. If State had submitted a report every 6 months during this 6-year period as required by law, they would have produced 11 reports. Instead, each of the six reports covered a period spanning an entire calendar year and focused on transfers that first came to State's attention in one of the six calendar years occurring between 2006 and 2011(see fig. 1). State provided these six reports at irregular intervals that have averaged 16 months, ranging between 7 and 22 months apart. It provided its most recent report in December 2014, 22 months after its previous report. The interval between the last two reports was the longest interval between reports since the beginning of 2006.

**Figure 1: Timeliness of State's INKSNA Reports, 2006-2015**



Source: GAO analysis of State data. | GAO-15-519

## State Has Not Established a Process That Allows It to Comply with INKSNA's Required 6-Month Reporting Cycle

State has not established a process that would allow it to comply with the 6-month reporting cycle required by INKSNA. State uses a complex and lengthy process that involves multiple interagency and internal reviews to compile credible information about a group of reportable transfers that first came to its attention in a single calendar year, and to determine whether to impose sanctions on foreign persons associated with those transfers. Because its process focuses on a group of transfers that came to its attention in a single year, State delays providing a report to the committees until it has resolved concerns it may have regarding any of the transfers in the group covered in the report and determined whether to sanction persons associated with any of those transfers. State officials begin preparing a new report every December, regardless of whether they have completed and provided all previous reports. State officials have told GAO they sometimes must delay work on one draft report to work on another, and that they can make only a limited amount of progress toward completing a new report before they have completed earlier reports. According to State, they use this approach because each report builds on the previous installment, including any determinations to defer a decision on sanctions and any determinations on whether to add nonlisted items to reportability on a case-by-case basis. As a result, State required almost 3 years to prepare its December 2014 report, which addressed transfers that first came to its attention in 2011.

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**State Uses a Complex  
Process Involving Multiple  
Interagency and Internal  
Reviews**

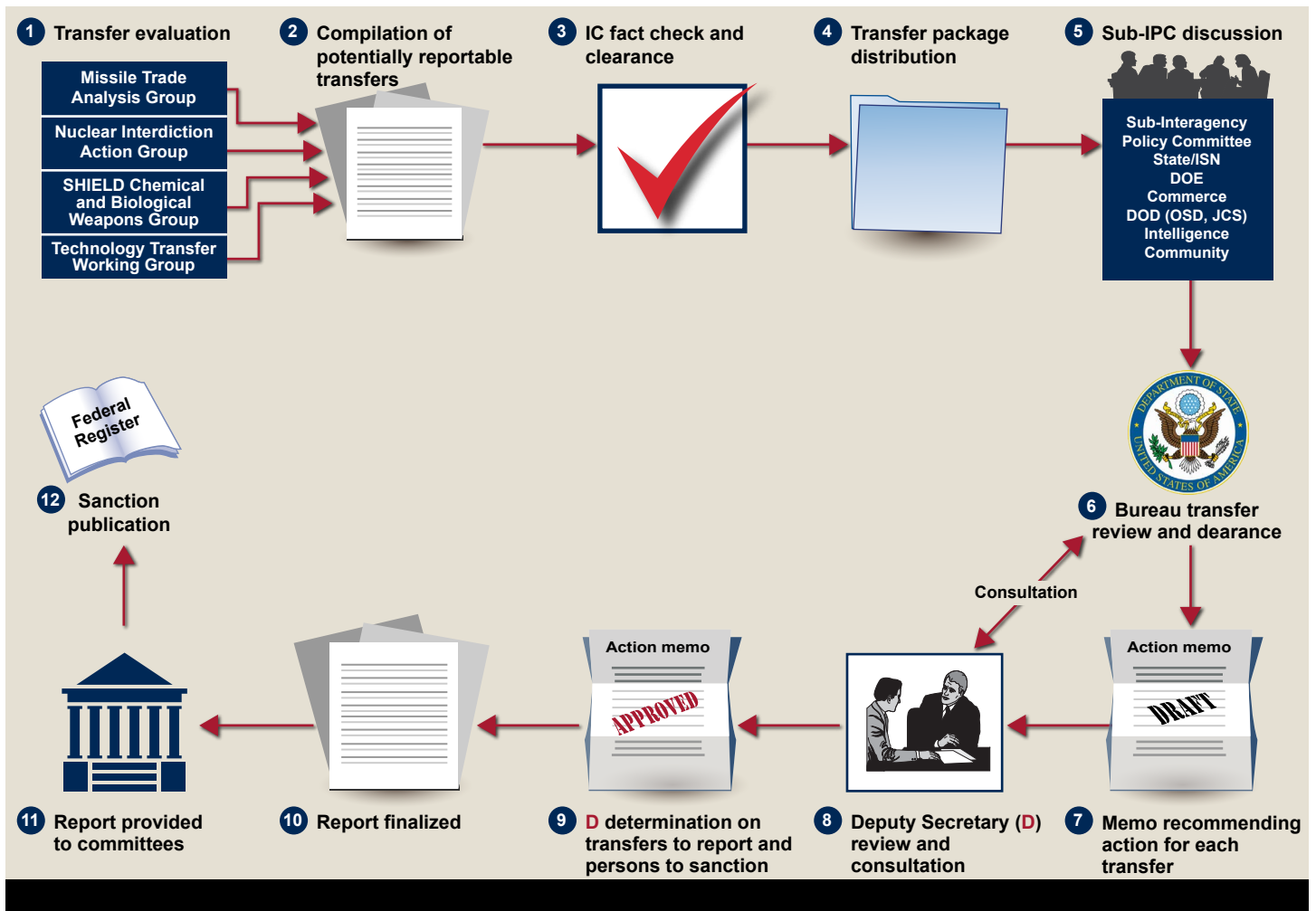
According to officials in the office responsible for producing the report—State’s Bureau of International Security and Nonproliferation’s Office of Missile, Biological, and Chemical Nonproliferation (ISN/MBC)—State’s process for implementing INKSNA consists of the 12 following steps, as depicted interactively in figure 2 and described in appendix II.

**Interactive graphic**

**Figure 2: State's INKSNA Process**

**Directions:**

Roll over each step to view more information.



**D** Office of the Deputy Secretary of State  
**Commerce** Department of Commerce  
**DOD (JCS)** Department of Defense (Joint Chiefs of Staff)  
**DOD (OSD)** Department of Defense (Office of the Secretary of Defense)  
**DOE** Department of Energy  
**H** State Bureau of Legislative Affairs  
**HFAC** House Committee on Foreign Affairs

**IC** Intelligence Community  
**INKSNA** Iran, North Korea, Syria Nonproliferation Act  
**ISN** State Bureau of International Security and Nonproliferation  
**IPC** Interagency Policy Committee  
**MBC** State Office of Missile, Biological, and Chemical Nonproliferation  
**NSC** National Security Council  
**SFRC** Senate Committee on Foreign Relations

Source: GAO analysis of State information. | GAO-15-519

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State officials told us that while the four State-led interagency working groups (named in figure 2 above) meet on a regular basis to evaluate reporting from a wide variety of sources on transfers and flag activity that might trigger INKSNA or other legal authorities, State typically begins the report preparation process, starting with compiling the activity for the draft report, once the relevant calendar year ends.<sup>8</sup> The State Bureau of International Security and Nonproliferation/State Office of Missile, Biological, and Chemical Nonproliferation (ISN/MBC), working with other agencies and the Intelligence Community, compiles a list of transfers that first came to its working groups' attention during the previous calendar year and then provides the list along with any diplomatic histories associated with each transfer to the Intelligence Community for fact checking and to determine whether the names of the foreign persons associated with the transfers are releasable to the *Federal Register* if State imposes sanctions. State then distributes the corrected package of transfers and any other information to the relevant interagency working group that includes the other federal departments involved in this process—the Department of Defense (DOD), the Department of Energy (DOE), and the Department of Commerce (DOC). Next, State chairs an interagency Policy Committee meeting (held at the deputy assistant secretary or office director level), where State and other members of the interagency working groups provide advice on whether each transfer is reportable under INKSNA and whether it should result in sanctions. This meeting is followed by reviews by State officials in geographic and functional bureaus.<sup>9</sup>

ISN/MBC includes the result of these reviews in an action memo that it sends to the Deputy Secretary of State for the final determination as to which transfers to include in the report and which persons to sanction in connection with those transfers.<sup>10</sup> Following the Deputy Secretary's determinations, State officials prepare the final version of the report,

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<sup>8</sup>The working groups also examine intelligence to identify proliferation-related shipments that the United States seeks to interdict, some of which may also be reportable under INKSNA.

<sup>9</sup>Examples of such bureaus include Economic and Business Affairs, Near Eastern Affairs, and East Asian and Pacific Affairs.

<sup>10</sup>State also may take other actions, such as sending notices (démarches) or cables alerting countries where the sanctioned entities reside or are located.

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transmit it to the cognizant congressional committees, and arrange to have sanctions notices published in the *Federal Register*.

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### State's Process Requires on Average More than 2 Years to Complete a Report

Using this process, State has required, on average, more than 2 years to produce each of the six INKSNA reports that it provided to the cognizant congressional committees between 2006 and 2015. It required almost 3 years to complete the report it provided to the committees in December 2014 covering calendar year 2011. Our analysis of the production times of State's six INKSNA reports indicates that the three longest stages of State's process involve State's compilation of potential reportable transfers into a single list (steps 1 and 2); State's scheduling and holding of the sub-Interagency Policy Committee meeting (held at the deputy assistant secretary or office director level) to discuss the transfers (steps 4 and 5); and the Deputy Secretary's review of the action memo in making his or her determinations (steps 8 and 9). For example, concerning the report State provided in December 2014, the Deputy Secretary required more than a year to review the action memo for transfers State learned of in 2011 and to determine which persons to identify in the report and whether to apply sanctions.

State officials told us that a variety of political concerns, such as international negotiations and relations with countries involved in transfers, can delay State's INKSNA process. They stated that these concerns can particularly delay the steps that involve internal State approvals, including the Deputy Secretary's review and sanctions determination.

State's practice of focusing each report on a group of transfers that first came to its attention in a single calendar year also contributes to the length of time State's process requires to complete a report. State does not provide a report to the congressional committees until it has resolved concerns it may have about every one of the transfers in the group covered in the report and determined whether to impose sanctions on persons associated with each of the transfers in that group. As a result, a single problematic case in a group can delay State's provision of the report, which may include other INKSNA-reportable transfers that State may be otherwise ready to report to Congress.

As a result of this practice of focusing each report on a single year's group of transfers and acquisitions, State officials must either complete a report within a year or manage the preparation of a backlog of multiple reports, each covering a different calendar year and each in a different

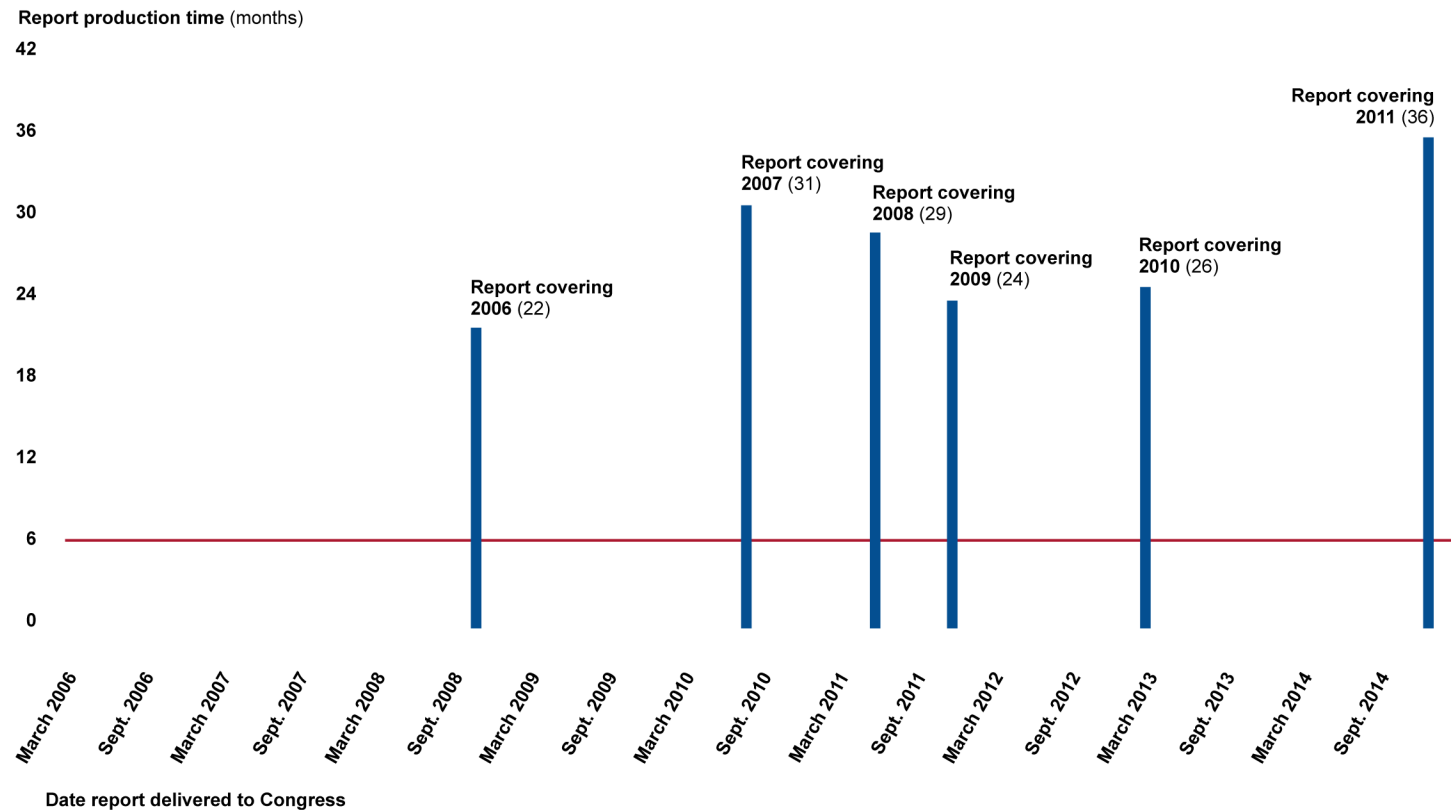
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stage of State's process. Under State's process, State officials begin preparing a new report every December, regardless of whether they have completed and provided all previous reports. State data indicate that State officials were simultaneously processing three reports, covering calendar years 2011, 2012, and 2013, in the last 6 months of 2014. State officials have told us that they sometimes must delay work on one report to work on another. For example, State officials told GAO that they delayed work on the report State issued in December 2014 (which covered calendar year 2011) for 4 months so that they could focus on completing delivery of the report to Congress covering calendar year 2010.

As a result of its process, State's delays in reporting on transfers and acquisitions have recently increased. As shown in figure 3, State's report on transfers that first came to its attention in 2010 was provided 26 months after the end of 2010, while its report on transfers that first came to its attention in 2011 was provided 36 months after the end of 2011—a nearly 40 percent increase in the time elapsed between the year addressed and the date that State provided the report. State's draft report on transfers it first learned of in 2012 is now in its 30th month of preparation and, as of April 2015, had fallen 9 months behind the pace set by its predecessor.



**Figure 3: State’s Delays in Reporting on Transfers and Acquisitions Reportable under the Iran, North Korea, and Syria Nonproliferation Act (INKSNA), 2006-2014**



Source: GAO analysis of State data. | GAO-15-519

State officials cited two reasons for State’s decision to review and report on transfers in groups covering a single year.

- The parties involved in the complex, multistep process can review and clear a single group of transfers per year in sequence more quickly and with less confusion than would be possible with the 6-month cycle required by INKSNA. Officials stated, for example, a shorter cycle could be confusing, as it could require these parties to make decisions on overlapping groups of transfers in different stages of the process in the same time frame.
- While State officials stated they intend to institute 6-month reports once they have cleared the backlog, they acknowledged they might still find it difficult to meet this requirement. INKSNA allows State to

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add to reportability transfers of items (goods, services, or technologies) not on any of the multilateral control lists that nonetheless make material contributions to WMD. State officials stated that they must complete reports sequentially to ensure that they correctly identify transfers of newly reportable items.

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## State's Process Limits Its Ability to Minimize the Time Required to Impose INKSNA Sanctions

By using a process that does not comply with INKSA's 6-month reporting cycle, State has limited its ability to minimize delays affecting the potential imposition of INKSNA sanctions. INKSNA does not allow State to impose INKSNA sanctions on foreign persons until State has identified them in a report to the congressional committees. Because State does not have a process enabling it to provide INKSNA reports every 6 months as required, it cannot impose INKSNA sanctions on foreign persons within the time frames established by INKSNA. Those time frames would allow State to impose sanctions on a foreign person between 6 and 12 months after it first obtained credible information of the person's involvement in a reportable transfer.<sup>11</sup> For example, in any given year in which State decided to sanction a person for a reported transfer or acquisition, the sanction would be effective no later than December if State had learned about the transfer between January 1 and June 30 of that year, if it had identified that person in a report provided to the committees in September as required by INKSNA.

However, State's delay in providing its reports to congressional committees between 2006 and 2014 may undermine its ability to impose potential INKSNA sanctions in accordance within the time frames defined in INKSNA. Because State may not impose INKSNA sanctions on foreign persons until it has identified them in a report, its late reports may have delayed by more than 2 years State's imposition of sanctions on some of these foreign persons. Our analysis of the reports covering the calendar years 2006 through 2011 indicates that State was not able to impose sanctions on foreign persons deemed responsible for transactions

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<sup>11</sup>Section 3(b) of INKSNA notes that sanctions on foreign persons will be effective no later than 90 days after the INKSNA report identifying the foreign person is submitted, if the report is submitted on or before the date the reports are due. Therefore, if State provided reports to Congress on March 14 and September 14 every year, as required by INKSNA section 2(b), the Deputy Secretary of State may use his or her discretionary authority to impose sanctions on any or all of the foreign persons named in the reports effective no later than June 14 and December 14, respectively. If reports are submitted to the congressional committees more than 60 days after the required date, any sanctions are effective on the date of the report.

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included in the reports until an average of 28 months after the end of that reporting period. The intervals ranged between 22 and 36 months.

State's delay in providing its most recent report may have imposed the longest delay on State's ability to impose INKSNA sanctions, which are discretionary. State imposed sanctions on 23 foreign persons in December 2014, when it provided its report on transfers it first learned of in 2011.<sup>12</sup> The sanctions pertained to transfers that had first come to State's attention between 36 and 48 months earlier. If State had established a process enabling it to provide reports to the committees every 6 months, it would have had the ability to impose sanctions on one or more of these 23 persons more than 2 years earlier.

State officials acknowledged these delays, but told us that they believe that the threat of imposing sanctions can be as effective as the imposition of sanctions in achieving the behavior changes that sanctions are intended to motivate. They stated that at various times in the reporting cycle, State may use the information it is compiling to meet the INKSNA reporting requirement to notify foreign governments about suspected transfers taking place within their jurisdictions and request that they take appropriate action. This use is in accordance with provisions in INKSNA that (1) encourage State to contact foreign governments with jurisdiction over the person, in order to afford the government the opportunity to provide explanatory, exculpatory, or additional information with respect to the transfer, and (2) exempt foreign persons from INKSNA sanctions if the foreign government has imposed meaningful penalties on that person. They noted that the threat of INKSNA sanctions itself can prompt foreign governments to take actions to halt transfers or to penalize or deter persons within their jurisdiction who are suspected of conducting these transfers, which may stop the activity before it meets the threshold for reporting under INKSNA.

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## Conclusions

State officials praise INKSNA as a valuable tool in combating proliferation of WMD associated with Iran, Syria, and North Korea. However, State has established a complex and lengthy reporting process that prevents it

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<sup>12</sup>INKSNA sections 4(a) and 4(b) require State to report to the congressional committees when deciding not to exercise the authority to sanction a reportable person, including a written justification describing in detail the facts and circumstances that support the decision not to sanction. 50 U.S.C. § 1701 note.

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from providing INKSNA reports on a 6-month schedule to the Senate Committee on Foreign Relations and the House Foreign Affairs Committee, as required by INKSNA. This process may limit State's ability to impose potential sanctions at an earlier date, in accordance with the time frames established in INKSNA.

While State officials state that their process of reviewing and reporting on transfers in groups covering a single calendar year allows them to prepare reports more quickly and with less confusion than groups covering 6 months, our analysis demonstrates that State is falling further and further behind in providing the reports and is now juggling a backlog of draft reports at different stages of that process. In addition, State officials told us that the threat of INKSNA sanctions can be an effective deterrent. However, State's current process has increased the interval of time between the occurrence of a reportable transfer and State's decision to impose sanctions on the foreign persons identified by State as responsible for those transfers. The imposition of sanctions no sooner than 3 or more years after the transfer occurred may diminish the credibility of the threatened sanction. In addition, reporting delays of this magnitude are not consistent with the time frames established by Congress when it enacted INKSNA.

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## Recommendation for Executive Action

The Secretary of State should reconsider State's INKSNA process to ensure that it (1) complies with INKSNA's 6-month reporting cycle, and (2) minimizes delays in its ability to opt to impose sanctions.

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## Agency Comments and Our Evaluation

We provided a draft of this report to the Departments of State, Commerce, Defense, Energy and Treasury for comment. State provided written comments, which we reprinted in appendix III, as well as technical comments, which we incorporated, as appropriate. Commerce, Defense, Energy, and Treasury declined to provide comments.

In its written comments, State concurred with our recommendation but said they need to clear their backlog before delivering reports semi-annually. Moreover, they expressed concern that the draft report does not take into account the inherent difficulties of meeting the law's very tight deadlines and the substantial increases in scope of reportable activity. In addition, State said that the report does not place sufficient priority on the need for careful preparation and thorough vetting. In response, GAO noted that the report shows that the time State requires to produce the reports for Congress has increased since 2006, the period covered by our

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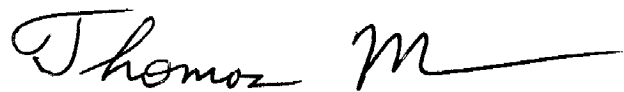
report, despite no additional changes to the scope of the law over that period. We also recognize State's need to carefully prepare and thoroughly vet each INKSNA report. We also recognize that some transfers that are reportable under INKSNA may require several years to investigate and vet prior to being included in an INKSNA report. However, our review found that State's process could allow a single such problematic transfer to delay State's reporting to Congress of other transfers that State may have already investigated and vetted.

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As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, will send copies to the appropriate congressional committees and the Secretaries of State, Commerce, Defense, Energy, and Treasury. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-9601 or [melitot@gao.gov](mailto:melitot@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix III.

Sincerely yours,

A handwritten signature in black ink that reads "Thomas M" followed by a long horizontal flourish.

Thomas Melito  
Director, International Affairs and Trade

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# Appendix I: Objectives, Scope, and Methodology

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This report (1) examines the Department of State's (State) timeliness in providing Iran, North Korea, and Syria Nonproliferation Act (INKSNA) reports; (2) reviews State's reporting process; and (3) identifies the potential impact of State's reporting timeliness on its imposition of sanctions.

To examine State's timeliness in providing INKSNA reports, we reviewed the reporting requirements established under section 2(b) of INKSNA, the six reports provided by State to the House Committee on Foreign Affairs and the Senate Committee on Foreign Relations covering the period between calendar year 2006—when transfers and acquisitions involving North Korea were first incorporated into the INKSNA reporting requirements—and calendar year 2011, when the latest report was provided by State to the two committees in December 2014. We reviewed the *Federal Register* entries announcing the sanctions on 82 of the foreign persons named in the six reports and the dates those sanctions became effective. We also interviewed officials from the office within State responsible for producing the reports—the Office of Missile, Biological, and Chemical Nonproliferation in the Bureau of International Security and Nonproliferation (ISN/MBC) —the Department of Defense (DOD), and the Department of Energy (Energy) to confirm the timing of these reports.

To review State's reporting process, we reviewed State documents and interviewed officials at State and the Departments of Defense (DOD) and Energy (DOE) to determine the extent to which each agency participated in the State-led interagency working groups that identify transfers potentially meeting INKSNA's reporting and sanctions criteria and their role in the sub-Interagency Policy Committee meetings that voted on which transfers to recommend for reporting and for sanctions. Using the information from these interviews and documents provided by State, we developed a graphic to depict State's process. We requested data from State on the length of time it took to accomplish particular steps in the process for the last six reports and analyzed that data to determine where delays in the process were occurring. We also identified the date that State provided each report and determined the number of months separating that date from the end of the calendar year each report addresses. On the basis of our review, we determined that the data received from the State Department were sufficiently reliable for our analysis of State's process.

In addition, we also interviewed Department of Commerce (Commerce) and Department of the Treasury (Treasury) officials to identify their participation in the INKSNA reporting process.

To identify the potential impact of the timeliness of the INKSNA reports on the imposition of sanctions, we reviewed the deadlines for the imposition of sanctions established in sections 2(b) and 3(c) of INKSNA, the 2006-2011 calendar year INKSNA reports, and the House report that accompanied the bill that became the Iran Nonproliferation Act of 2000. We also interviewed officials from State to discuss the timing and effectiveness of the sanctions.

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# Appendix II: State's Iran, North Korea, and Syria Nonproliferation Act (INKSNA) Process

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According to officials from the Department of State (State) Office of Missile, Biological, and Chemical Nonproliferation in the Bureau of International Security and Nonproliferation (ISN/MBC) State's process for producing the Iran, North Korea, Syria Nonproliferation Act (INKSNA) reports consists of the following steps.

1. Four State-led interagency working groups meet on a regular basis to evaluate reporting from a wide variety of sources on transfers of proliferation concern. The groups also identify activity relevant to INKSNA or other legal authorities.
2. ISN/MBC solicits lists of transfers deemed potentially reportable under INKSNA from the four working groups based on information received during the reporting year. ISN/MBC adds the diplomatic history describing efforts to address transfers with relevant foreign governments, creating a package of information on transfers.
3. ISN/MBC sends the package of transfers to the Intelligence Community for its members to check the information for accuracy and determine whether foreign persons' names are releasable to the *Federal Register* if State decides to impose sanctions on them.
4. ISN/MBC receives a corrected package from the Intelligence Community, sends it out to the federal departments involved in the interagency process ( the Departments of Defense, Energy, and Commerce), and the National Security Council (NSC) calls for a sub-Interagency Policy Committee (IPC) meeting to be scheduled to discuss the transfers.
5. Sub-IPC discusses each transaction. Attendees provide advice on whether each transfer is reportable under INKSNA and whether it should result in sanctions.
6. ISN/MBC sends the package of transfers, along with the results of the sub-IPC meeting, to other relevant State regional and functional bureaus to obtain their views and approval.
7. ISN/MBC compiles a draft action memo that contains the recommended outcome for each transfer. The memo also contains the views of the attendees from the sub-IPC meeting. ISN and other relevant management levels clear the memo.
8. ISN sends the action memo to the Office of the Deputy Secretary (D) to review the transfers and the recommended actions and conduct iterative rounds of questions and consultations on certain transfers with other State offices before the memo is ready for the Deputy Secretary of State.



9. The Deputy Secretary of State approves the action memo once he or she makes a decision on every transfer for the given calendar year, and D sends it back to ISN/MBC.
10. ISN/MBC prepares (1) the final INKSNA report for the committees, and (2) the draft *Federal Register* notice. It then sends them to the State Bureau of Legislative Affairs (H).
11. H adds a cover letter and provides the report to the clerks/security officers of recipient committees: the House Committee on Foreign Affairs and the Senate Committee on Foreign Relations.
12. Within days, the *Federal Register* publishes the notice announcing the names of the foreign persons who have been sanctioned.

# Appendix III: Comments from the Department of State

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



**United States Department of State**

*Comptroller*

*Washington, DC 20520*

**MAY 13 2015**

Dr. Loren Yager  
Managing Director  
International Affairs and Trade  
Government Accountability Office  
441 G Street, N.W.  
Washington, D.C. 20548-0001


Dear Dr. Yager:

We appreciate the opportunity to review your draft report, "NONPROLIFERATION: State Should Minimize Reporting Delays That may Impact Sanctions on Trade with Iran, North Korea, and Syria" GAO Job Code 321045.

The enclosed Department of State comments are provided for incorporation with this letter as an appendix to the final report.

If you have any questions concerning this response, please contact Ralph Palmiero, Deputy Director, Office of Missile, Biological and Chemical Nonproliferation, Bureau of International Security and Nonproliferation at (202) 647-3737.

Sincerely,

  
Christopher H. Flaggs

Enclosure:  
As stated.

cc: GAO – Thomas Melito  
ISN – Vann Van Diepen  
State/OIG - Norman Brown

**Department of State Comments to GAO Draft Report**

**NONPROLIFERATION: State Should Minimize Reporting Delays That May  
Impact Sanctions on Trade with Iran, North Korea, and Syria**  
(GAO-15-519, GAO Code 321045)

The Department appreciates the opportunity to comment on the GAO draft report entitled *“Nonproliferation: State Should Minimize Reporting Delays That may Impact Sanctions on Trade with Iran, North Korea, and Syria.”*

**General Comments**

The draft report regarding the Department’s process on the Iran, North Korea, and Syria Nonproliferation Act (INKSNA) does not take into account the inherent difficulties of meeting the law’s very tight deadlines and the substantial increases in the scope of reportable activity, pursuant to changes to the original Iran Nonproliferation Act of 2000 (INPA).

INKSNA continues the original INPA requirement for the reports to identify **every foreign person** determined to be involved in relevant activity based on a deliberately low evidentiary threshold, requiring that we merely possess “credible information indicating that” such activity has occurred, regardless of whether the foreign person “knowingly” engaged in such activity or whether the activity made a “material contribution” to a weapons program. All three of these INPA-now-INKSNA requirements are important factors that expand the scope and complexity of INKSNA reporting and that do not exist in other nonproliferation sanctions legislation.

Further challenging the ability of the Department to deliver INKSNA reports within the statutory timeframe, the law has subsequently expanded in scope along its evolution from INPA to the Iran-Syria Nonproliferation Act (ISNA) to INKSNA, while the above complicating factors (and the statutory deadline) have remained unchanged.

--Initially, the reporting requirement only was for transfers to (not acquisitions from) Iran and did not include the potential for sanctions on most Wassenaar-controlled items. (INKSNA cases involving the transfer or acquisition of Wassenaar-listed items constitute approximately 50% of the current case load.)

See comment 1.

--Then, as of January 1, 2005, the law was amended to expand the reporting requirement to include Syria and to require reporting on not only transfers to, but acquisitions from, Iran and Syria. Additionally, a separate requirement was added to report and certify to the Congress to:

- allow payments, in cash or in kind, by the USG to Russia for work to be performed or services to be rendered prior to January 1, 2012 necessary to meet U.S. obligations under agreements related to the International Space Station (ISS); and
- add a reporting requirement on any such payment.

--Finally, as of July 1, 2006, transfers to and acquisitions from North Korea were added to the reporting requirement.

The draft GAO report also does not place sufficient priority on the need for careful preparation and thorough vetting of a report that must meet the stipulations of U.S. law and has such broad and important implication. The INKSNA sanctions are important tools with implications on bilateral relations, foreign persons/entities, and also U.S. persons' ability to engage with sanctioned entities. The process the Department has established for INKSNA is intended to ensure a full and comprehensive review of potential sanctions actions that have such clear implications. An example of this is the claim that "State has established a complex and lengthy reporting process" on page 18 and elsewhere, implying we could easily make the process less rigorous despite these requirements and implications.

Given the scope of the INKSNA reporting requirements, the number of cases today is significantly larger than when the only requirement was to report transfers to Iran – although the statutory timelines for sending six-month reports to Congress has not changed. While this does not excuse the current backlog, we believe it is unrealistic to expect such a complex report – involving dozens of sensitive sanctions decisions -- to be turned in every six months within the current statutory timelines. This fact also calls into question the draft report's implicit assumption that a key driver of the current backlog is the Department's ongoing expedient of dealing with that backlog via annual rather than six-monthly reports until the backlog is eliminated. The above factors strongly indicate, however, that had the Department continued trying to submit reports covering six months rather than one year (i.e., combining two reports), that the backlog would have remained – just with twice as many reports backlogged. This likely result is further substantiated by the interdependence of one report on its predecessors in terms of factors like deferred cases and items added to case-by-case reportability.

See comment 2.

See comment 3.

**Department of State Response to Recommendation**

The Department of State accepts the GAO recommendation. The Department has every intention of working to comply with INKSNA's 6-month reporting cycle – recognizing the structural impediments noted in the general comments above. We have communicated with the appropriate Congressional committees the need to deliver reports on a calendar year basis at least until the backlog is cleared, and they have made no objections. We then hope to return to the practice of delivering reports semi-annually.

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## GAO Comment

**Comment 1:** The scope of INKSNA, as currently written, has not changed since 2006, which was the start time for GAO's analysis. The report shows that the time State requires to produce the reports for Congress has increased since 2006, despite no additional changes to the scope of the law. While INSKNA's six month reporting deadlines may be tight, the report demonstrates that the State Department should consider more efficient processes for meeting those deadlines. For example, State's practice of reporting transfers in entire groups could allow a single problematic transfer to delay the reporting of other transfers that State may have already investigated and vetted.

**Comment 2:** We recognize State's need to carefully prepare and thoroughly vet each INKSNA report. We also recognize that some transfers that are reportable under INKSNA may require several years to investigate and vet prior to being included in an INKSNA report. However, our review found that State's process could allow a single such problematic transfer to delay State's reporting to Congress of other transfers that State may have already investigated and vetted.

**Comment 3:** The report highlights the fact that State has opted to submit annual reports instead of the six-month reports required by law. However, it does not assume that State's decision to do so is the key driver of the current backlog. The report instead calls attention to State's current process that could allow a single problematic case in a group to delay its reporting on other transfers within that group. We also note the report demonstrates that the backlog is growing and is not, as State suggests, being eliminated.

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# Appendix IV: GAO Contact and Staff Acknowledgments

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**GAO Contact:**

Thomas Melito, (202) 512-9601, or [melitot@gao.gov](mailto:melitot@gao.gov)

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**Staff****Acknowledgments:**

In addition to the contact named above, Pierre Toureille (Assistant Director), B. Patrick Hickey, Jennifer Young, Ashley Alley, Tina Cheng, Debbie Chung, Justin Fisher, and Judy McCloskey made key contributions to this report.

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