

## **A Message from the NPS Vice President & Dean of Research**

Naval Postgraduate School (NPS) is firmly committed to adhering to all applicable U.S. export controls. Export control laws and regulations are lengthy, complex, and frequently subject to change. Different government agencies have different jurisdictions with corresponding rules and requirements regarding export controls. Still, it is the responsibility of each and every NPS student, employee, and contractor to know about and abide by U.S. export control requirements.

As an NPS student, employee, or contractor you are not expected to become an expert on export controls and licensing. However, you are expected to be aware of their existence and to know when a work situation might have export control implications. You are also expected to determine when you need guidance and assistance on an export control matter and to know where to get that help.

The purposes of the accompanying Naval Postgraduate School Export Control Information Pamphlet are as follows:

- To clarify NPS's export control policy.
- To increase awareness about export control regulations, requirements, and procedures.
- To identify resources you can use to assure that your activities are in compliance with U.S. export control requirements.

Please note, however, that this booklet is only an introductory document. It is not a substitute for official export regulations or future official NPS policies or procedures.

It also needs to be emphasized that the intent of strengthening export controls at NPS is not to discourage or prohibit necessary interactions or exchanges.

Rather, it is to enhance student, employee, and contractor awareness about export controls and to assist them in making sure their activities comply with all applicable U.S. export regulations and requirements.

## **Dean of Research**

## What Are Export Controls?

Export controls are designed to protect items and information important to the United States. They refer to government rules and regulations that govern the transfer of commodities, technologies, and software/code to non-U.S. entities or individuals—**regardless of where or how the transfer takes place.**

It is not always obvious what is “export sensitive” and, therefore, impacted by export controls. Export controls serve multiple purposes—from guarding our national security, to protecting our national economy, to supporting our national foreign policy. As a result, different government agencies have different rules and different lists for “who,” “what,” or “where” is considered export sensitive. Furthermore, these rules and lists are updated constantly and in any given situation, all or none may apply.

Most U.S. exports, however, take place under expressly defined exceptions or waivers and do not require a specific export license or other special authorization.

Nonetheless, for Naval Postgraduate School, with critical national security and education missions as well as important international collaborations, it is imperative that we be a responsible exporter.

This means adhering to all applicable U.S. export rules and regulations and obtaining necessary licenses or waivers. Export controls apply to activities ranging from mere discussions with foreign nationals to the transfer of equipment. Of particular concern to NPS are export controls dealing with satellite and space technology, laser technology, and sensitive Intelligence Surveillance & Reconnaissance (ISR) technologies.

Other types of unclassified yet controlled information and computer codes are also of special concern to NPS.

NPS’s policy on export controls is straightforward: **NPS will comply with all applicable U.S. export control laws and regulations.**

It is each student, employee, and contractor’s responsibility to:

- Be aware of the existence of export control laws.
- Understand when any export control requirements may be related to his or her work/research.
- Ensure that all exports are in compliance with NPS procedures regarding these laws and regulations.

In this regard, students, employees, and contractors are expected to determine when they need guidance and assistance on an export control matter, and to know where to get that help.

### Noncompliance Is Not an Option

Noncompliance could result in suspension of NPS’s current or future licensing privileges, making it extremely difficult for NPS to meet its programmatic obligations. Noncompliance could also result in stiff administrative or criminal penalties up to and including imprisonment for individual employees, students, and contractors.

This booklet provides a basic introduction to export controls and briefly outlines NPS’s current Export Control Program.

It brings together some of the definitions, rules, and operating practices you need to know. And, perhaps most importantly, it tells you whom to contact for information and assistance on export control matters. More detailed information on export control can be found at the State and Commerce Department websites at the end of this pamphlet.

# What Is an Export?

The Department of Commerce defines an export as:

- Any shipment, transfer, or transmission out of the United States, by any means (including hand-carrying), of:
  - Commodity (equipment, hardware, or materiel).
  - Technology (technical data, information, or assistance not in the public domain on how to use equipment).
  - Software/code (commercial or custom).
- Any transfer to any person or entity of a commodity, technology, or software by physical, electronic, oral, or visual means with the knowledge or intent that the item(s) will be shipped, transferred, or transmitted to a non-U.S. entity or individual.
- Any disclosure of technical data or information to a foreign entity or individual, by any means, inside or outside of the United States. This includes interactions with foreign persons visiting or on assignment to NPS or while NPS personnel are on foreign travel.
- Any transfer of a commodity, technology, or software, by any means, to a foreign embassy or affiliate.

## Important Concept: “Deemed Export”

Any transfer to a citizen or representative of a foreign country, regardless of where the transfer occurs, is deemed by the U.S. government to be an export to that country—unless the person is a lawful permanent resident of the U.S.; that is, holds a so-called “green card.”

Keep in mind that all exports are covered by the requirements of various agencies, and should be

reviewed. However, only some exports are deemed “sensitive” enough to require a license from the controlling agency. Such export control sensitivity usually arises for any or all of the following reasons:

- The nature of the export itself.
- Concerns about the destination country, organization, or individual.
- Concerns about the declared or suspected end use and/or end user (e.g., an individual, an entity such as a laboratory or other organization, or a country) of the export.
- It is also important to keep in mind that exporting is not limited simply to transferring a document or piece of equipment. Indeed, the range of activities that can pose potential export control concerns might surprise you. For example:
  - Direct exports; Cooperative Research and Development Agreements (CRADAs); certain contracts; and donations, sales, or transfers of surplus equipment.
  - International and domestic collaborations and technical, exchange programs, including school-to-school programs.
  - Documents to be published, such as NPS reports, conference papers, abstracts, and journal articles.
  - Written materials in general, from memos and letters to trip reports and work notes.
  - Presentations at conferences and other public meetings, both domestic and domestic

- Foreign visits and assignments by foreign nationals to NPS.
- Foreign travel by NPS student, employee or contractors.
- Conversations outside NPS; conversations with foreign nationals anywhere.
- Specifications included in proposals or requests for quotations.
- Other types of communication such as telephone calls, faxes, e-mails, and placement of NPS information on the World Wide Web.

## Who Controls Exports— Agencies and Lists

As noted earlier, a number of different government agencies have export control responsibilities—each agency having jurisdiction over specific types of technology or restricted trade. Those most relevant to the NPS are: the Department of State (DOS), the Department of Defense (DOD), and the Department of Commerce (DOC).

### Department of State/Directorate of Defense Trade Controls (DDTC)

This agency controls the export of “defense articles and defense services” under the International Traffic in Arms Regulations (ITAR). Items in this category to be export controlled are placed on the U.S. Munitions List (USML), which is maintained by the DDTC in conjunction with the DOD. This list includes such obvious things as firearms, ammunition, and explosives. It also includes all military vehicles (land, air, and sea); spacecraft (including nonmilitary); military and space electronics; protective personnel equipment; guidance and control equipment; and components, auxiliary equipment, and

miscellaneous articles related to military equipment. Export of any item or technology on the USML requires specific authorization from the DDTC. The DOS website listed below contains helpful information:

[http://www.pmddtc.state.gov/regulations\\_laws/itar.html](http://www.pmddtc.state.gov/regulations_laws/itar.html)

In addition to the above website, the DOS maintains a Directorate of Defense Trade Control (DDTC) Response Team hotline at (202) 663-1282 (M-F, 8 a.m. – 5 p.m. EST)

### Department of Commerce/Bureau of Industry and Security (DOC/BIS)

This agency controls the export of all commodities, technologies, and software not regulated by another government agency under the Export Administration Regulations. Key to the regulations is the Commerce Control List (CCL), a section of the regulations that lists specific technologies and the countries to which those technologies may or may not be exported, along with any special restrictions or exceptions that may apply. These lists, as well as other helpful information, can be found at the DOC website at:

<http://www.bis.doc.gov/index.php/regulations/export-administration-regulations-ear>

## Other Control Lists and Requirements

There are additional agency export control lists of which you should be aware.

The Department of Commerce/Bureau of Industry and Security, for instance, maintains various lists of sensitive countries, organizations, and individuals. The Entities List, for example, identifies foreign end-users engaged in nuclear proliferation or who have been determined to present an unacceptable risk by developing weapons of mass destruction or missiles that could deliver such weapons.

Another Bureau of Industry and Security list is the so-called “Denial List,” which shows official denial orders. Such orders prohibit transactions with people (or organizations) who have been denied export privileges, usually because of past violations, end-use concerns (e.g., proliferation), or other reasons. These lists, as well as other helpful information on export controls can be found at the bureau’s Website at <http://www.bis.doc.gov/>.

## **NPS’s Export Control Program**

NPS’s Export Control Program is designed to support NPS’s international activities by strengthening compliance with U.S. export laws and regulations. The Export Control Working Group (ECWG) provides support and expertise on these matters. Checks and safeguards are incorporated into NPS operating procedures to guard against students, employees or contractors transferring a commodity, technology, or software contrary to U.S. policy. Each employee, student, organization, and group at NPS has a responsibility to be aware of and abide by the NPS’s export control policy and procedures.

### **NPS Export Control Office**

NPS’s Export Control Office, assisted by the NPS Internal Review Board (IRB), is responsible for assessing and communicating the requirements of U.S. Export Controls on NPS activities.

If you have a question or concern about export controls, the Export Control Office is the place to start. You may then be referred to a specific staff member of that group or to a member of the IRB for assistance.

## **Other NPS Export Control Functions and Responsibilities**

While all NPS students, employees, and contractors have export control responsibility for their own work, certain employees have special roles in the NPS’s efforts. Program and project managers, for example, must consider the need for export licenses or other authorizations in their program/project planning and, if needed, make sure any export control requirements are addressed well in advance of prospective shipping or transfer dates.

Purchasing agents also play a key role. They are responsible for seeing that all the right forms are in order and proper procedures followed when processing requisitions for commodities or services that are subject to export control. When an export license is required, they are responsible for notifying the parties involved of the specific terms and conditions of that license.

Another function of the NPS’s Export Control Program is to maintain a documentation and record-keeping system. This is important to provide an audit trail for export control compliance. The program also disseminates information, as warranted, on export control issues. And, it has a built-in auditing mechanism for monitoring the NPS’s export control processes and procedures and making changes when needed.

## **Your Responsibilities**

As an NPS student, employee or contractor, you are responsible for being aware of the export control implications of your work and for ensuring that your NPS activities are in compliance with U.S. export rules and regulations. This means making sure that any required licenses or approvals are in place prior to exporting anything. Program and project managers are responsible for taking export controls into consideration during planning and

implementation of their programs or projects, as well as when those activities change in scope or direction.

For most students, employees, or subcontractors this is not a major concern. Moreover, NPS has procedures for export control screening and documentation. One example of those controls is found in the embedded reviews of NPS Information Assurance (IA) process for the release of information and documents.

Still, if your NPS activities now involve or are expected to involve interactions with a foreign national or entity—either directly or indirectly, inside or outside of the United States, you may be expected to receive training in export control

Additionally, you must be aware of:

- What you can and cannot disclose or provide to a specific foreign person or entity for export control reasons without first obtaining permission.
- What approvals may be necessary before a meeting or exchange can take place.

## Know the Customer

U.S. export control policy places considerable responsibility on the exporter for ensuring that the end use and end user of an export complies with U.S. export laws. Even uncontrolled items (i.e., items that normally do not require an export license) may require a license or other special approval if the transaction raises proliferation concerns (e.g., laser or missile technology, nuclear propulsion, and encryption). In fact, exporters can lose their export privileges and be fined or criminally prosecuted if they ship, without prior authorization, normally uncontrolled items to destinations that violate end-use or end-user policy.

In other words, it is your responsibility to “know the customer.” As the person most knowledgeable about you and your

collaborator’s work, you must stay alert for any irregularities or abnormal circumstances that might indicate an export is destined for an inappropriate end use, end user, or destination.

If you notice something suspicious, inquire further. You are responsible for making sure that any suspicious circumstances are properly checked out. In any case, do not bury your head in the sand. That is, do not avoid learning something for fear that the knowledge might jeopardize your project. If there is a problem, such avoidance will not insulate you or NPS from liability, and could be considered an aggravating factor in enforcement proceedings.

If you ever have a doubt or suspicion about an export or export control situation, contact members of the Export Control Working Group (ECWG) for assistance.

The Department of Commerce/Bureau of Industry and Security Website mentioned earlier also provides some helpful guidelines to follow and red flags to watch for in knowing the customer.

## Common Misconceptions

The following misconceptions about export controls can lead to compliance problems if proper export procedures are not followed. Think about them. And if any of these apply to you and your work activities, check with your supervisor or NPS’s ECWG.

***I don’t have an export situation because the type of information I will be communicating has already been openly published in national journals for many years.***

As the research moves into development and is considered for licensing or patents, export controls could apply.

***If we don’t export NPS documents directly to foreign countries, we don’t need to worry about export controls.***

If you have indicated an unlimited (i.e.,

uncontrolled) distribution for your document, you have implicitly released the technology to all countries.

***I don't have an export problem because my publications in this field have not been restricted in the past.***

While fundamentally true, you should have a clear understanding of the sponsor's intent as applied to licensing of key technologies to private industry.

***The Department of Defense or my government-tasking agency will handle all export problems for me.***

The Department of Defense in coordination with the Department of State determines what technologies are in the Military Critical Technologies List or MCTL. However, as any new technology emerges, NPS should conduct reviews on behalf of the DOD and other agencies to ensure consistency and timely approval.

***Unclassified information cannot be sensitive from a national security standpoint.***

The enormous growth in activities with federal, state, and local homeland security issues clearly contradicts the notion of a blanket release of unclassified information without concern for national security. More importantly, many unclassified controls (e.g., export controls) are applied when economic competitiveness is the principal concern.

***My technical data isn't sensitive, critical, emerging, or advanced, so export control is not an issue.***

Even if your work clearly fits all these criteria, the tools you use to acquire the data could be controlled in regard to foreign national participation. In short, you are the principal mechanism for ensuring that export controls are considered and appropriate reviews are obtained when foreign nationals are included in the work force assigned to your effort.

***All of my contacts are with companies in the U.S., and I only ship to U.S. addresses, so I do not have to worry about export control.***

The Department of Commerce has a Denied Parties List of individuals and corporations, some of which are in the U.S. or are U.S. citizens who may not receive controlled technologies, software, or commodities. However, as long as your interactions are processed through NPS procedures, this will be checked for you.

## **When in Doubt, Ask!**

Export controls can be complex and are subject to change. If you have a question or concern about an export control matter, contact the Export Control Office.

<http://www.nps.edu/research/ExportControl/index.html>