



Export Compliance

Executive-level Overview of ITAR, EAR, & Related NOAA Policy for All NESDIS Employees



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Export Compliance

- **It's serious business**
- **It's not a squeaky wheel**
 - You often don't know of problems until something goes wrong...then it's too late for the easy fix
- **Failure to understand and comply with export control laws not only jeopardizes national security interests, it can also result in severe penalties for NOAA & the person who exports improperly**
 - monetary fines and/or prison time



Governing Federal Regulations



- **International Traffic in Arms Regulations (ITAR)**
 - Protects key U.S. defense-related technology (**including weather satellites**) from foreign access
 - 22 Code of Federal Regulations Chapter I, Subchapter M, Parts 120-130
 - U.S. regulation/licensing authority: Department of State's Directorate of Defense Trade Controls (DOS/DDTC)
 - http://www.pmdtcc.state.gov/regulations_laws/itar_official.html



- **Export Administration Regulations (EAR)**
 - Protects key commercial-application technology from foreign access
 - 15 CFR Parts 730-774
 - U.S. regulation/licensing authority: Department of Commerce's Bureau of Industry & Security (DOC/BIS)
 - <http://www.bis.doc.gov/policiesandregulations/ear/index.htm>

Governing NOAA & NESDIS Policy



- **NOAA Administrative Order 207-12 “Technology Controls and Foreign National Access” (2006)**
 - Policy mandates quarterly monitoring, control, and reporting by each NOAA Line Office
 - http://www.corporateservices.noaa.gov/ames/administrative_orders/chapter_207/207-12.html



- **NESDIS Policy**

- Describes roles & responsibilities of persons designated to maintain compliance...and process for review of potential export actions
- http://deemedexports.noaa.gov/roles_&_responsibilities/index.html
- Controlled Technology Coordinator (CTC – R. Fulton) and Deputy CTC (M. Medina)
- **16 Export Control Points of Accountability (POAs)** at each of our NESDIS facilities

OSPO@NSOF – K. Hampton
OSPO@NCWCP – K. Hampton
OSPO@FCDAS – L. Ledlow
OSPO@WCDAS – B. Clark
HQ-OCIO – R. Fulton
NCDC – A. Annis
NGDC – M. Moran
NODC@SSMC3 – D. Bridgett
NODC-NCDDC – J. Sandidge

STAR@NCWCP – G. Taylor
STAR@M-Square – C. Cao
STAR@CIRA – M. DeMaria
STAR@CIMSS – J. Key
JPSS – J. Furgerson
GOES-R – C. Keeler
OSD@NSOF – W. Dorsey
OSD@SSMC1 – R. Fulton
IIA – M. Medina

Examples of Program-level Export Control Plans

GOES-R Program

Effective Date: date of last signature
Expiration Date: five years from Effective date
Responsible Organization: GOES-R Program/Code 410

410-R-PLN-0239
Version 2.0



GOES-R Series Program
GOES-R Export Control Plan (ECP)
July 2012



U.S. Department of Commerce (DOC)
National Oceanic and Atmospheric Administration (NOAA)
National Environmental Satellite, Data and Information Service (NESDIS)
National Aeronautics and Space Administration (NASA)

Check the VSDE at <https://goes3.ndbc.noaa.gov> to verify correct version prior to use.

JPSS Program

Effective Date: September 22, 2011
Revision: -

GSFC JPSS CMO
12/15/2011
Released

Joint Polar Satellite System (JPSS) Program
Code 470
470-00014

Joint Polar Satellite System (JPSS)
Technology Transfer Control Plan (TTCP)



National Aeronautics and
Space Administration

Goddard Space Flight Center
Greenbelt, Maryland

Check the JPSS MIS Server at https://ssmis.gsfc.nasa.gov/frontnew_dsp.cfm to verify that this is the correct version prior to use.

NAO 207-12 “Technology Controls & Foreign National Access”

- **Requires routine monitoring & updates to:**
 - **Controlled Technology Inventories**
 - **Foreign National guest lists**
 - **Access Control Plans**
 - **Access Control Information Sheets**
- **Requires annual NESDIS certification of export compliance by the DAA**
- **Defines required process for hosting & pre-approval of foreign national visitors & guests who wish to come to NESDIS facilities**



Foreign National (FN) Approval Processing to Visit NESDIS Facilities

- **All FNs must be preapproved in advance by NESDIS, NOAA, and DOC Security**
- **Find instructions and forms at**
http://deemedexports.noaa.gov/compliance_access_control_procedures/how-to-sponsor-a-foreign-national-at-a-noaa-facility.html
- **Foreign national “guests” (staying > 3 days)**
 - Submit at least 30 days in advance to your POA for review, then to NESDIS CTC, NOAA OCAO, DOC Security
- **Foreign national “visitors” (< 4 days)**
 - Submit visitor information direct to DOC Security at least 1 day in advance
- **Submit FN information form securely to DOC Security (contains PII)**

Who is Responsible for Export Control in NOAA?

- **Front line of defense = YOU**
 - Every federal employee and on-site contractor
- **Second line of defense = Export Control Points of Accountability (POA) (see slide 4)**
 - Manages office/center/program-level compliance activities
- **Third line of defense = NESDIS Controlled Technology Coordinator (CTC) and Deputy CTC**
 - Manages NESDIS-level compliance activities
- **NESDIS Export Control Empowered Official**
 - Deputy Assistant Administrator
- **NOAA Office of the Chief Administrative Officer**
 - Manages NOAA-level export policy & compliance activities



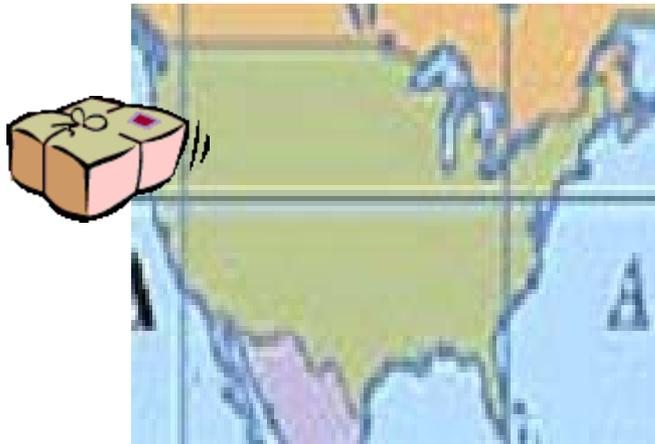


Everyone's Responsibilities (feds & on-site contractors)

- **Protect ALL ITAR/EAR controlled technology in your possession from foreign national access (includes electronic computer files)**
- **Report all ITAR/EAR materials in your possession to your office's POA (see slide 4) for inclusion in NESDIS's inventory**
- **Describe this technology and your access controls in writing...give form to your POA for recording**
- **If there are status changes, report it to your POA immediately**

What is an “Export”?

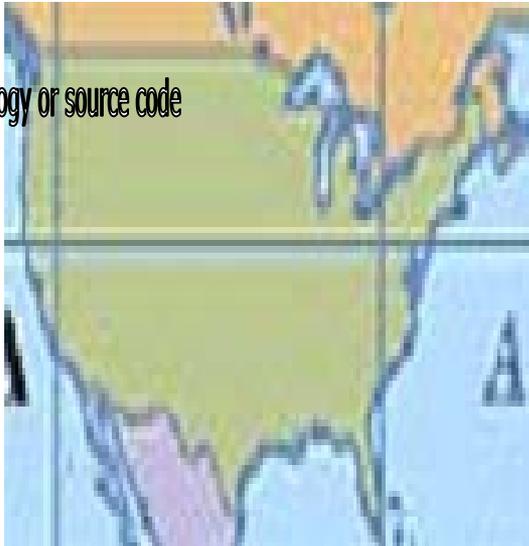
- An export is a shipment or transmission of controlled items to a foreign person **out of the United States**



What is a “Deemed Export”?

- The release of controlled technology **to a foreign person in the US**. It is deemed to be an export to the recipient’s home country.

Technology or source code



What Form Does Controlled Technology Take?

- **Tangible items**
 - Hardware, satellite instruments, test equipment, hard copy engineering documents, CDs, DVDs, etc.
- **Soft items**
 - Software, electronic files, etc.
- **Services**
 - Discussions & meetings (formal & informal) with foreign nationals via phone, email, in-person, etc.
 - Training activities



Examples of ITAR/EAR Markings on Documents

- ***“ITAR CONTROLLED DOCUMENT – DO NOT EXPORT – This document contains technical data as defined in ITAR Part 120.10 and thus is controlled by the U.S. Department of State”***
- ***“COMMERCE DESTINATION CONTROL STATEMENT - The export of these commodities, technology or software are subject to the U.S. Export Laws and Regulations in accordance with the Export Administration Regulations. Diversion contrary to U.S. law is prohibited.”***
- **Usually appears on title page but may be on internal pages too**
- **If ITAR/EAR markings appear just on the document title page, assume the entire document is controlled and do not share all or part of it with non-licensed foreign nationals**



Possible Ways to Improperly Export Controlled Technology

- **International cooperative research, development, & manufacturing projects (even domestic ones)**
- **Foreign students or professors conducting research in U.S. with NOAA scientists and engineers**
- **Technical conferences or meetings open to the public (where access is not controlled or monitored)**
- **Hosting a foreign national guest at a NOAA facility**
 - NESDIS hosts about 100 FN contractors each year, mostly in STAR & NGDC
- **Tours of NOAA facilities**



What is a Foreign Person?

- **Person with non-U.S. citizenship, including dual nationals of U.S.**
- **Not a Permanent Resident Alien in the U.S.**
 - i.e., Not “Green Card” holders
- **Foreign persons are prohibited from accessing ITAR or EAR materials without a USG-approved license**





- **What is controlled by ITAR?**
 - **All items on the U.S. Munitions List (USML)**



ITAR's U.S. Munitions List (USML – 121.1) (1 of 2)

- **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 Navel Equipment**
- **Category VII: Tanks and Military Vehicles**
- **Category VIII: Military Aircraft and Associated Equipment**
- **Category IX: Military Training equipment and Training**
- **Category X: Protective Personnel Equipment and Shelters**
- **Category XI: Military Electronics**
- **Category XII: Fire Control, Range Finder, Optical and Guidance and Control Equipment**

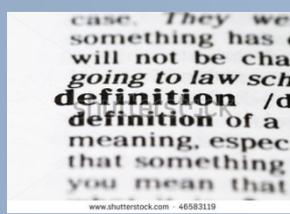
ITAR's U.S. Munitions List (USML – 121.1) (2 of 2)

- **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**

Category XV – Spacecraft Systems and Associated Equipment

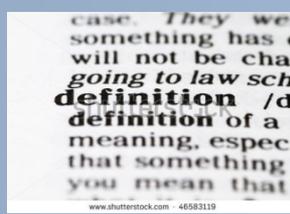
- You can find **NESDIS satellites** here (for the near-term)....
- “Spacecraft, including communications satellites, **remote sensing satellites, scientific satellites**, research satellites, navigation satellites, experimental and multi-mission satellites”
- “**Ground control stations** for telemetry, tracking, and control of spacecraft or satellites”
- “All specifically designed or modified systems or subsystems, components, parts, accessories, attachments and associated equipment....including **ground support equipment, test equipment....**”
- “**Technical data and defense services**...as well as detailed design, development, manufacturing or production data for all spacecraft and specifically designed or modified components for all spacecraft systems”





- **Defense Article (120.6)**
 - Any **item or technical data*** designated in the USML
 - This includes technical data recorded or stored in any physical form; models, mock-ups or other items that reveal technical data directly relating to items designated
- **Defense Service (120.9)**
 - The **furnishing of technical data or assistance (including training) to foreign persons, whether in the United States or abroad**, in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of defense articles

* See definition next slide



- “Technical Data” (120.10)
 - Information which is required for the **design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification** of defense articles. This includes information in the form of blueprints, drawings, photographs, plans, instructions and documentation
 - **Software** directly related to defense articles (121.8)
 - System functional design, logic flow, algorithms, application programs, operating systems and support software for design, implementation, test, operation, diagnosis and repair

What is Not Controlled?

(applies to both ITAR & EAR)

- **Public domain information – that which is published and which is generally accessible or available to the public, including**
 - Fundamental research published in journals
 - Periodicals, books at libraries
 - Information released after approval by the cognizant USG agency
- **General scientific or engineering principles**
- **Basic non-technical marketing information**
- **General non-technical system descriptions**
- **Financial information**
- **Business terms and conditions**



Export Licenses and Agreement



- **An *export license* from [DOS/DDTC, DOC/BIS] is the legitimate mechanism to export [ITAR, EAR]-controlled technology to a foreign country**
 - NESDIS international agreements often specify license-like export terms & conditions with our partners
 - Licenses for NESDIS to export do not generally flow down to our support contractors...contractors are responsible for their own compliance
- **Licenses must be applied for by the exporter in advance, fully documented (who, what, when, why, how much), and are often approved with “provisos” (limitations on the transaction)**
- **Licenses generally apply to exporting *tangible items***
- **Technical Assistance Agreements (TAAs) are licenses to provide *technical services* to foreign countries**
 - This is usually a contractor-only authorization

Is an ITAR License Required?

- **Ask yourself: Is this item a defense article or service listed in the ITAR's U.S. Munitions List?**
 - If yes, a license is required to export anywhere outside the U.S.
 - Unless “exemptions” are available (see next slide)
 - If no, is it subject to another export jurisdiction, e.g., EAR?
- **Ask your NESDIS Export Control POA**
 - They are trained to interpret regulations and classify items
- **Ask DOS/DDTC**
 - Submit a “commodity jurisdiction” request



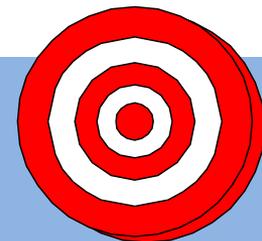
ITAR License Exemptions

- **Exemption = authorization to export without a license based on specific conditions...**
- **Technical data exports by USG Agencies (125.4.b.3 and 125.4.b.13):**
 - “Technical data in furtherance of a contract between the exporter and an agency of the USG if the contract provides for the export of the data and such data does not disclose the details of design, development, production, or manufacture of any defense article.”
 - “Technical data approved for public release by the cognizant USG department. It does not require that the information be published in order to qualify for the exemption.”
- **Shipments by or for USG Agencies (126.4):**
 - “A license is not required for the temporary import, or temporary export, of any defense article, including technical data or the performance of a defense service, by or for any agency of the USG for official use by such an agency, or for carrying out any foreign assistance, cooperative project or sales program authorized by law and subject to control by the President by other means.”



- **What is “subject to the EAR”?**
 - **ALL items in the U.S. on the Commerce Control List (CCL) except:**
 - **Publicly available technology and software (734.7)**
 - **Products of fundamental research (734.8)**
 - **Literary non-technical publications such as newspapers or literary works available at libraries**
 - **Items subject to other control jurisdictions (e.g., ITAR)**

*Broad jurisdiction BUT...
narrow license requirements*





- **What is controlled by EAR (i.e., what needs a license to export)?**
 - Technology that is required for the **development, production, or use** of items on the Commerce Control List (CCL)
 - “Dual use” items (have both commercial and military applications)
 - Items are controlled based on what country they will be exported to (in contrast to ITAR)

Commerce Control List (CCL)

- **Contains lists of those items subject to the licensing authority of DOC/BIS**
 - Similar concept to the USML for ITAR
- **Most items are described in terms of their technical parameters**
- **Each list entry has a unique Export Control Classification Number (“ECCN”)**
 - Characterizes the nature of the controlled technology as a unique 5-character string (e.g., “0A018”)

Major Categories of the CCL

0	Miscellaneous & Nuclear Materials
1	Materials, Chemicals, Microorganisms, and Toxins
2	Materials Processing
3	Electronics
4	Computers
5	Part 1-Telecommunication
5	Part 2-Information Security
6	Sensors & Lasers
7	Navigation & Avionics
8	Marine
9	Aerospace & Propulsion

Product Groups of the CCL (sub-categories of previous page)

A	Systems, Equipment & Components
B	Test, Inspection & Production Equipment
C	Materials
D	Software
E	Technology

How Can You Determine the ECCN Number for an Item?

- **Ask the manufacturer**
- **Self classify**
 - Working with an engineer who knows the item & your POA, review the CCL together
- **Ask your NESDIS Export Control POA**
 - They are trained on processes to classify items, but they can't do it without your assistance
- **Ask DOC/BIS for a formal classification if it's not obvious from the above (~10 days)**





EAR Exceptions (Part 740)

- **Exception = authorization to export without a license based on certain specific conditions...**
- **Some examples**
 - **GOV (740.11)**
 - **Overseas shipments to USG employees, either military or civilian**
 - **TMP (740.9)**
 - **Items for use up to 1 year**

In summary.....Export Don'ts



- **Don't export or re-export from the U.S. any USML-listed defense article or technical data or furnish any defense technical services without obtaining required license or written approval from the Department of State**
- **Don't export or re-export from the U.S. any CCL-listed commercial or dual-use item without a required license from the Department of Commerce**
- **Don't violate any of the terms or conditions of licenses or approvals granted by the DOC or DOS**
- **Don't export controlled technology without verifying the recipient is BOTH licensed and has a *legitimate need to know***



- **Don't transmit technical data using ANY transfer method (voice, email, mail, etc.) to foreign persons without a proper authorization**
- **Don't leave any export controlled items laying around on your desk or otherwise unprotected**
- **Don't put export controlled e-documents on unprotected NESDIS computers or public web sites where FNs have unrestricted access**
 - Resulted in NESDIS's first ever ITAR violation in early 2013
 - Don't email it around unsecurely



- Do **protect** all controlled technology in your possession from FN access
 - Lock it up in file cabinets
 - Lock your computer when you step away
- Do **report** it to your office's POA to verify proper controls are in place and to add it to NESDIS's Controlled Technology Inventory
- Do **document** how it's being protected in coordination with your office's POA
- If you don't know whether it's controlled or not, **contact your office's POA** for an assessment
- Do **get clearance** from your POA before publishing, distributing, or presenting technical information in open meetings or teleconferences



Export Do's (cont.)

- Do **follow** all export control warning markings on documents
 - If it's marked, protect it
- Do **abide by** any export requirements & limitations specified in
 - NESDIS satellite program Export Control Plans,
 - support contract clauses, and/or
 - International Agreements (e.g., “Transfer of Goods & Technical Data Clause”)
- Do **get ITAR/EAR-trained** if you deal with technology in international programs/projects
- Do **contact** your NESDIS office's POA (see slide 4) if you have further questions



Obama Administration's Export Control Reform

- **Major changes are coming for NESDIS in the next year...stay tuned**
- **Plans are to move weather satellites from USML (ITAR) to CCL (EAR)**
- **Will likely ease control restrictions**
- **However...controls will NOT totally go away for NESDIS satellite technology**



Questions?

- **This has been an executive-level briefing**
 - For much more detailed information, contact your office's POA BEFORE you hit the iceberg
- **NOAA Export Control Program**
 - <http://deemedexports.noaa.gov/>
- **NOAA Policy NAO 207-12 “Technology Controls and Foreign National Access”**
 - http://www.corporateservices.noaa.gov/ames/administrative_orders/chapter_207/207-12.html
- **NESDIS Export Control Policy**
 - http://deemedexports.noaa.gov/roles_&_responsibilities/index.html
- **ITAR and EAR regulations**
 - http://www.pmdc.state.gov/regulations_laws/itar_official.html
 - <http://www.bis.doc.gov/policiesandregulations/ear/index.htm>

