

**U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT  
HOMELAND SECURITY INVESTIGATIONS**

## **HSI Directive 14-04: Exodus Accountability Referral System**

**Issue Date:** October 17, 2014  
**Effective Date:** October 17, 2014  
**Superseded:** This Directive supersedes U.S. Immigration and Customs Enforcement (ICE) Office of Investigations Directive 06-008, entitled "Exodus Accountability Referral System," dated July 17, 2006, and Homeland Security Investigations (HSI) memorandum, entitled "Deployment of the Exodus Accountability Referral System Phase 3.0," dated November 2, 2011.

**Federal Enterprise Architecture Number:** 306-112-002b

- 1. Purpose/Background.** This Directive establishes policy on the use of the Exodus Accountability Referral System (EARS) by ICE HSI Special Agents. This Directive also establishes the process for granting EARS access to HSI users and to other authorized ICE and Department of Homeland Security (DHS) export enforcement officials. EARS serves as an investigative tool to enforce U.S. Federal export laws and regulations.
- 2. Policy.** HSI Special Agents and other authorized DHS export enforcement officials shall utilize EARS when they encounter, or suspect the presence of, a commodity being exported from the United States or its commonwealths, territories, or possessions that 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 controlled commodities requiring a license, permit, or other authorization from any regulatory agency of the U.S. Government (e.g., weapons, chemicals, etc.) are imported into the United States or its commonwealths, territories, or possessions. All information contained and accessed through EARS is to be treated as law enforcement sensitive. Users must not download national classified information into EARS. EARS data must not be released to the public or to other personnel who do not have a valid need-to-know without prior approval or guidance from the HSI Records and Disclosure Unit (RDU).
- 3. Definitions.** The following definitions apply for purposes of this directive only. Some of these terms are not utilized further in the Directive; however, they are provided below because they are common terms in EARS and are germane to counter-proliferation and export enforcement investigations.
  - 3.1. The Automated Export System (AES)** is the central point through which export shipment data required by multiple agencies is filed electronically to U.S. Customs and

Border Protection (CBP). (Note: The U.S. Census Bureau administers the Internet based AESDirect to capture and store U.S. export data electronically. The U.S. Census Bureau provides AESDirect free of charge to allow exporters to self-file their Electronic Export Information (EEI).)

- 3.2. The **Arms Export Control Act (AECA)** (Title 22, United States Code (U.S.C.), Section 2778) provides the authority to control the export of defense articles and services and charges the President to exercise this authority.
- 3.3. 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 responsibilities of enforcing Federal criminal laws, 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.
- 3.4. The **Bureau of Industry and Security (BIS)**, within the U.S. Department of Commerce (DOC), 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.
- 3.5. The **Commerce Control List (CCL)** comprises all commodities, technology, or software subject to the licensing authority of BIS. (Title 15, Code of Federal Regulations (C.F.R.), Section 774).
- 3.6. 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 (DOS) pursuant to the AECA and the International Traffic in Arms Regulation (ITAR).
- 3.7. The **Counter-Proliferation Investigations Program** is the entity within HSI Headquarters that has programmatic and operational oversight of the Exodus Command Center (ECC) and EARS.
- 3.8. The **Directorate, Defense Trade Controls (DDTC)**, Bureau of Political-Military Affairs, DOS, controls the export and temporary import of defense articles and defense services covered by the USML.
- 3.9. The **Electronic Export Information (EEI)** is the electronic export data required to be filed in the AES prior to an export. EEI is mandated to be filed electronically through the AES or AESDirect. EEI is used by the U.S. Census Bureau for compiling official U.S. export statistics, and DHS entities that enforce U.S. export laws.

- 3.10. The **Entity List** contained in the Export Administration Regulations (EAR) imposes license requirements for transactions involving certain “listed” entities. The Entity List specifies the license requirements that the EAR imposes on each listed entity.
- 3.11. The **Export Administration Regulations (EAR)** are issued and implemented by the DOC BIS, which regulates the export of goods and related technology identified on the CCL. (15 C.F.R. §§ 730-774)
- 3.12. 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.
- 3.13. The **Exodus Command Center (ECC)** is the single point of contact for HSI Special Agents and other authorized DHS employees to obtain operational support from national export regulatory licensing authorities.
- 3.14. 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.
- 3.15. The **Government Jurisdiction** 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.
- 3.16. The **International Traffic in Arms Regulations (ITAR)** details the regulations governing the export of defense-related materials, technologies, and services. It provides definitions of important terms, along with information and procedures for registration, licenses, agreements, general policies, violations, penalties, and administrative procedures. (22 C.F.R. §§ 120-130)
- 3.17. The **Office of Foreign Assets Controls** 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.
- 3.18. A **Pretrial Certification (PTC)** is a procedure by which DDTC contacts the appropriate government agency and/or manufacturer of a commodity to ascertain whether or not the commodity in question was specifically designed, adapted, or modified for military use. A PTC by DDTC is strongly encouraged for any commodity that will be cited in an indictment, prior to obtaining the indictment.

- 3.19.** 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.
- 3.20.** 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)

#### **4. Responsibilities.**

- 4.1.** The **Executive Associate Director of HSI** has overall responsibility for ensuring that the provisions of this Directive are in compliance with applicable laws and regulations.
- 4.2.** The **Deputy Assistant Director, HSI Counter-Proliferation Investigations Program**, has operational oversight of the implementation of EARS.
- 4.3.** The **Unit Chief, Counter-Proliferation Investigations Unit**, is responsible for overseeing personnel access, user training, and the functionality, operation, and maintenance of EARS.
- 4.4.** The **Section Chief, ECC**, is responsible for approving requests for access to EARS.
- 4.5.** The **ECC Program Manager** is responsible for the overall daily review and functionality of EARS.
- 4.6.** **EARS Users** are responsible for adhering to the provisions of this Directive.

#### **5. Procedures/Requirements.**

- 5.1.** EARS provides a total electronic management system through the entire life cycle of the License Determination (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.
- 5.2.** HSI Special Agents and other authorized ICE and DHS export enforcement officials shall request and obtain official licensing determinations and/or rulings from external regulatory licensing agencies (e.g., Departments of State, Commerce, Treasury, etc.) through EARS.
- 5.3.** 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.

- 5.4. 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, RDU, 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).
- 5.5. EARS data should be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with DHS Management Directive (MD) 11042.1, "Safeguarding Sensitive but Unclassified (For Official Use Only) Information," dated January 6, 2005, or as updated, and ICE Directive 4003.1 (former number: 5-2.0), "Safeguarding Law Enforcement Sensitive Information," dated March 23, 2007, or as updated.
- 5.6. 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 RDU.
- 5.7. 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.
- 5.8. 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.
- 5.9. Users must not download national classified information into EARS.
- 5.10. 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.
6. **Recordkeeping.** EARS data should be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with DHS MD 11042.1, "Safeguarding Sensitive but Unclassified (For Official Use Only) Information," dated January 6, 2005, or as updated, and ICE Directive 4003.1 (former number: 5-2.0), "Safeguarding Law Enforcement Sensitive Information," dated March 23, 2007, or as updated.
7. **Authorities/References.**
  - 7.1. 22 U.S.C § 401, Illegal Exportation of War Materials.
  - 7.2. 22 U.S.C. § 2778, Arms Export Control Act.

- 7.3. 50 U.S.C. APP. § 1 *et seq.*, Trading With the Enemy Act.
- 7.4. 50 U.S.C. § 1701 *et seq.*, The International Emergency Economic Powers Act.
- 7.5. 15 C.F.R. Chapter VII, Export Administration Regulation.
- 7.6. 15 C.F.R. § 774, Supplement 1, Commodity Control List.
- 7.7. 22 C.F.R. §§ 120-130, International Traffic in Arms Regulations.
- 7.8. DHS MD 11042.1, "Safeguarding Sensitive but Unclassified (For Official Use Only) Information," January 6, 2005, or as updated.
- 7.9. ICE Directive 4003.2 , "Safeguarding Law Enforcement Sensitive Information," dated May 20, 2014, or as updated.
8. **Attachments.** None.
9. **No Private Right.** This Directive provides only internal HSI guidance. It is not intended to, does not, and may not be relied upon to create any rights or benefits, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter, nor are any limitations hereby placed on otherwise lawful investigative prerogatives of HSI.



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