

**U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
ICE Policy System (IPS)**

OFFICE OF INVESTIGATIONS DIRECTIVE

PROPOSING OI DIVISION/UNIT: National Security Investigations Division
Arms and Strategic Technology Investigations Unit

DISTRIBUTION:	OI
DIRECTIVE NO.:	OI DIR 06-008
ISSUE DATE:	07/17/2006
EFFECTIVE DATE:	07/17/2006
REVIEW DATE:	07/17/2009
SUPERSEDES:	N/A

DIRECTIVE TITLE: EXODUS ACCOUNTABILITY REFERRAL SYSTEM

1. PURPOSE and SCOPE. This Directive establishes policy on the use of the Exodus Accountability Referral System (EARS) by U.S. Immigration and Customs Enforcement (ICE) Office of Investigations (OI) Special Agents. This Directive also establishes the process for granting EARS access to OI users and to other authorized ICE and Department of Homeland Security (DHS) export enforcement officials. EARS will serve as an investigative tool to enforce U.S. Federal export laws and regulations. (See Section 2.)

2. AUTHORITIES/REFERENCES.

2.1 Authorities

2.1.1 22 U.S.C § 401, Illegal Exportation of War Materials

2.1.2 22 U.S.C. § 2778, Arms Export Control Act (AECA)

2.1.3 50 U.S.C. APP. § 1 *et seq.*, Trading With the Enemy Act (TEWA)

2.1.4 50 U.S.C. § 1701 *et seq.*, The International Emergency Economic Powers Act (IEEPA)

2.1.5 15 C.F.R. Chapter VII, Export Administration Regulation (EAR)

2.1.6 15 C.F.R. § 774, Supplement 1, Commodity Control List (CCL)

2.1.7 22 C.F.R. §§ 120-130, International Traffic in Arms Regulation (ITAR)

2.2 Reference

- 2.2.1 DHS Management Directive (MD) 11042.1, "Safeguarding Sensitive but Unclassified (For Official Use Only) Information," January 6, 2005.

3. **SUPERSEDED/CANCELLED POLICY/SUMMARY OF CHANGES.**

None.

4. **BACKGROUND.** In June 2006, ICE Headquarters deployed a comprehensive nationwide Intranet-based automated system, referred to as EARS, to initiate, track, and manage export License Determination (LD) requests sent to the Arms and Strategic Technology Investigations (ASTI) Unit, Exodus Command Center (ECC) by OI Special Agents and other authorized ICE and DHS export enforcement officials to obtain export licensing information from external export licensing authorities. As a result, an OI Directive was needed to set policy and procedures governing access to EARS and use of the data in EARS.

5. **DEFINITIONS.** The following definitions are provided for the purposes of this Directive. Some of these terms are not utilized further in the Directive; however, they are provided below, because they are common terms in EARS and germane to strategic investigations.

- 5.1 The **Automated Export System (AES)** is the central point through which export shipment data required by multiple agencies is filed electronically to the U.S. Customs and Border Protection.

- 5.2 The **Arms Export Control Act (AECA)** (22 U.S.C. § 2778) provides the authority to control the export of defense articles and services and charges the President to exercise this authority.

- 5.3 The **Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)** is the principal law enforcement agency within the U.S. Department of Justice which performs the dual responsibilities of enforcing Federal criminal laws as well as regulating the firearms and explosives industries and reducing crime involving firearms and explosives, acts of arson, and the illegal trafficking of alcohol and tobacco products. ATF is also the licensing authority for the importation of firearms and destructive devices.

- 5.4 The **Bureau of Industry and Security (BIS)** is charged with the development, implementation, and interpretation of U.S. export control policy for dual-use commodities, software, and technology. Dual-use items subject to BIS regulatory jurisdiction have predominantly commercial uses, but also have military applications.

- 5.5 The **Commerce Control List (CCL)** comprises all commodities, technology, or software subject to the licensing authority of BIS. The CCL is located in Supplement 1 of Part 774 of the EAR.
- 5.6 The **Commodity Jurisdiction (CJ)** determines whether an item or service is covered by the U.S. Munitions List (USML) and is therefore subject to export controls administered by the U.S. Department of State pursuant to the AECA and the ITAR.
- 5.7 The **Directorate, Defense Trade Controls (DDTC)**, Bureau of Political-Military Affairs, controls the export and temporary import of defense articles and defense services covered by the USML.
- 5.8 The EAR contain an **Entity List** that imposes license requirements for transactions involving certain "listed" entities. The Entity List specifies the license requirements that EAR imposes on each listed entity.
- 5.9 The **Export Control Classification Number (ECCN)** is an alphanumeric classification used in the CCL to identify items for export control purposes. An ECCN is different from a Schedule B number which is used by the Bureau of the Census to collect trade statistics. It is also different from the Harmonized Tariff System Nomenclature which is used to determine import duties.
- 5.10 The **Exodus Command Center (ECC)** is the single point of contact for OI Special Agents and other authorized DHS employees to obtain operational support from national export regulatory licensing authorities.
- 5.11 The **Foreign Military Sales (FMS)** program is the government-to-government method for selling U.S. defense equipment, services, and training. The AECA, as amended, regulates the FMS program. In order to purchase weapons through FMS, countries must meet all the eligibility requirements contained in the Foreign Assistance Act and the AECA.
- 5.12 The **Government Jurisdiction (GJ)** differs from a CJ in that it involves a request initiated by a U.S. Government agency. This type of request is one which does not comprise any manufacturer involvement.
- 5.13 The **International Traffic in Arms Regulation (ITAR)** details the regulations governing the export of defense-related materials, technologies, and services. It provides definitions of important terms, with information and procedures for registration, licenses, agreements, general policies, violations, penalties, and administrative procedures. (22 C.F.R. §§ 120-130)
- 5.14 The **Office of Foreign Assets Controls (OFAC)** of the U.S. Department of the Treasury administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries,

terrorists, international narcotics traffickers, and those engaged in activities related to the proliferation of weapons of mass destruction.

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- 5.16 The **Shipper's Export Declaration (SED)** is the form that may be required for shipments by the Department of Commerce and is used by the Bureau of Census to collect trade statistics. The SED is prepared by a shipper, indicating the value, weight, destination, and other basic information about an export shipment.
- 5.17 The **Ultimate Consignee** is a person, company, government entity, etc., who is the true party in interest and who receives goods for the designated end use.
- 5.18 The **U.S. Munitions List (USML)** categorizes goods and technologies governed by the ITAR. All exports categorized in the USML require an export license, although some license exemptions are available under very specific circumstances. (22 C.F.R. § 121)
- 6. POLICY.**
- 6.1 EARS provides a total electronic management system through the entire life cycle of the LD process. When a user requests an LD or a license history or verification check involving the exportation of defense or dual-use articles, he or she will be able to track the request (by means of its electronically-assigned referral tracking number) beginning with the issuance of an LD from the external regulatory agency to the subsequent tracking of the full range of disposition activities (e.g., seizure, investigation, etc.) associated with the LD decision.
- 6.2 OI Special Agents and other authorized DHS export enforcement officials shall utilize EARS when they encounter, or suspect that, a commodity being exported from the U.S. or its territories requires specific export authorization, or when shipping documents fail to offer concrete export licensing authorization from the appropriate external regulatory agency relative to the suspected defense articles or dual-use commodity. Authorized users will also use EARS when certain commodities (i.e., weapons, chemicals, etc.) are imported into the U.S. or its territories.
- 6.3 OI Special Agents and other authorized ICE and DHS export enforcement officials can request and obtain official licensing determinations and/or rulings

from external regulatory licensing agencies (e.g., Departments of State, Commerce, Treasury, etc.) through EARS.

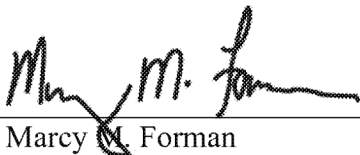
- 6.4 External regulatory licensing agencies require specific information to render a comprehensive licensing decision; hence, EARS users should be aware that the application supports the downloading of the manufacturer's specifications, brochures, shipping documents, and other technical descriptive information to assist in the decision process. EARS is designed to reject requests that fail to provide sufficient information to support a review and/or official decision from the external regulatory agency.
- 6.5 All information contained and accessed through EARS is to be treated as Law Enforcement Sensitive. If disclosure of EARS information is demanded in any judicial or administrative proceeding, the OI Information Disclosure Unit, the appropriate ICE Counsel, and/or U.S. Attorney should be consulted so that measures can be taken to invoke appropriate privileges against disclosure. Information contained in EARS may be exempt from public release under the Freedom of Information Act (5 U.S.C. § 552).
- 6.6 EARS data should be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with DHS MD 11042.1. (See Section 2.2.1.)
- 6.7 EARS data **MUST NOT** be released to the public or other personnel who do not have a valid "need-to-know" without prior approval or guidance from the OI Information Disclosure Unit.
- 6.8 EARS is accessible through the ICE and CBP Intranet websites. Access to EARS is restricted by user names and passwords distributed by the ECC to those individuals who have an official requirement to utilize EARS.
- 6.9 The use and release of any non-ICE information (i.e., manufacturer's proprietary information) contained in or accessed through EARS must be approved by the source agency prior to any law enforcement action.
- 6.10 Users **MUST NOT** download national classified information into EARS.

7. RESPONSIBILITIES.

- 7.1 The Director of OI has overall responsibility for ensuring that the provisions of this Directive are in compliance with applicable laws and regulations.
- 7.2 The Assistant Director of OI has responsibility for ensuring overall compliance with the provisions of this Directive.
- 7.3 The Deputy Assistant Director, National Security Division, has operational oversight of the implementation of EARS.

- 7.4 The Unit Chief, ASTI, is responsible for overseeing personnel access, user training, and the functionality, operation, and maintenance of EARS.
- 7.5 The Section Chief, ECC, is responsible for approving requests for access to EARS.
- 7.6 The ECC Program Manager is responsible for the overall daily review and functionality of EARS.
- 7.7 All users of EARS are responsible for adhering to the provisions of this Directive.
8. **PROCEDURES.** Specific procedures for entering and accessing records in the EARS database are contained in the EARS User Guide. The EARS User Guide can be accessed via the Help function in EARS.
9. **ATTACHMENTS.** None.
10. **NO PRIVATE RIGHT STATEMENT.** This Directive is an internal policy statement of OI. It is not intended to, and does not create any rights, privileges, or benefits, substantive or procedural, enforceable by any party against the United States; its departments, agencies, or other entities; its officers or employees; or any other person.

Approved



Marcy M. Forman
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