Astrophysics Probe Explorer (APEX) Pre-Proposal Conference: Export Control

Juan Santos
NASA Headquarters Export Administrator (HEA)
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Compliance is Part of the NASA Mission

- "It is NASA policy to ensure that exports and transfers of commodities, technical data, or software to foreign persons and foreign destinations are carried out in accordance with Export Administration Regulations."

  -NPD 2190.1B, Section 1.a.

- *"We want to maximize the benefits of our international efforts while ensuring that we comply with U.S. export control laws and regulations. This is the personal responsibility of each employee."*

  -NPR 2190.1C, Section 2.1.1.

Compliance is everyone's job at NASA

What is an Export?

- Includes, but not limited to, and actual shipment or transmission out of the United States.

- An export can involve a commodity, software, technical data, technology, and/or providing a defense service or technical assistance to a foreign person or a foreign destination.

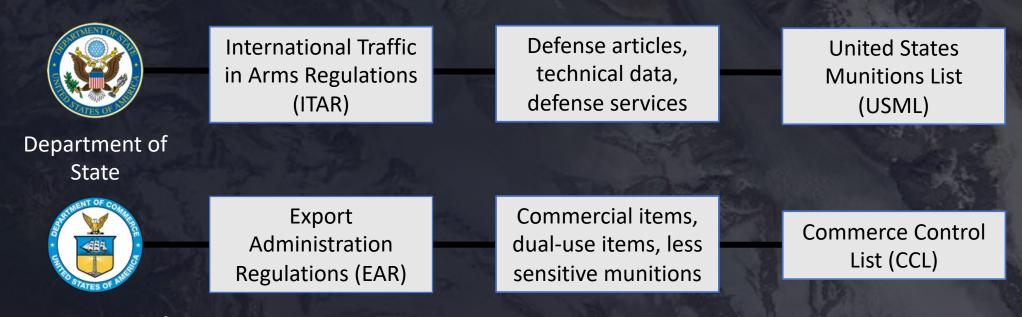- "Export" is defined within the U.S. Export Control Laws and Regulations.

Export Control Laws and Regulations

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Arms Export Control Act          Export Control Reform
     of 1976 (AECA)                Act of 2018 (ECRA)
              \                      /
                  U.S. President
                        |
          ┌─────────────┴─────────────┐
   Department of              Department of
   State (DOS)                Commerce (DOC)
        |                          |
   International               Export
   Traffic in Arms            Administration
   Regulations (ITAR)         Regulations (EAR)
   22 CFR §120-130            15 CFR §730-774
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- The goal of these laws and regulations is to protect our national security and policy interests.

- Both the **ITAR** and the **EAR** include criminal and civil penalties for export control violations that can result in monetary penalties, imprisonment, or both.

Export Control Laws and Regulations

Department of State

| International Traffic in Arms Regulations (ITAR) | — | Defense articles, technical data, defense services | — | United States Munitions List (USML) |

Department of Commerce

| Export Administration Regulations (EAR) | — | Commercial items, dual-use items, less sensitive munitions | — | Commerce Control List (CCL) |

Missile Technology Control Regime items appear on both the USML and CCL

If an items is listed on the USML or the CCL, an export authorization determination is required.

United States Munitions List (USML)

I - Firearms, Close Assault Weapons, and Combat Shotguns

II - Guns and Armament

III - Ammunition/Ordnance

IV - Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs, and Mines

V - Explosives and Energetic Materials, Propellants, Incendiary Agents and Their Constituents

VI – Surface Vessels of War and Special Naval Equipment

VII - Ground Vehicles

VIII - Aircraft and Related Articles

IX - Military Training Equipment and Training

X - Personal Protective Equipment

XI - Military Electronics

XII - Fire Control, Range Finder, Optical and Guidance and Control Equipment

XIII - Materials and Miscellaneous Articles

XIV - Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment

XV - Spacecraft and Related Articles

XVI - Nuclear Weapons Related Articles

XVII - Classified Articles, Technical Data and Defense Services Not Otherwise Enumerated

XVIII - Directed Energy Weapons

XIX - Gas Turbine Engines and Associated Equipment

XX - Submersible Vessels and Related Articles

XXI - Articles, Technical Data, and Defense Services Not Otherwise Enumerated

Commerce Control List (CCL)

Category 0 - Nuclear Materials, Facilities and Equipment and Misc.

Category 1 - Materials, Chemicals, Microorganisms and Toxins

Category 2 - Materials Processing

Category 3 - Electronics

Category 4 – Computers

Category 5 - Telecommunications and Information Security

Category 6 - Lasers and Sensors

Category 7 - Navigation and Avionics

Category 8 - Marine

Category 9 - Propulsion Systems, Space Vehicles and Related Equipment

Technical Data and Defense Services

The Department of State (DOS) has specific definitions of technical data and defense services in the ITAR:

Technical Data
Technical data is information that is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of an export-controlled item and must be protected in accordance with export control regulations (ITAR).

Defense Service
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 (ITAR).

Technology

The Department of Commerce (DOC) has a specific definition of technology in the EAR:

Technology
Per EAR, Information necessary for the "development," "production," "use," operation, installation, maintenance, repair, overhaul, or refurbishing (or other terms specified in ECCNs on the CCL that control "technology") of an item

Technology

Per EAR, "technology" may be in any tangible or intangible form, such as written or oral communications, blueprints, drawings, photographs, plans, diagrams, models, formulae, tables, engineering designs and specifications, computer-aided design files, manuals or documentation, electronic media or information revealed through visual inspection;

Per EAR, The modification of the design of an existing item creates a new item and technology for the modified design is technology for the development or production of the new item.

Proposal Best Practices

- Mark or identify export-controlled and proprietary information in proposals
  - Marking either pages, sections, or paragraphs
- Identify all foreign partners and participants
- Understand your responsibilities under the U.S. export control regulations
  - Articulate your export control plans

NASA's International Agreements

- NASA's International Agreements - the basis for NASA foreign cooperative (or reimbursable) activity

    - define the responsibilities of the parties, scope of the work to be performed, & the terms and conditions under which the cooperation will be affected

- All NASA International Agreements contain a clause on transfers of controlled goods & data

- NASA's International Agreements do **<u>NOT</u>** trump export control laws & regulations

An International Agreement does not replace a contractor's need for a license or other export authorization.

NASA Contractors and Export Control

- Contractor and their subcontractors are responsible for export compliance, including obtaining the required export authorizations and keeping the required records, in the execution of contracted work (NASA Federal Acquisition Regulations (FAR) Supplement (NFS) 1825.1103-70 and 1852.225-70)

  - NFS Clause 1825.1103-70 "Export control"

  - NFS Clause 1852.225-70 "Export Licenses"

- NPD/NPR 2190 is applicable to NASA contractors and grantees as required in their contracts or grants

- NASA contractors, should be coordinating with NASA in advance of any license application that will further a NASA program

- NASA provides review of licenses submitted to the Department of State and the Department of Commerce

NASA & Contractor Best Practices

- Early coordination between the NASA Program/Project Managers, Contractor(s), and NASA Headquarters or Center Export Administrator will benefit programs/projects.
    - Understand what is controlled
    - Identify international parties involved
    - Add export milestones to program/project schedule
    - Develop technology transfer control plan
    - Coordinate meetings with international partner(s) well in advance
- Mark/determine the export jurisdiction of data/hardware when created or acquired
- Recordkeeping

Important Links

- The Department of State is the regulatory authority for defense articles and defense services. http://www.pmddtc.state.gov/

- The Department of Commerce is the regulatory authority for dual-use items. http://www.bis.doc.gov/

- The NASA Export Control Program is at https://www.nasa.gov/oiir/export-control

Questions

Juan Santos

juan.f.santos@nasa.gov
202-358-1792

Mike Tu

michael.y.tu@nasa.gov
202-358-1196