

I. Purpose

To ensure that SI maintains records, conducts required reporting and archives its records in accordance with export control regulations for both tangible exports and all export-controlled activities, including required reporting for:

- Export Administration Regulations (EAR - 15 CFR)
- International Traffic in Arms Regulations (ITAR - 22 CFR)
- Foreign Assets Control Regulations (FACR - 31 CFR)
- Federal Trade Regulations (FTR - 15 CFR).

In the event that SI is asked to retrieve records for an investigation by U.S. government officials, enforcement guidelines specify that records should be retrievable within 48 hours for a period of actions taken in the past two years, and retrievable within five days for records for transactions that occurred three to five years ago.

For license records, they must be retained for five years after the export or expiration of the license, whichever is later. To meet this, any export license, shipment record, or statement of work should be stored electronically, when possible. If not possible, then hard copy documents should be stored in a place where the above time frames can be accommodated.

II. Procedure

1. For SI Units that Export Hardware and Items

If the shipment is not export controlled, Pls, Administrators or Curators should provide copies of export and import records to the Unit Shipping Manager or the Export Compliance Coordinator (ECC). These are often electronic forms that can be easily forwarded and include Commercial Invoice, Packing Slip, Bill of Lading/Air waybill, EEI, Customs Import Documents, ISF security filings, etc.

Reports: SI is required to report tangible international shipments in the Automated Export System (AES) – see Export Clearance Procedures. Provide the reports, called Electronic Export Information (EEI) to the Unit Director. These are often emailed by the courier and can be easily forwarded by email to the Shipping Manager.

International Export Records for Courier Shipments: The AES filing is made by SI as part of the courier's on-line booking system. SI Units should forward international records, including the invoice, air waybill, Census report, called the "EEI", import clearance documents, should be sent to the Unit Shipping Manager or the Export Compliance Coordinator (ECC).

International Export Records for Shipments by Freight Forwarders: When an SI Unit arranges transport with a freight forwarder, the freight forwarder prepares the EEI when: the shipment is valued at more than \$2500 or is subject to an export license. If we are arranging a routed export

transaction to a foreign party, we need a statement from the foreign party that they have a power of attorney with their freight forwarder and this record must be maintained.

2. For Units with Export- Controlled Activities: Record Keeping Requirements and Special Archiving Procedures for Export-Controlled Information

- SI-affiliated personnel are advised to maintain the records as noted in the records matrix, see attachment. After the retention period, the records should be disposed of according to SI's or the Sponsor's Archive Requirements records procedures provided in Section III (See Attachment of SI Archive's confirmation of receipt of records.)
- SPP records: Records cannot be provided to other organizations without SPP's permission for 15 years.
- Both the EAR and ITAR Export Compliance Program (ECP) documents and documents with export-controlled information are to be retained at the Unit for a minimum of two years. Thereafter, when the unit prepares records to be sent to the Smithsonian Institution Archives (SIA), the responsible administrator will request the **ECO** to identify any export-controlled (EC) documents. The **ECO** contacts the **PI** or record author to indicate if their records have **EC** information. When the **PI** responds that information is export-controlled, the **ECO** advises the responsible administrator of the unit to mark the boxes "Requiring expedited access for potential compliance audit. "
- Shipping records related to the export and import of historical artifacts subject to an export license shall be not be destroyed and shall be retained according to the curator's requirements.
- Documents related to licensed exports are to be retained five years after the expiration date of the license or the last shipment, whichever is later.
- Records of export license documents shall have an additional notation "to be destroyed after - date (five years after the expiration date of the license))."
- Any hard drives of discarded computers containing export-controlled information should be destroyed or erased using special military grade erasure programs.

3. For the Export Compliance Officer

Types of reporting required by the export regulations are based on: the use of export license authorizations, use of license exceptions or license exemptions when exporting, specific record keeping requirements specified on a license as part of license conditions, or those records required by the EAR, ITAR, FTR and FACR.

- a. Reporting requirements of the EAR, as described in Part 743: This Part of the EAR enumerates reporting when an exporter uses a "License Exception" instead of a validated license to authorize an export. This section of the EAR requires reporting to meet Wassenaar Arrangement requirements. These reports are required because other member-country governments do not have "License Exceptions" as part of their own export regulations so the U.S. government requires exporters to report their "License Exception" usage to the BIS, and the BIS reports it to the Wassenaar Arrangement, the regime that controls items for conventional weapons and security.
- Exports executed under EAR "License Exceptions" GBS, CIV, TSR, LVS, APP per EAR part 740, and the cooperating government portions (§§740.11(b)(2)(iii) and 740.11(b)(2)(iv) of the EAR) of GOV that pertain to specific ECCNs as identified in section 743.1 c. (see Part 740 of the EAR).

(Note that exports to Wassenaar member countries listed in Suppl. No. 1 to Part 743 and of technology and source code under License Exception TSR to foreign nationals located in the U.S.

- Report exports authorized under the “Special Comprehensive License” procedure that permits multiple exports under a single license (as described in Part 752 of the EAR).
 - The reports are to be submitted semi-annually on 01 February and 01 August for the previous six month in 2 copies per 743.1.
 - Reports of exports of high performance computers, per 743.2, and exports under infrared camera integrator license to cooperating countries, per 743.3.
 - Exports authorized under the Validated End-User authorization (see §748.15 of the EAR).
 - Exports authorized under License Exception STA (See § 740.20 of the EAR). The ECO or back-up is responsible for electronically reporting shipments under these license exceptions semi-annually to BIS per the instructions in 743.1 to countries not members of the Wassenaar Arrangement.
- b.** Reports required by export license conditions: BIS and DDTC can impose unique reporting requirements as a condition of approval of their export licenses. BIS and DDTC do this by including conditions that require special record keeping or reporting, such as proof of delivery and the EEI to be provided to BIS within 30 days of shipment. Sometimes these special conditions need to be accepted by the applicant or consignee prior to the issuing of the license or prior to export. The ECO is responsible for identifying the special reporting requirement, reporting as stated on the condition, and ensuring that PIs and collaborators provide the required agreement to the license conditions, when required.
- c.** Reports required by the ITAR: the ITAR does not have a dedicated record keeping and reporting section in the ITAR. Below are reporting areas that the ECO must comply with:
- Reporting to Customs when an ITAR-applicable item is about to be shipped under a DSP-5 license for permanent export or after filing the EEI for a DSP-73 license shipment for temporary export and re-import per 123.9.
 - Manufacturing License Agreements in Part 124 that is an annual report.
 - Initial export of ITAR technical data when the export is not reported in AES per Part 125.
 - Reporting of shipments made by a registered broker per Part 129.
 - Contributions made to foreign governments to receive their business per 130.
 - Initial export of technical data that is exported under a license or license exemption when made in intangible form that is not reported in the AES system.

4. Procedure for government enforcement inquiries:

Employees are advised the following:

- Always obtain ID from the government official if they appear at the facility in person.
- If you feel that the officials is looking for something in particular, then ask “Are we the subject of an investigation?” If they say yes, then tell them you want to seek the advice of our Office of General Counsel.
- Ensure that the ECO and the Empowered Official have a copy of each document taken by the government official.

- Do not destroy or alter any documents requested by a government official. It is obstruction of justice and is a federal offence.
- When records are archived at SI or destroyed, the Administrator of the unit receives written confirmation from the SI Archives. The Administrator maintains the notification as a record of the date and contents of files that were sent to the Archives.
- Where the SI SD indicates a shorter time frame for retention, the retention period in this document should be followed.

III. References

- SD 611 Export Compliance and Trade Sanctions Related to Research, Export and Museum Activities
- Questions should be referred to Natascha Finnerty at nfinnerty@cfa.harvard.edu or by telephone (617) 496-7557.
- [The Smithsonian Archives - Transferring or Destroying Records](#)
- [The Smithsonian Archives - Managing Active Records](#)
- [Export Administration Regulations](#) ("EAR" 15 CFR Part 743 and 762)
- [International Traffic in Arms Regulations](#) ("ITAR" - 22 CFR §123.22)
- [Foreign Trade Regulations](#) ("FTR" 15 CFR §30.10)

- **Export Control Glossary of Terms:**

Automated Export System (AES) – data system used by U.S. Census Bureau to record exports and calculate trade balance statistics.

Electronic Export Information (EEI) – required filing made of export to U.S. Census Bureau by the exporter or shipping company.

SPP – Sponsored Programs and Procurement, SAO

Wassenaar Arrangement – international export control regime that meets in the Netherlands whose mission is to coordinate the trade of strategic dual-use items that are controlled for conventional weapons and security concerns.

- **Responsible Persons**

Export Compliance Officer (ECO) and back-up ECO - ensure documents are retained for the required retention period and for reporting to government authorities when required.

Shipping Manager for the unit ensures that records related to each shipment is maintained.

Grant and Contract Specialists - ensure all critical documents associated with contracts, such as statement of work and equipment budgets are scanned into PeopleSoft and assigning an administrator to arrange for files to be sent to the Smithsonian Institution Archives (SIA).

PIs retain records related to their activities, particularly engineering activities of equipment controlled by the ITAR and EAR for five years beyond the validity of the program or export license.

Division Administrators/Division Managers/Program Managers - advise the ECO in advance of shipments of export-controlled items so that the related documentation is forwarded to the ECO for retention of documents received from the courier or freight forwarder.

Accountable Property Officer/Office of Contracting, Procurement Management or the SI Unit is responsible for ensuring it retains all related records for exports and imports.

The **Administrative Support Assistant for each SI Unit** is responsible for organizing and arranging for contract, grant, and proposal files to be sent to the Smithsonian Institution Archives (SIA).

Procurement Specialists - maintain records of quotes and deliveries of items that are exported, particularly if they are export controlled.

ECP 5.5 POLICY AND PROCEDURE FOR EXPORT COMPLIANCE REPORTING AND RECORD KEEPING

Instruction 1:

Each Organization is responsible for identifying its records that they create, receive or store related to export compliance.

This records matrix provides guidance about what export compliance records need to be retained, which organization is responsible, and the location of the record. Records are to be retained for five years or five years after the validity of the license. Here is a list of the records that must be maintained at SAO. It can be used as an example for other Units. Each Unit should compile its own matrix.

Example: Records at Sponsored Programs and Procurement, SAO

CONTRACT/GRANT RECORD	LOCATION
Proposal submitted to the Sponsor (with NSPIRES statement for NASA grant proposals)	SPP Drive-V
Correspondence related to the award	SPP Filing room
Award documents	SPP Drive-V and PeopleSoft
Description of instruments to be designed Engineering progress reports	Central Engineering
Progress Reports	SPP Filing room
Financial Reports	Financial Management (FM) Filing room
EXPORT TRANSACTION DOCUMENTS	LOCATION
Invoices	Financial Management Filing room
Project Classification forms	ECO Office and SPP Drive-V at V:\7-Export Compliance\Export licenses\Classifications
Power of Attorney with Freight Forwarders and Customs Brokers	Office of General Counsel
Shipping invoices	Accountable Property Officer and DA/DM/PM
Shipper's Letter of Instruction (SLI)/EEI filings	Accountable Property Officer and DA/DM/PM
Airway bills/Bills of lading	Accountable Property Officer and DA/DM/PM

ECP 5.5 POLICY AND PROCEDURE FOR EXPORT COMPLIANCE REPORTING AND RECORD KEEPING

EXPORT COMPLIANCE RECORDS	LOCATION
Classification documents issued by the USG	V:\7-Export Compliance\Export licenses\Classifications
Current and file copies of the Denial Lists and hits that were resolved, or canceled visas, contracts	V:\7-Export Compliance\Export licenses\Denial screening
Antiboycott checklist, if applicable, with sign-off	V:\7-Export Compliance\Export licenses\Antiboycott
Written assurances regarding end-use and Re-export	ECO in license file
Correspondence from BIS/DDTC	ECO in government file in file cabinet V:\7-Export Compliance\Regs
Export Licenses with supporting documents DSP-5, DSP-73, DSP-61 TAA BIS 748	ECO Office V:\7-Export Compliance\Export licenses
Reports of license exception exports submitted to BIS, as applicable	ECO Office V:\7-Export Compliance\Export licenses
Current copy of the EAR/ITAR	ECO, ECO back up, engineer's website
Federal Register notices	V:\7-Export Compliance\Regs

ECP 5.5 POLICY AND PROCEDURE FOR EXPORT COMPLIANCE REPORTING AND RECORD KEEPING

TECHNOLOGY CONTROL PLAN RECORDS	LOCATION
ITAR NDA EAR Technology and Software under Restriction license	ECO Office V:\7-Export Compliance\Export licenses
Visitor log and visitor request forms	ECO Office V:\7-Export Compliance\Export licenses\Visitor log
Agendas of visits by foreign nationals	ECO and PI
Approval by cognizant agency of plant tours and other meetings with foreign nationals	ECO and PI
IT records of security improvements	ECO
ITAR/EAR controlled data	ECO, facility officers, Pls

EXPORT MANAGEMENT SYSTEM RECORDS	LOCATION
Audit reports and corrective actions	Supervisor of SPSP
Training records	Individual trained and HR
Minutes of meetings related to export compliance	ECO

SAMPLE LETTER FROM SI ACKNOWLEDGING RECEIPT OF RECORDS FROM SAO



Smithsonian Institution Archives

Memo

Archives Division

Date December 12, 2013

To Casey Pulnik, Smithsonian Astrophysical Observatory, Sponsored Programs and Procurement Department

From Jennifer Wright, Assistant Archivist

Subject Transfer of Records

This memorandum is to acknowledge that the Smithsonian Institution Archives received **49 records storage boxes** from the Smithsonian Astrophysical Observatory, Sponsored Programs and Procurement Department, on June 26, 2013. These materials consist of *Grant Award Files*, with dates 1998-2007. The records have been rehoused into acid-free boxes. When requesting information about this transfer, please refer to accession **14-038**. A revised folder list is enclosed for your information.

These records are restricted for fifteen years, beginning with the most recent date of the material (2007), to your staff and others who receive permission from your office. The restriction will be lifted at the beginning of calendar year 2023.

Many of the archives holdings are located off-site and therefore we request advance notice if you wish to consult an accession. Please contact our Reference Team at osiaref@si.edu to retrieve records.

Thank you for your help transferring these records to SIA. If you have any questions, or if there is any other way in which I can be of service, please do not hesitate to call me at (202) 633-5924.

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