

# Export Control and Economic Sanctions Compliance Policy

Radio Amateur Satellite Corporation

*Keeping Amateur Radio in Space and the Next Generation reaching for the Stars*



Approved: October 21, 2022

## Purpose

This policy is intended to ensure compliance with U.S. export control and economic sanctions laws and regulations. This policy is applicable to all AMSAT employees and volunteers.

## Policy Statement

The Radio Amateur Satellite Corporation (AMSAT) will comply with all U.S. export control and economic sanctions laws and regulations. It is the responsibility of all individuals working at, with, or on behalf of AMSAT, who work with, or have access to, export-controlled technical data, software, materials, and equipment, to be familiar and comply with the federal laws and regulations, as well as with AMSAT's written procedures.

## Background

This policy implements U.S. laws and regulations regarding the export or re-export of items, technologies, software, and services regulated for reasons of national security, foreign policy, prevention of the spread of weapons of mass destructions and for competitive trade reasons, as well as economic sanctions regulations that support foreign policy and national security goals by prohibiting trade, financial transactions and other dealings with countries, entities, and individuals of concern.

## Scope

The regulations are applicable to all organizational activities such as research, development, education, communications, international travel, shipping, procurement, accounts payable, hosting foreign visitors, and human resources. While it is AMSAT's intent that most activities will be excluded from these regulations, under the public domain/public availability exclusion, some activities and transactions may be restricted.

## Compliance Authority

The President shall appoint or approve the appointment of an export control officer (ECO) and an empowered official (EO) for the purposes of compliance with U.S. export control laws and regulations. Both ECO and EO shall receive authority from the organization president to perform their duties.

## Definitions and Explanations of Terms

**Deemed Export:** The release of technology or software source code subject to the Export Administration Regulations (EAR) to a foreign national in the United States is "deemed" to be an export to the home country of the foreign national under the EAR. Although the International Traffic in Arms Regulation (ITAR) does not use the words "deemed export,"

Our mission is to design, build, and operate experimental satellites and promote space education. We work in partnership with government, industry, educational institutions, and fellow Amateur Radio societies. We encourage technical and scientific innovation and promote the training and development of skilled satellite and ground system designers and operators.



**AMSAT**

disclosing or transferring technical data subject to the ITAR to any non-U.S. person is considered to be an export “whether in the United States or abroad.”

**Empowered Official (EO):** A U.S. citizen who is legally empowered (in writing) by an organization to sign export license applications or other requests for approval on behalf of the organization. The EO has the independent authority to inquire into any aspect of a proposed export, verify the legality of the transaction and the accuracy of the information to be submitted, and refuse to sign a license application or other request for approval without prejudice or other adverse recourse.

**Export:** An actual shipment or transmission of items, services, or technology/technical data out of the United States or the release of technology or software source code (EAR) or technical data (ITAR) to a foreign person in the United States. Technology, software, or technical data can be “released” for export through visual inspection, oral exchanges, transfer or shipment, or provision of a service.

**Export Control Officer (ECO):** A person who is identified formally at an organization for the purposes of organizational compliance with export control and economic sanctions regulations. It is not the role of the ECO to determine what scientific research or engineering activities that organizational personnel may engage in. Such a determination will fall to the individual’s program, project, or department.

**Foreign Person:** A natural person who is not a U.S. citizen, lawful permanent resident or protected individual (formally granted asylum). It also means any foreign corporation, business association, partnership, trust, society or any other entity or group that is not incorporated or organized to do business in the United States, as well as international organizations, foreign

governments and any agency or subdivision of foreign governments (e.g., diplomatic missions). An equivalent term is “foreign national.”

**Technical Data (ITAR):** Information required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance, or modification of defense items controlled by ITAR.

**Technology (EAR):** Information (whether in tangible or intangible form) necessary for the development, production, use, operation, installation, maintenance, repair, overhaul or refurbishing of an item controlled by the EAR.

**Technology Control Plan (TCP):** A written plan that describes the steps to be taken to control the access and dissemination of export-controlled items, information, materials, technology, and/or data in accordance with federal export regulations. Elements of a TCP include, but are not limited to, an identification of the item/technology to be protected, physical security, information security, project personnel requirements, accountability, and recordkeeping.

**U.S. Person:** A person who is granted U.S. citizenship, a lawful permanent resident, granted status as a protected person under 8 U.S.C. 1324b(a)(3), any corporation/business/organization/group incorporated in the United States under U.S. law or any part of the U.S. government.

## Controlling Law and Jurisdiction

Federal laws and regulations supersede any conflicting contractual requirements, state laws or regulations, and any organizational policies or procedures that are in conflict with federal regulations. Only the federal agencies responsible for the export control and economic sanctions regulations have the authority to make determinations and issue licenses. Neither

the organization nor a sponsoring entity has such authority.

## Key Federal Regulations

Export control laws and regulations restrict two principal areas of activity: 1) the shipment, transmission or transfer of certain items, software, technology, and services from the U.S. to foreign countries; and 2) the disclosure or transfer of certain items, software, technology, information, or materials to foreign persons located in the U.S. (a “deemed” export). These laws and regulations also restrict exports for prohibited end uses and to prohibited end users. In addition, economic sanctions laws and regulations restrict certain transactions such as financial transactions and providing goods or services to sanctioned or embargoed countries or to entities or individuals identified on any Restricted Parties lists.

Although many AMSAT activities subject to federal export and economic sanctions regulations can be carried out without prior written authorization from one or more U.S. government agencies due to specific exemptions and exclusions, a license may be required to carry out certain research, development, academic, administrative or other activities. It is critical that employees and volunteers assess how export controls or economic sanctions laws may apply to activities early in the process in order to allow time for obtaining a license when required.

The three agencies that regulate and enforce the majority of federal export control and economic sanctions regulations are:

**U.S. Department of State:** Enforces the International Traffic in Arms Regulations (ITAR), which regulates defense articles, defense services and related technical data listed on the U.S. Munitions List (USML).

**U.S. Department of Commerce:** Enforces the Export Administration Regulations (EAR), which regulate the export and re-export of most commercial items including “dual-use” items that have both commercial and military or proliferation capabilities and are enumerated on the Commerce Control List (CCL).

**U.S. Department of the Treasury:** Enforces U.S. economic sanctions and embargoes through its Office of Foreign Assets Control (OFAC) and prohibits a wide range of transactions and the export of anything of value, either tangible or intangible, to sanctioned countries, organizations, or individuals.

## Exclusions and Exemptions

The federal government has excluded certain kinds of information from export controls. The most common exclusion applicable to AMSAT is the public domain/publicly available exclusion. In addition, AMSAT may exclude certain kinds of information from export controls when working with institutions of higher learning, to include the fundamental research exclusion, the educational information exclusion, and the bona fide full-time Employees.

The exclusion of certain kinds of information from export controls applies only to information, not to the export or deemed export of controlled material items or technology. Even if a project qualifies for an exclusion, materials, including hardware, software and technology/technical data, whether owned by AMSAT or supplied by a third party, are still subject to U.S. export controls. There are other restrictions on using this exclusion; notably, some encryption source code is not eligible. Contact the export control officer whenever there is uncertainty about the use of the excluded information.

### **Information in the Public Domain/Publicly Available Exclusion**

Information that is already published and generally available to the public, as well as publicly available technology and some encryption software, is outside the scope of the export control regulations. This exclusion does not apply to information if there is reason to believe it may be used for weapons of mass destruction or where the U.S. government has imposed access or dissemination controls.

### **Fundamental Research Exclusion (FRE)**

Fundamental research (basic or applied research in science and/or engineering at an accredited institution of higher learning in the United States resulting in information that is ordinarily published and shared broadly within the scientific community) is excluded from export control regulations. This means that the intellectual product of fundamental research (publishable results) is excluded from export controls.

Research will not qualify for this exclusion if the institution or investigator accepts any restrictions on the publication of the information resulting from the research, other than limited prepublication review by research sponsors to ensure that proprietary information is not inadvertently disclosed in publication or to ensure that publication will not compromise the patent rights of the sponsor. Additionally, when the research is federally funded, and specific access and dissemination controls have been accepted by the institution, investigator, or manager, that research will not qualify.

### **Educational Information Exclusion**

The EAR provides that educational information released by instruction in academic catalog-listed courses or in teaching laboratories associated with those courses is not subject to

the EAR, with the exception of certain encryption software.

The ITAR provides that information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges and universities is not included in the definition of technical data subject to the ITAR. The references to specific academic fields, use of “principles” rather than “information” and the inclusion of undefined terms such as “general” and “commonly taught” makes the ITAR definition potentially narrower and subject to interpretation.

### **Exemption for Disclosure to Bona Fide Full-Time Employees (ITAR-Regulated Research Only)**

The ITAR exempts disclosures of unclassified technical data in the U.S. by U.S. universities to foreign persons when:

- The foreign person is a bona fide full-time regular employee.
- The employee’s permanent abode throughout the period of employment is in the U.S.
- The employee is not a national of an embargoed country.

## **Responsibilities**

### **Senior AMSAT Management**

- Ensure the existence of adequate resources and management support to comply with regulations and to resolve identified export control and economic sanctions compliance issues.

### **Empowered Official**

- Represent AMSAT to export control and economic sanctions regulators in matters related to registration, licensing, commodity jurisdiction and commodity classification

requests, and voluntary or directed disclosures.

### **Export Control Officer**

- Monitor and interpret U.S. export control and economic sanctions regulations.
- Identify AMSAT activities that are impacted by export control and economic sanctions regulations.
- Develop policy and procedures to assist the AMSAT in remaining in compliance with the regulations.
- Provide training and informational materials to AMSAT employees and volunteers regarding the laws, regulations, and AMSAT policy and procedures associated with export control and economic sanctions regulations.
- Seek advice from the legal counsel in analyzing and handling export control and economic sanctions compliance issues, including potential violations.
- Assist investigators and program/project managers with compliance measures regarding export-controlled equipment, technology, information, or services.
- Assist investigators and program/project managers in evaluating grants, contracts, and other agreement proposals for information that identifies potential export control issues, including restrictions on publication and dissemination of results and access based on citizenship, and attempt to negotiate out such restrictions where reasonable.
- Assist principal investigators and program/project managers in developing a Technology Control Plan for scientific research/technology development involving export-controlled items or information to ensure compliance with export control regulations.

- Review international travel requests for export control and economic sanctions issues.
- Review international shipments for export control and economic sanctions issues.
- Apply for export licenses, commodity jurisdiction and commodity classification requests.
- Conduct restricted party screenings of persons associated with export-controlled research/development and others as needed to verify that entities and individuals are not restricted parties or specially designated nationals.
- Aid other departments conducting export control classifications and restricted party screenings.
- Advise and assist with record keeping for export-controlled activities at AMSAT.
- Serve as AMSAT liaison with external agencies regarding export control and economic sanctions compliance.
- Maintain the export controls and economic sanctions website.

### **Principal Investigators and Program/Project Managers**

Principal Investigators (PIs) and Program/Project Managers (PMs) have expert knowledge of the items, information, and technology involved in a research or satellite technology development project or other AMSAT activity. PIs and PMs must ensure that they do not disclose controlled information or technology, transfer controlled-items, or provide controlled services to a foreign national without prior authorization as required. It is the responsibility of each PI/PM to:

- Ensure that:
  - Controlled technology used or produced by them or under their supervision, is classified correctly under export control regulations.

- Controlled activities are identified, approved, and licensed if necessary.
- All exports of controlled technology, both physical and deemed, including those associated with international travel, are conducted in compliance with applicable export controls and economic sanctions regulations.
- Know and comply with the terms and conditions of sponsored projects and other agreements including export controls and limitations on publication of scientific research data and results.
- Assist AMSAT in preventing unauthorized exports.
- When applicable, assist with the development of a Technology Control Plan and follow the requirements of the approved plan.
- Seek advice from the export control officer regarding activities with the potential for export control or economic sanctions concerns.
- Ensure that employees and volunteers under their supervision are made aware of any applicable requirements (e.g., AMSAT, regulatory or sponsor imposed) and that they receive adequate training in how to conduct their activities in compliance with those requirements.

#### **All AMSAT Employees and Volunteers**

- Know and comply with export controls and economic sanctions requirements applicable to their activities.
- Seek assistance from the export control officer prior to exporting any controlled items, technology, software, or services.
- Report any suspected non-compliance with export control or economic sanctions regulations or this policy to the export control officer.

## **Recordkeeping Requirements**

Per federal regulations, records relating to export activities must be retained for five years after the completion of the activity and made available to the regulating authority upon request.

## **Penalties and Disciplinary Action**

Failure to comply with U.S. export control and economic sanctions laws and regulations exposes both the individual and AMSAT to severe criminal and civil penalties (fines and prison sentences) as well as administrative sanctions (loss of program funding and export privileges). Civil and criminal sanctions, including fines and/or prison sentences for individuals violating Export Control and embargo laws, are substantial. Fines and sentences can apply to the individual as well as AMSAT. Fines can range from \$50,000 up to \$1,000,000 per violation for individual and/or AMSAT. Prison sentences of up to 20 years may be imposed.

In addition to these severe penalties, the potential reputational damage to an organization from violation of these laws could be difficult to repair, possibly resulting in lost opportunities for attracting world-class engineers and/or decreased access to program funding through private industry and government sources.