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NASA Procedural Requirements

COMPLIANCE IS MANDATORY**NPR 2190.1B**
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27, 2016[Printable Format \(PDF\)](#)[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](#) |
[Chapter8](#) | [AppendixA](#) | [AppendixB](#) | [AppendixC](#) | [AppendixD](#) | [AppendixE](#) | [ALL](#) |

Appendix A. Definitions

AES or Automated Export System is the system used by U.S. exporters to electronically declare their international exports to U.S. Customs and Border Protection. Formerly, this declaration was only made by the Shipper's Export Declaration form.

AO or Advisory Opinion is a U.S. Department of State (DoS) term used to reference official DoS correspondence regarding export licensing regulations and policy issues.

BICE refers to the Bureau of Immigration and Customs Enforcement, a component of the U.S. Department of Homeland Security.

BIS refers to the Bureau of Industry and Security, a component of the U.S. Department of Commerce (DoC), which administers the Export Administration Regulations (EAR).

BIS 748P is the multipurpose application form for a license to export items or classify items subject to the licensing authority of BIS. Export license application forms are electronically submitted to BIS by the NASA Export Administrator at Headquarters.

CCL or Commerce Control List refers to a list that includes commodities, software, and technology subject to the authority of BIS. The CCL does not include those items exclusively controlled for export by another department or agency of the U.S. Government; e.g., DoS or Department of Energy (DoE). On the CCL, there are ten general categories of items; each category is subdivided into five descriptive groups, designated by letters A through E.

CEA or Center Export Administrator is the senior-level official appointed by the Center Director to implement and manage the NASA Export Control Program at each Center.

CEC or Center Export Counsel is the attorney appointed by the Center Chief Counsel to provide legal guidance to the CEA in NASA export control matters.

CFIUS or Committee on Foreign Investment in the United States is an interagency committee chaired by the Secretary of Treasury that implements the Exon-Florio foreign investment review legislation. CFIUS seeks to serve U.S. investment policy through thorough reviews that protect national security while maintaining the credibility of our open investment policy.

CIV is a CCL-based License Exception in the EAR, 15 CFR § 740.5. CIV authorizes exports and reexports controlled to the ultimate destination for national security reasons only, and if identified by "CIV Yes" on the CCL, provided the items are destined to civil end users for civil end uses in specified countries (generally, the nations of the former Soviet Union and certain other countries). Use of EAR Exceptions for exports must have the concurrence of the CEA or the HEA.

Classification is the process for determining the relevant entry in the CCL for commodities or technologies that fall under the jurisdiction of the EAR. Classification takes place after the jurisdiction of the item has been determined. Items under the jurisdiction of the EAR can be found on the CCL, and items under the jurisdiction of the DoS can be

found on the USML. Individuals are responsible for correctly classifying items. However, NASA can request DoC assistance in classifying an item on the CCL. NASA classification requests must be coordinated with, and submitted by, the NASA HEA.

CJ or Commodity Jurisdiction refers to the DoS authority to determine if an article or service is under the jurisdiction of the DoS. A CJ may also be used for consideration of a redesignation of an article or service currently covered by the USML. NASA CJ requests must be coordinated with, and submitted by, the HEA.

Commodity refers to an item, piece of hardware, software, or technical data.

Controls refers to possible reasons for export prohibitions or restrictions on a commodity, software, or technology. In the context of the EAR, reasons for export control include national security, foreign policy, antiterrorism, crime control, regional stability, international sanctions, and nonproliferation.

Consignee is a person, organization, or entity that is a recipient of an export.

Consignor is a person, organization, or entity that provides or effects an export.

DAA or NASA Scientific and Technical Document Availability Authorization refers to NASA Form 1676, used for all NASA-generated or -funded scientific and technical information that is to be released outside NASA. See NPR 2200.2, Requirements for Documentation, Approval, and Dissemination of NASA Scientific and Technical Information.

DCS or Destination Control Statement is a statement made by the exporter or consignor that must be entered on the invoice, and bill of lading, air waybill, or other export control document that accompanies the shipment to its ultimate consignee or end user abroad. In the absence of other prescriptions (See Section 1.2.40), and at a minimum, it should read: "These [item description] were exported from the United States in accordance with the [Export Administration Regulations] [International Traffic in Arms Regulations]. Diversion contrary to U.S. law is prohibited." The DCS relates directly to the "Marking Statement" which is discussed in NASA international agreements that provide for exports of items in NASA programs where, in most cases, the international agreement prescribes the content of the DCS.

Defense Service means the furnishing of assistance (including training) to foreign persons, whether in the United States or abroad, in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing, or use of defense articles as defined in 22 CFR §120.6. See 22 CFR §120.9 for more descriptions of a defense service.

DSP-5 is the DoS application form for a license to permanently export unclassified defense articles and related unclassified technical data controlled by the ITAR and subject to the licensing authority of the DoS. Generally, NASA does not seek licenses for exports of technical data or defense services. All NASA export license applications are coordinated with and submitted by the HEA.

DTC or DDTC refers to the Directorate of Defense Trade Controls, a component of the DoS, which administers the ITAR.

Dual use is a term used to distinguish the types of items covered by the EAR from those that are covered by the ITAR. Dual use refers to items that have both a military and commercial application.

EAR or Export Administration Regulations, 15 CFR §§ 730-774, is the set of regulations that control the export of commercial and dual-use items that are designed for commercial use, but may have military use as well. The BIS within the DoC has the responsibility for the EAR under the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401, et seq.).

EAR-99 is an EAR classification used to describe an item (commodity, software, or technology) that is subject to the EAR, but that is not specifically identified on the CCL. EAR-99 indicates the lowest level of control and is eligible for export to most countries (excluding terrorist-supporting and embargoed nations), using the designation NLR. See 15 CFR § 740, Supp.1, Country Group E.

ECA or Export Control Auditor refers to NASA-appointed internal auditors that perform the annual audit of NASA ECP.

ECCN or Export Control Classification Number is related to the classification process. On the CCL, there are ten categories of items, 0 through 9; each category is subdivided into five descriptive groups designated by letters A through E. The ECCN consists of a set of digits and a letter. The first digit identifies the general category (e.g., 9 - Propulsion Systems, Space Vehicles, and Related Equipment); the letter immediately following identifies in which of the five descriptive groups the item is listed (e.g., A - Equipment, Assemblies, and Components). The following digits differentiate individual entries by identifying the type of controls associated with the items contained in the entry (e.g., 0 - National Security reasons). The second and/or third digits serve to differentiate between multilateral and unilateral entries. Thus, in ECCN 9A004, the 9 represents Propulsion Systems, Space Vehicles, and Related Equipment; the A represents Systems, Equipment, and Components, and the 00 represents both the reason for

control as National Security and is subject to multilateral control. The last digit, 4, simply represents the sequential location in the category.

ECP or Export Control Program refers to NASA Export Control Program and NPD 2190.1.

ECR or Export Control Representative is a civil servant in the Center Directorate or program organization that may be appointed as an Export Control Representative and is responsible for facilitating and coordinating resolution of export control issues with the CEA. The ECR maintains a working knowledge of the export control laws and regulations and can assist the Center Directorate or program with compliance and development of Technology Transfer Control Plans.

ENC is a License Exception under the EAR, 15 CFR § 740.17. ENC authorizes the export of certain encryption items and information security test, inspection, and production equipment. All requirements of the ENC Exception must be reviewed and complied with before its use can be authorized. Use of EAR Exceptions for exports must have the concurrence of the CEA or the HEA.

End User is the designated final entity and destination of the export indicated on an export license. The foreign government partner signatory to the international agreement or Memorandum of Understanding with NASA is usually the designated end user on a NASA export license application.

EPT or Export Processing Template is a helpful decision tree or flow chart to guide you through the export process. See Appendix C.

Exception is an EAR authorization that allows an export or reexport of an otherwise controlled item to proceed without a license, provided that certain specified conditions are met. Exception is a BIS term and applies only to items under the jurisdiction of the EAR. Use of Exceptions for exports must have the concurrence of the CEA or the HEA. See 15 CFR, Part 740 for a description of all EAR License Exceptions.

Exemption is an ITAR authorization from DTC for exports of unclassified defense articles and defense services without a license under certain specific provisions or limitations. Exemptions can be found in the ITAR. All conditions of an Exemption must be met before use is authorized. Use of Exemptions for exports must have the concurrence of the CEA or the HEA and there are recordkeeping and reporting requirement to HEA. See 22 CFR Parts 123, 125, and 126 for a description of the most relevant ITAR License Exemptions. NASA Federal Acquisition Regulation 1852.225-70 notes the requirement for a NASA letter authorizing contractor use of 125.4(b) (3).

Export is the transfer of anything to a foreign person or foreign destination by any means, anywhere, anytime. An export can be any shipment, mail, transfer, or transmission of commodities, technology, or software, regardless whether it occurs in the United States, overseas, or in space, including:

- a. Transfer to any person by physical, electronic, oral, or visual means, with the knowledge or intent that the items will be shipped, transferred, or transmitted outside of the United States.
- b. Disclosure of technical data to a foreign person by physical, electronic, oral, or visual means within or outside of the United States (disclosure to U.S. nationals representing foreign interests are not exports unless there is knowledge or reason to know that the technical data will be further disclosed to a foreign party).
- c. Transfer to a foreign country, embassy, or affiliate.
- d. Transfer of control over a satellite or instrument on-orbit.

Foreign Person, for purposes of export control regulation, is any person who is not a U.S. citizen, permanent resident alien, or Protected Individual of the United States (See 22 CFR § 120.16). Note: Under NASA security policies, a foreign national is any person who is not a U.S. citizen (See NPR 1620.1).

Foreign Visit refers to a visit by a foreign national or foreign entity representative to any NASA facility, including NASA Headquarters, NASA Centers, JPL, or other Component Facilities. NPR 1371.2 describes the procedures and guidelines for review and approval of all visits to NASA facilities by foreign persons.

Fundamental Research means basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community, as distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security reasons. (National Security Decision Directive 189)

GBL or Government Bill of Lading is an accountable, U.S. Government form used to document and facilitate exports of commodities on behalf of the U.S. Government. When a GBL is used to effect an export, the U.S. Government agency authorizing the use of the GBL is the exporter.

GBS is a CCL-based License Exception in the EAR, 15 CFR § 740.4. GBS authorizes exports to most free-world countries of certain commodities controlled for national security reasons only. All requirements of the GBS Exception must be reviewed and complied with before its use can be authorized. Use of Exceptions for exports must be coordinated with the CEA or the HEA.

GOV is a License Exception in the EAR, 15 CFR § 740.11. GOV authorizes exports to and from U.S. Government agencies or personnel. It also permits exports to certain foreign government agencies. All requirements of the GOV Exception must be reviewed and complied with before its use can be authorized. Use of Exceptions for exports must have the concurrence of the CEA or the HEA.

HEA is the NASA Headquarters Export Administrator. The HEA is appointed by the Associate Administrator for International and Interagency Relations and is responsible for:

- a. Ensuring the compliance of all NASA program activities and exports with U.S. export control laws and regulations and this NPR.
- b. Serving as NASA's Empowered Official for purposes of 22 CFR § 120.25 and 15 CFR § 758.1(a), in certifying and approving all NASA export license applications.
- c. Serving as the Headquarters point of contact with CEAs.
- d. Serving as the Agency's interagency interface for export control matters with the DoS and DoC, and others as appropriate, for all export licensing matters.

HEC or Headquarters Export Counsel is the attorney appointed by the NASA General Counsel to provide legal guidance to the HEA in NASA export control matters.

International Agreement refers to the approved agreement document between NASA and a foreign entity. An international agreement can take the form of a letter agreement, a Memorandum of Understanding, or similar instruments. Unless otherwise delegated by the Associate Administrator for International and Interagency Relations, international agreements are signed by authorized officials in the Office of International and Interagency Relations at NASA Headquarters. See NPD 1050.1.

ITAR or International Traffic in Arms Regulations is the set of regulations that control the export and temporary import of defense articles and services. The ITAR (22 CFR §§ 120-130) is promulgated under the authority of the Arms Export Control Act (22 USC §§ 2778, et seq.). The authority for these controls has been delegated to the Secretary of State by Executive Order 11958, as amended (42 Fed. Reg. 4311).

Item means commodities, software, and/or technology/technical data.

IVL is an Individual Validated License, which is an export license issued by the DoC or DoS. The DoS export license has a raised stamp and signature by the licensing officer, and the original license must be presented to Department of Homeland Security's Bureau of Immigration and Customs Enforcement (BICE) at the time of export. The DoC export license has no signature, and a copy can be presented to BICE at the time of export.

LVS is a CCL-based License Exemption in the EAR, 15 CFR § 740.3. LVS authorizes the export in a single shipment of eligible commodities of limited value where identified on the CCL. All requirements of the LVS Exception must be reviewed and complied with before its use can be authorized. Use of Exceptions for exports must have the concurrence of the CEA or the HEA.

Major non-NATO Ally or MNNA is a designation given by the U. S. Government to close allies who have strategic working relationships with U.S. armed forces, but are not members of the North Atlantic Treaty Organization (NATO). Current MNNA countries are: Argentina, Australia, Bahrain, Egypt, Israel, Japan, Jordan, Kuwait, Morocco, New Zealand, Pakistan, Philippines, South Korea, and Thailand.

Marking or marking statement refers to the export control notice that NASA must place on export documents (i.e., GBL, notification for foreign recipient, inventory, or packing lists) for all exports of controlled commodities or technology. The international agreement governing the export will have a Technical Data and Goods Clause that indicates the marking statement requirement. It is important that all controlled technical data (including software) include a marking statement prior to transfer to the foreign party. A marking statement is similar to the Destination Control Statement (DCS) required in the EAR and discussed in DAA above. The typical marking statement for exports effected under international agreements would read, "This (item description) is subject to the export control laws and regulations of the United States of America and is being exported from the United States to (name of foreign recipient) in accordance with (cite international agreement or contract) and U.S. export laws and regulations and are to be used by (name of authorized foreign recipients) only for the purposes of fulfilling their responsibilities under (cite international agreement or contract) and shall not be retransferred to any other entity without the prior written permission of NASA."

NATO The North Atlantic Treaty Organization (NATO) is a military alliance that currently consists of 28 member states from North America and Europe. Current NATO members are: Albania, Belgium, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Turkey, United Kingdom, and the United States.

NLR or no license required is an EAR term and is entered on the Shipper's Export Declaration (SED), certifying that

no license is required to export the item. NLR is determined in the export classification process.

Publicly Available or "public domain" means information (including software) that is not subject to export control due to its unrestricted availability as follows: in open literature; available at any library to which the public has access; open seminar; fundamental basic and applied research where the resulting information is ordinarily published and shared broadly within the scientific community; educational information taught in catalog courses, including general scientific, mathematical, or engineering principles commonly taught in academic institutions; information contained in published patents or published patent applications; or basic marketing information on function or purpose or general system descriptions. It does not include research which is restricted for proprietary reasons, or which is subject to specific U.S. Government access and dissemination controls. Additionally, information or software which is proprietary to any party is not publicly available. Public Domain is a term similar to publicly available. The ITAR defines public domain in 22 CFR § 120.11. The EAR defines publicly available in 15 CFR Part 732.

Recordkeeping refers to the requirements for the maintenance of original records pertaining to export transactions for inspection by U.S. Government regulatory departments and agencies upon request. Recordkeeping requirements for the EAR are found at 15 CFR Part 762 and for the ITAR at 22 CFR Part 130.14 and reflected in NPR 1441.1 NASA Records Retention Schedules. Export records are to be kept for all exports 5 years beyond the expiration date of an export license or 5 years beyond use of a License Exception or Exemption.

Red Flag means any abnormal circumstance in a transaction that indicates that the export/transfer may be destined for an inappropriate end use, end user, or destination. Examples may include requests for items that are inconsistent with the needs of the partner/project, requests for equipment configurations that are incompatible with the stated destination (e.g., 120 volts in a country with 220 volts), or other apparent irregularities. Always inquire and seek additional information if red flags are indicated. Refer to the EAR 15 CFR Part 732, Supplement 3.

RPL is a License Exception in the EAR, 15 CFR § 740.10. RPL authorizes exports associated with one-for-one replacement of parts or servicing and replacement of equipment. All requirements of the RPL Exception must be reviewed and complied with before its use can be authorized. Use of Exceptions for exports must have the concurrence of the CEA or the HEA.

SED or Shipper's Export Declaration, is a joint Bureau of the Census/International Trade Administration document used for compiling the official U.S. export statistics and administering the requirements of the Export Administration Act as provided for in the Foreign Trade Statistics Regulations (15 CFR Part 30) and the EAR (15 CFR Parts 768-799). The SED is filed by the exporter with the Bureau of Immigration and Customs Enforcement at the port of exit from the United States.

STI refers to Scientific and Technical Information, which consists of the collected set of facts, analyses, and conclusions resulting from scientific, technical, and related engineering research and development efforts, both basic and applied. Information published in policy documents, such as NASA directives and NASA Technical, Engineering, or Safety Standards, or information published as a result of mishap investigations, are not considered STI. See NPR 2200.2 for further information.

Source Code means a representation or expression of one or more processes that may be transformed by a programming system or language, such as BASIC, FORTRAN, C++, Ada, JAVA and SQL (NPR 2210.1) into executable form ("object code"). Source code is any collection of statements or declarations written in some human-readable computer programming language.

Technical Assistance refers to defense service. A Technical Assistance Agreement is an ITAR licensing document required for the performance of a defense service or the disclosure of technical data.

Technical Data and Technology: Technical Data is an ITAR term, defined in the ITAR at 22 CFR § 120.10. It is defined as information required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance, or modification of a defense article identified on the USML. Technology is an EAR term, defined in the EAR at 15 CFR Part 772. It is defined as specific information necessary for the development, production, or use of a product. The information takes the form of technical data or technical assistance. Controlled technology is further described in the General Technology Note (15 CFR Part 774, Supp. 2). As with technical data, controlled technology does not include information which is publicly available. For the purposes of this NPR, the terms technical data and technology have the same meaning.

TMP is a License Exception in the EAR, 15 CFR § 740.9. TMP authorizes various temporary exports; exports of items temporarily in the United States; and exports of beta test software. All requirements of the TMP Exception must be reviewed and complied with before its use can be authorized. Use of Exceptions for exports must have the concurrence of the CEA or the HEA.

TSR is a CCL-based License Exception in the EAR, 15 CFR § 740.6. TSR permits exports of technology and software controlled for national security reasons only where identified on the CCL, provided the software or technology is destined to a free-world country. (See Country Group B, Supplement No. 1 to 15 CFR Part 740.) A written assurance is normally required from the consignee before exporting under TSR. All requirements of the TSR Exception must be reviewed and complied with before its use can be authorized. Use of Exceptions for exports must

have the concurrence of the CEA or the HEA.

TSU is a License Exception in the EAR, 15 CFR § 740.13. TSU authorizes exports of operation technology and software; software updates (bug fixes); "mass market" software subject to the General Software Note (15 CFR Part 774, Supp. 2); and encryption source code (and corresponding object code) that would be considered publicly available under 15 CFR § 734.3(b) (3). All requirements of the TSU Exception must be reviewed and complied with before its use can be authorized. Use of Exceptions for exports must have the concurrence of the CEA or the HEA.

TTCP or Technology Transfer Control Plan defines what technologies or technical data in a NASA program or project requires protection and what foreign access is permissible. It also assigns ECP requirements and responsibilities for programs or projects with foreign national participation. NASA international program activities should have a TTCP to follow when they involve exports or transfers of controlled technical data or hardware to international partners/foreign parties who are neither members or nationals of NATO or major non-NATO countries. See Section 3.5 of this NPR.

USML or United States Munitions List identifies and enumerates classes of defense articles and defense services subject to the jurisdiction of the ITAR. The USML is found in the ITAR at 22 CFR, Part 121.

Voluntary Disclosure is self disclosure of possible violations of export provisions by persons, firms, or organizations engaged in international transactions. Disclosures of export violations are required to be filed under the ITAR and are strongly encouraged under the EAR. The HEA will file any such voluntary disclosures concerning possible NASA export control violations with the appropriate agency. All suspected criminal violations in the NASA ECP are to be reported immediately to the HEA who will consult with the Office of the Inspector General and appropriate regulatory and enforcement agencies. NASA support contractors implementing NASA programs should report potential voluntary disclosure matters to the HEA in addition to taking other actions required under the EAR or ITAR.

| [TOC](#) | [Preface](#) | [Chapter1](#) | [Chapter2](#) | [Chapter3](#) | [Chapter4](#) | [Chapter5](#) | [Chapter6](#) |
[Chapter7](#) | [Chapter8](#) | [AppendixA](#) | [AppendixB](#) | [AppendixC](#) | [AppendixD](#) | [AppendixE](#) |
[ALL](#) |

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