

IODP Export Control Policy

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Table of Contents

- i. Introduction**
- ii. Export Controls and Agency Overview**
- iii. Import/Export Control Coordinators**
- iv. Process Controls for Import/Export Compliance Coordinators**
- v. Policy Implementation**
- vi. Technology Control Plan**
- vii. Training**
- viii. Record Retention**
- ix. Monitoring and Auditing**

- x. Appendix – Commerce Control List
Munitions List
Decision Tree**

i. Introduction

It is TAMU policy that all employees comply with the U.S. export control laws and the Texas A&M University System policy on export control (<http://researchcompliance.tamu.edu/export-controls>). “The Texas A&M University System, its members, employees and students must comply with all United States export control regulations. Export control regulations are federal laws that restrict the unlicensed shipment, transmission or transfer of certain items, information or technology from the United States to a foreign country for reasons of national security, foreign policy or trade protection. Export control regulations also prohibit “deemed exports,” or the unlicensed release or disclosure of controlled items, information or technology to foreign nationals in the United States.” Both TAMU and TAMRF are firmly committed to full compliance with all U.S. export control laws as established by the applicable federal regulations and TAMUS policy. This commitment extends to promoting strict compliance on an on-going basis.

IODP will proactively address export control regulation compliance in partnership with the appropriate offices within the University such as the Office of Research Compliance and the Office of General Counsel.

ii. Export Controls

Export control laws regulate the export and re-export of “dual-use” items (controlled items, information and technology) and defense articles or technical data. Also, the U.S. Government prohibits export/re-export to certain end-users and for certain end-uses and to certain sanctioned persons and destinations. No export/re-export will be undertaken that are contrary to any U.S. export regulations.

“Dual use” items have both commercial and military or proliferation applications. However, purely commercial items without an obvious military use are also subject to export regulations (Dual use and purely commercial items are collectively referred to as “Controlled Items”). Defense articles are any item or technical data designated on the U.S. Munitions List. U.S. economic sanctions broadly prohibit most transactions between a U.S. person and persons or entities in an embargoed country.

Prior written authorization (i.e., a license) for export and/or re-export of Controlled Items, defense articles or technical data and transactions involving certain sanctioned persons and destinations may be required from one or more U.S. government agencies if an exemption or exclusion is not available.

WHAT IS AN EXPORT?

An export is any item that is sent (physically shipped or transmitted by another method) from the United States to a foreign destination or foreign nationals. “Items” include commodities, software or technology. Examples include clothing, building materials, circuit boards, automotive parts, blue prints, design plans, retail software packages and technical information.

How an item is transported outside of the United States does not matter in determining export license requirements. For example, an item can be sent by regular mail or hand-carried on an airplane. A set of schematics can be sent via facsimile to a foreign destination, software can be uploaded to or downloaded from an Internet site, or technology can be transmitted via e-mail or during a telephone conversation with a foreign national. Regardless of the method used for the transfer, the transaction is considered an export. An item is also considered an export even if it is leaving the United States temporarily, if it is leaving the United States but is not for sale (e.g., a gift), or if it is going to a wholly-owned U.S. subsidiary in a foreign country. Even a foreign-origin item exported from the U.S., transmitted or shipped through the U.S., or being returned from the U.S. to its foreign country of origin is considered an export. Under both the EAR and ITAR, transmitting or giving controlled technology to a foreign national located in the US is “deemed” equivalent to exporting that controlled technology to a foreign country. Restrictions are also imposed on travel and on the participation of foreign nationals in research on campus.

Export controls are generally based on the following: (a) the nature of the item or activity, (b) the country involved in the transaction, (c) the person receiving or ultimately using the item or service or (d) the end-use to which the item or service will be put.

US export controls serve the following purposes: (a) to control any potential military application; (b) to protect US trade/economic interests; (c) to control the exposure of controlled technologies, materials and information to foreign nationals and foreign countries; and (d) to prevent the proliferation of weapons of mass destruction.

Several US government agencies oversee export control laws and regulations. These include, but are not limited to:

U.S. Commerce Department, Export Administration Regulations (EAR)

Governs commodities, software and technology (or information) (primarily civilian); also includes some sanctions, embargoes and restrictions on transfers to certain end-uses and persons, including terrorists.

U.S. State Department, International Traffic in Arms Regulation (ITAR)

Governs defense articles (including technical data) and defense services (predominately military items and information, including satellites and spacecraft).

U.S. Treasury Department, Office of Foreign Assets Control (OFAC)

Maintains trade sanctions, embargoes and restrictions on transfers to certain persons, such as terrorists and narcotics traffickers.

U.S. Nuclear Regulatory Commission (NRC)

Governs nuclear equipment, materials, software and technology

Agency Overview

Agency	Office	Regulations	Mechanism	Jurisdiction
US Dept. of Commerce	Bureau of Industry and Security (BIS)	Export Administration Regulations (EAR)	Commerce Control List (CCL)	Governs commodities, goods, and commercial information (primarily civilian).
US Dept. of State	Directorate of Defense Trade Controls	International Traffic in Arms Regulation (ITAR)	Munitions List	Governs defense articles and services (predominantly military items & information including satellites & spacecraft)
US Dept. of Treasury	Office of Foreign Assets Control (OFAC)	Sanctions and Embargoes	Embargoed Countries List	Governs trade sanctions, embargoes, restrictions on transfers to certain end-users, terrorism, anti-narcotics.

iii. IODP Import and Export Control Coordinators

The Import and Export Coordinators serve as a resource in the administration of IODP's import requirements and export control program in accordance with Texas A&M University System (TAMUS) rule 15.02, TAMUS export control policies, and all import/export federal laws and regulations.

A. General Responsibilities

Logistics Coordinator – Serve as a resource to departmental staff regarding shipping of all physical items in and out of the U.S.

- Interface with freight forwarders
- Prepare accurate import/export transaction documentation in connection with the IODP Asset Management System (AMS) including but not limited to, creating cargo declaration paperwork, obtaining country of manufacturer, Schedule B and harmonized tariff numbers.

Compliance/Deemed Export Coordinator – Serve as a resource to departmental staff for all import/export compliance/policy matters, item classification, end use/end user screening and deemed exports.

- Research Export Control Classification Numbers (ECCN) and U.S. Munitions List and (USML) making a decision on classification utilizing the technical expertise of departmental staff when necessary.
- Propose licensing exceptions and/or requirements for exports to the *JOIDES Resolution*.
- Serve as a resource to Science Ops and Travel Services in screening subcontractors and visitors to the IODP facilities, end use and end users on the *JOIDES Resolution*
- Serve as a resource for determining international travel requirements including those for embargoed and sanctioned countries, if required
- Maintain all export control supporting documentation for audit purposes
- Interface with the ORC regarding export control as requested

iv. Process Controls for Export

A. **Controlled Items:**

- 1) All necessary information on any potentially controlled item (i.e., an identified ECCN or USML number) to be shipped to the *JOIDES Resolution* will be reviewed by the Compliance/Deemed Export Coordinator.
- 2) In the event that an item is determined to be controlled and a license is required, the shipping of the item will be suspended pending further review by the IODP Senior Management Team.
- 3) The Compliance/Deemed Export Coordinator submits all relevant information to the General Manager, Administration, who is the export liaison to the IODP Senior Management Team.

- 4) The IODP Senior Management Team will review all information and make a final determination regarding the item(e.g., whether a license is required or whether the suspension can be lifted and the item shipped).

v. Implementation

Commodities

Export regulation requires every item shipped be designated as “controlled” or “not controlled” using a common identifier (ECCN, USML number or EAR 99).

Phase 1-Item Designation

IODP will initiate export controls beginning in the procurement/purchasing phase. Each department will be required to determine the designation of each item purchased as either “controlled” or “not controlled” utilizing the following resources and procedures.

- Vendor/Manufacturer
- Decision Tree (attached)
- Visual Compliance
- Commerce Control List (CCL) using their technical expertise and knowledge
- Import/Export Compliance Officer guidance

Once determined, the common identifier will be entered into the “export control number” field provided in the asset management system (AMS) linking it to the item. The resource information used to determine the item designation will be forwarded to the Compliance/Deemed Export IECO for two additional steps.

1. Determination of license requirements and exceptions as required.
2. Record retention.

Phase 2- License Requirements

Controlled Items – ECCN/USML

Items identified as “controlled” and given an ECCN or USML number could require a license. This determination will be made by the Compliance/Deemed Export IECO based on the ECCN/USML assigned to the item. If it is determined that a license exception is not available, the IECO will forward the information to the IODP Senior Management Team for further guidance. The application for a license will be made through the TAMU Office of Research Compliance.

Non- Controlled Items – EAR 99

EAR 99 items may require a license if they are shipped to embargoed destinations, denied persons, sanctioned entities or prohibited end-users or end-uses. EAR Parts 736, 742, 744, 746 and 764 provide further details regarding these restrictions. Due to nature of the restrictions, licensing determination can only be made when the item is earmarked for shipping and the destination is identified. AMS reports and cargo declarations will serve as the monitoring mechanism to insure compliance with applicable regulations.

Individuals and Entities (Companies)

The U.S. Department of Commerce, the U.S. Department of State, and the U.S. Department of Treasury, along with various other government agencies, maintain lists of prohibited and restricted end-users (Restricted Party Lists). If not wholly prohibited, licenses are required to export to these end-users or to carry out a transaction in which a prohibited or restricted end-user is involved.

In order to ensure that IODP is not doing business with individuals or entities that have been debarred, denied export privileges or are otherwise on one of the numerous government Restricted Party Lists, IODP must screen both individuals and entities.

TAMU has licensed Visual Compliance software that permits authorized users to screen Restricted Party Lists electronically. Visual Compliance is an online software that performs Restricted Party Screening against all relevant U.S. Government lists, including: Department of Treasury Office of Foreign Assets Control (OFAC) Sanctions, Department of Commerce Bureau of Industry and Security (BIS) Denied Persons List, Department of Commerce BIS Entity List and Unverified List, Department of State Arms Export Control Act Debarred Parties, Department of State Designated Terrorist Organizations, Department of State Nonproliferation Orders.

A list of scientists and individuals sailing on and/or visiting the *JOIDES Resolution* or IODP facility will be screened by the Science Operations Department and/or Travel Services through Visual Compliance as outlined in the TAMU policy to determine if there is a match on a Restricted Party List. If it is felt that there is a possible match of the party being screened with a party on a Restricted Party List, (a “hit”) then the Compliance/Deemed IECO will verify that it is a possible hit by screening with additional detailed information to confirm. Possible hits should be forwarded to the IODP Senior Management team, along with the criteria used to determine the possible hit for further guidance. The information used to determine their status will be forwarded to the Compliance/Deemed IECO for retention.

Payments to Non-US Companies and Foreign Nationals

OFAC administers a number of U.S. economic sanctions and embargoes that target geographic regions and governments. Comprehensive sanctions programs currently include Burma (Myanmar), Cuba, Iran and Sudan. Other non-comprehensive programs include the Western Balkans, Belarus, Cote d'Ivoire, Democratic Republic of the Congo, Iraq, Liberia (Former Regime of Charles Taylor), Persons Undermining the Sovereignty of Lebanon or Its Democratic Processes and Institutions, North Korea, Sierra Leone, Syria and Zimbabwe as well as other programs targeting individuals or entities that could be anywhere. For the full list of current sanctioned countries and programs, please go to <http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>. Those programs currently relate to foreign narcotics traffickers, foreign terrorists, WMD proliferators. In addition to targeted countries, it is very important to note that OFAC publishes a list of Specially Designated Nationals and Blocked Persons ("SDN list") which includes over 6,000 names of companies and individuals who are connected with the sanctions targets and are located throughout the world. A number of the named individuals and entities are known to move from country to country and may end up in locations where they would be least expected. U.S. persons are prohibited from dealing with SDNs wherever they are located and all SDN assets are blocked.

In some situations, authority to engage in certain transactions is provided by means of a general license. In instances where a general license does not exist, a written request for a specific license must be filed with OFAC. The request must conform to the procedures set out in the regulations pertaining to the particular sanctions program. Generally, application guidelines and requirements must be strictly followed, and all necessary information must be included in the application in order for OFAC to consider an application. For an explanation about the difference between a general and a specific license as well as answers to other licensing questions, see the [licensing questions](#) link.

vi. Technology Control Plan

If IODP determines an item or technology is export controlled a technology control plan may be required. In conjunction with the TAMU ORC, the IODP Senior Management Team will develop and implement a technology control plan to secure the item or controlled technology from access by unlicensed non-U.S. citizens. The plan will include but will not be limited to the following:

- (a) A commitment to export controls compliance;

- (b) Identification of the relevant export control categories and controlled technologies;
- (c) Identification and nationality of each individual participating in the project;
- (d) Appropriate physical and informational security measures;
- (e) Personnel screening measures and training; and
- (f) Appropriate security measures for the item or technology.

The technology control plan will include physical and informational security measures appropriate to the export control categories involved in the project. Examples of security measures include, but are not limited to:

- (a) Laboratory Compartmentalization. The item or technology may be limited to secured laboratory areas physically shielded from access or observation by unauthorized individuals. These areas must remain locked at all times.
- (b) Time Blocking. Use of the item or technology may be restricted to secure time blocks when unauthorized individuals cannot observe or access.
- (c) Marking. Export controlled information must be clearly identified and marked as export-controlled.
- (d) Personnel Identification. Individuals participating in the project may be required to wear a badge, special card, or other similar device indicating their access to designated project areas. Physical movement into and out of a designated project area may be logged.
- (e) Locked Storage. Tangible items such as equipment, associated operating manuals, and schematic diagrams should be stored in rooms with key-controlled access. Soft and hardcopy data, lab notebooks, reports, and other research materials should be stored in locked cabinets.
- (f) Electronic Security. Project computers, networks, and electronic transmissions should be secured and monitored through User Ids, password controls, 128-bit Secure Sockets Layer encryption or other federally approved encryption technology. Database access should be managed via a Virtual Private Network.

vii. Training

Well trained and informed employees reduce the likelihood that inadvertent violations of export control laws will occur. The way to prevent violations of law is through awareness and training. All IODP employees are required to take the online training course: *Export Controls & Embargo Training - Basic Course* (2111212), which is available through TrainTraq. Employees can access this TrainTraq course via Single Sign On at <https://sso.tamus.edu/>. IODP will provide updated training materials and will ensure that employees of the program will receive the appropriate instruction. Records of the training provided for each employee will be maintained. General

export control guidance will be available through the IODP intranet at http://iodp.tamu.edu/participants/export_control.html

viii. Record Retention

Records required to be maintained by export control laws and regulations shall be kept for the longer of:

1. The record-retention period required by the applicable export control regulations (see 15 C.F.R. Part 762 (ITAR); 22 C.F.R. Sections 122.5, 123.22 and 123.26 (EAR); and 31 C.F.R. 501.601(OFAC)), or
2. The period required for the retention of records as set forth in the Texas A&M University System policies and regulations and University rules.

All records indicated herein shall be maintained consistent with the TAMU record retention policy, and shall be retained no less than five years after the project's termination date or license termination date, whichever is later (subject to any longer record retention period required under applicable export control regulations).

Records will be maintained by the Compliance/Deemed Export IECO and archived in either AMS or OnBase as appropriate.

ix. Monitoring and Auditing

In order to maintain IODP's export compliance program and ensure consistent adherence to U.S. export control laws and regulations. The purpose of these reviews will be to identify possible violations and to identify deficiencies in training, procedures, etc., that can be rectified.

IODP Export Control Policies are subject to changes in regulation as outlined on the BIS website at http://www.bis.doc.gov/federal_register/rules/2011/index.htm

x. APPENDIX

Commerce Control List

A key in determining whether an export license is needed from the Department of Commerce is to know whether the item you intend to export has a specific Export Control Classification Number (ECCN). The ECCN is an alpha-numeric code, e.g., 3A001, that describes the item and indicates licensing requirements. All ECCNs are listed in the [Commerce Control List \(CCL\)](#) (Supplement No. 1 to Part 774 of the EAR) which is available on the Government Printing Office website. The CCL is divided into ten broad categories, and each category is further subdivided into five product groups.

Five Product Groups

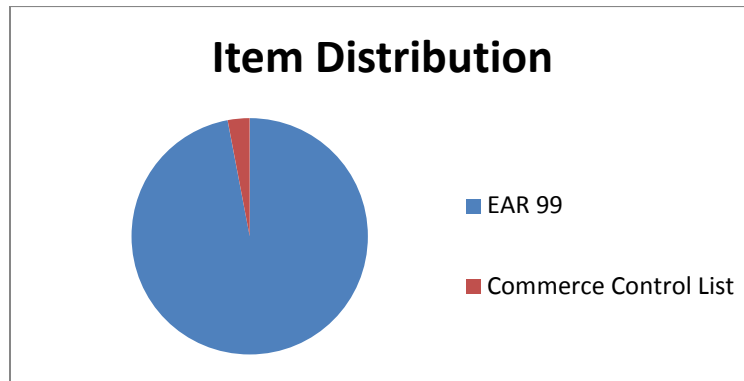
- A. Systems, Equipment and Components
- B. Test, Inspection and Production Equipment
- C. Material
- D. Software
- E. Technology



Commerce Control List Categories

- 0 = Nuclear materials, facilities and equipment (and miscellaneous items)
- 1 = Materials, Chemicals, Microorganisms and Toxins
- 2 = Materials Processing
- 3 = Electronics
- 4 = Computers
- 5 = Telecommunications and Information Security
- 6 = Sensors and Lasers
- 7 = Navigation and Avionics
- 8 = Marine
- 9 = Propulsion Systems, Space Vehicles, and Related Equipment

According to the Bureau of Industry and Security



Munitions List

Category I—Firearms, Close Assault Weapons and Combat Shotguns

Category II—Guns and Armament

Category III—Ammunition/Ordnance

Category IV—Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs and Mines

Category V—Explosives and Energetic Materials, Propellants, Incendiary Agents and Their Constituents

Category VI—Vessels of War and Special Naval Equipment

Category VII—Tanks and Military Vehicles

Category VIII—Aircraft and Associated Equipment

Category IX—Military Training Equipment and Training

Category X—Protective Personnel Equipment and Shelters

Category XII—Fire Control, Range Finder, Optical and Guidance and Control Equipment

Category XIII—Auxiliary Military Equipment

Category XIV—Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment

Category XV—Spacecraft Systems and Associated Equipment

Category XVI—Nuclear Weapons, Design and Testing Related Items

Category XVII—Classified Articles, Technical Data and Defense Services Not Otherwise Enumerated

Category XVIII—Directed Energy Weapons Category XIX [Reserved]

Category XX—Submersible Vessels, Oceanographic and Associated Equipment

Category XXI—Miscellaneous Articles having substantial military applicability

Specific descriptions of these categories can be found at:

http://www.pmdt.state.gov/regulations_laws/documents/consolidated_itar/2009/Part_121.pdf

Item Designation Decision Tree

