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# NASA Procedural Requirements

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Request Notification of Change (NASA Only)

**Subject: NASA Export Control Program****Responsible Office: Export Control & Interagency Liaison Division**[| TOC](#) | [| Preface](#) | [| Chapter1](#) | [| Chapter2](#) | [| Chapter3](#) | [| Chapter4](#) | [| Chapter5](#) | [| Chapter6](#) | [| Chapter7](#) |  
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## Chapter 3. NASA Export Control Process

### 3.1 General

3.1.1 NASA, as a U.S. Government agency on the leading edge of technological development and international cooperation in space, aeronautics, and a variety of scientific endeavors, is a responsible exporter. The most significant step in any export activity is to determine if the export is necessary and appropriate, from a program standpoint, and in accordance with NASA international policy and with the approved agreement (usually international agreement) or contract. The international agreement's Roles and Responsibilities and Technical Data and Goods clauses provide important guidance on the scope of exports and transfers that are consistent with the relevant program.

3.1.2 In general, NASA is not responsible for contractors' export compliance in the execution of contracted work. The exception is an instance in which NASA directs or authorizes a contractor to effect exports using a NASA-obtained IVL or GBL.

### 3.2 Commodity Jurisdiction (CJ) and Classification

3.2.1 Once it has been determined that a planned transfer of commodities, technology, or software to a foreign person is necessary and consistent with NASA policy and the approved agreement or contract, the next step is to establish if the item is listed on the United States Munitions List (USML) or the Commerce Control List (CCL). The USML enumerates the classes of defense articles subject to the licensing authority of the DDTTC. The CCL identifies items subject to the licensing authority of the BIS. NASA officials authorized to make this determination include the HEA, CEAs, and experienced ECRs and program and project managers. These individuals can seek advice from manufacturers, engineers, and other qualified, knowledgeable persons to assist in this process. The HEA can also request a CJ determination from DDTTC if doubt about proper jurisdiction persists.

3.2.2 Upon a written CJ request from the HEA, DDTTC will, in consultation with the DoD and DoC and other concerned U.S. Government agencies, provide a determination of whether a specific item is covered by the USML.

3.2.3 The ITAR states the basis upon which a commodity determination is made and how jurisdictional disputes may be resolved.

3.2.4 All CJ requests will come through Headquarters. NASA CEAs shall consult with the HEA if questions of jurisdiction arise.

3.2.5 If an item is believed to be under the jurisdiction of the EAR, but the exporter is not able to classify the item on the CCL, a classification request can be submitted to the BIS at the DoC.

3.2.6 All NASA classification requests are submitted by the HEA. A complete description of the item, including its intended purpose and all the capabilities the item may have, is required, as well as a suggested Export Control Classification Number (ECCN). BIS will provide a written classification to NASA, which may include limitations and requirement for reclassification if the item is modified or improved.

3.2.7 With the exception of publicly available technical data/technology or software, virtually all commodities, technical data, and software are subject to the export control regulations. If technology, technical data, or software is publicly available, the export or transfer may be made to any party (other than U.N.-embargoed countries) without a license; publicly available technology and software are not subject to export control. Note: The ITAR states that the performance of defense services or technical assistance relating to any defense article to any foreign party, even when using exclusively publicly available information, is an activity subject to export control. (See 22 CFR § 124.1(a).)

3.2.8 If the item is not publicly available, it must be classified either under an ECCN on the CCL (See Chapter 4 of this NPR) or under Category Number on the USML, (See Chapter 5 of this NPR).

3.2.9 Once properly classified on the CCL or USML, it is relatively easy to determine the applicable IVL, license exception, or license exemption requirements for any export. Consultation with the CEA is required prior to use of license exemption or exception and recordkeeping, and reporting requirements apply.

### **3.3 Foreign Partner or End-User Credentials**

3.3.1 In any export activity, it is imperative to know the intended end user. It is required that potential recipients (end users) be checked against the following lists to establish end-user (foreign partner or contractor) credentials prior to engaging in cooperative activity:

a. Check to ensure that the recipient is not:

- (1) A Denied Person.
- (2) A Specially Designated National.
- (3) A Debarred Party.
- (4) An Entity of Concern.
- (5) An Unverified entity.

b. Normally, only publicly available information shall be provided to a recipient identified on the list given in Section 3.3.1a.

c. Ability to provide non-publicly available information is determined by requirements. An IVL, license exemption, or license exception may be required. Consultation with an HEA or CEA, as appropriate, is needed.

3.3.2 Check for red flags. Refer to BIS' Know Your Customer guidance and red flags in EAR. When red flags are raised by the information provided, NASA officials have a duty to check out suspicious circumstances and inquire about the end use, end user, or ultimate country of destination.

3.3.3 Encourage the maximum flow of information concerning the end use and end user. Do not inhibit the flow of information from potential foreign partners in an effort to prevent the discovery of adverse end use, end user, or country of destination. Such actions will not insulate NASA personnel from liability and will likely be considered an aggravating factor in enforcement proceedings.

3.3.4 Reevaluate any discoveries after inquiry. Inquiry and reevaluation are intended to determine whether there are explanations or justifications for discovered "red flags." If they can be justified, it is appropriate to proceed with the transfer or export. If they cannot be justified, proceeding with the transfer or export may place NASA personnel at risk of having had knowledge of a potential violation of the export control regulations.

3.3.5 Consult with the CEA, CEC, HEA, or HEC for guidance. If concerns remain about a particular transfer or export, after inquiry and reevaluation, refrain from the transaction, provide all relevant information to the HEA or CEA, and await their determination. Information about proposed transfer/exports must be shared and evaluated by responsible individuals.

### **3.4 License Requirements**

3.4. The procedures for determining license requirements are stated in Chapters 4 and 5 of this NPR for exports under EAR and ITAR jurisdictions, respectively. It is possible that certain exceptions and exemptions may apply that permit an export without the need of a license. These exceptions and exemptions are discussed in Sections 4.2 through 5.3.

### **3.5 Technology Transfer Control Plans (TTCP)**

3.5.1 A TTCP is a document, intended to serve as an aid and a guide to program and project managers, as well as other NASA officials and contractors, involved in an international activity. The TTCP responds to four fundamental

sets of questions that NASA officials and contractors working with foreign nationals in a NASA program or project should ask:

- a. What technologies, software, or hardware am I working with that are subject to export control?
- b. What foreign persons (and what nations) am I working with?
- c. What technologies, software, or hardware do I need to provide to those foreign persons, according to the agreement or contract governing this activity? Which technologies do I need to protect?
- d. How will I provide those export-controlled technologies, software, or hardware to those foreign persons with whom I am working? How will I protect export-controlled technologies, software, or hardware from unauthorized transfer?

3.5.2 If a NASA program or project will not export software or hardware and will disclose only publicly available information to all participating foreign persons, a TTCP would not be necessary or appropriate. However, if a NASA activity will export hardware or software, or will transfer or disclose export-controlled technology or software, to a foreign person who is not a national of a NATO member country or a major non-NATO ally country, then a TTCP is a required and useful tool to ensure that all persons participating in the activity understand what export-controlled items are involved, what foreign persons are involved, what export-controlled items NASA must provide to those foreign persons under the terms and conditions of the cooperation, and how those items will be transferred to those foreign persons (including the means of transfer and appropriate markings, as required by the governing international agreement or contract). A TTCP is recommended for all NASA international cooperation.

a. NASA program and project managers should consult with their CEAs, or the HEA, in the development of TTCPs for their programs that involve foreign participation and exports. A sample TTCP is in Appendix D of this NPR. NASA program and project managers are also encouraged to consult with their Center Chief Patent Counsel, Software Release Authority, and the Innovative Technology Transfer Partnership (ITTP) Program when developing a TTCP.

## 3.6 Recordkeeping

3.6.1 All export control records shall be maintained and destroyed in accordance with NASA Records Retention Schedules. The CEA and HEA will keep relevant export license documents and consult with individual programs and project managers on other export control records that should be maintained with the program or project.

3.6.2 The EAR requires that records be maintained for all exports or transfers of items on the CCL for a period of at least five years beyond the expiration date of the license. Records must also be maintained when using License Exceptions or EAR-99/NLR.

3.6.3 The ITAR likewise requires that records be maintained for all exports or transfers and imports of items on the USML for a period of five years from the expiration of the license. Records must also be maintained when using license exemptions.

3.6.4 The statute of limitations for criminal actions under the Export Administration Act (EAA) and the Arms Export Control Act (AECA) is five years. Therefore, all export control records must be retained for not less than five years after the transfer or expiration of the license. BIS, DTC, and the Department of Homeland Security may inspect records at any time. Records to be retained include the following in original or copy form:

- a. Shipping documents (e.g., GBL's and AES/SED's).
- b. Validated licenses.
- c. Letters to NASA contractors by COs or their representatives authorizing the use of export license exceptions or exemptions.
- d. Classification determinations by NASA, BIS, or DDTC.
- e. Records other than AES/SEDs regarding the use of export license exceptions or exemptions, where appropriate.

## 3.7 Reporting

3.7.1 When preparing statements of work and data deliverable requirements, program and project managers shall ensure that the following requirements are provided to the CO so that they may be included in solicitations, contracts, and grants:

- a. Requirement for a plan identifying export licenses required for performance and exemptions and exceptions that will be used.
- b. Requirement for a status report of licenses obtained, including copies of licenses.
- c. Requirement for a status report of exports effected against those licenses, including copies of AES/SEDs and other related shipping documents.

d. Requirement that these reports will be delivered to the CO for distribution to the program or project manager, and to the CEA of the relevant NASA Center or the HEA at NASA Headquarters, as appropriate.

### 3.8 Information Security and Electronic Transmission

3.8. Ensure that the confidentiality and integrity of export-controlled information is protected during storage, processing, and transmission/dissemination. To the maximum extent practicable and when feasible, ensure that the confidentiality and integrity of export-controlled information exchanged over the Internet is properly protected by use of encryption.

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