



Public Works and
Government Services
Canada

Travaux publics et
Services gouvernementaux
Canada

CONTROLLED GOODS DIRECTORATE

POLICY – COMPLIANCE INSPECTIONS





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1. INTRODUCTION

The Controlled Goods Directorate (CGD) was created on 2001 04 01 to safeguard controlled goods and/or controlled technology within Canada and to prevent such goods from being accessed by unauthorized persons. To this end, the CGD created an Inspection Unit to ensure compliance with the [Defence Production Act](#) (DPA) and the [Controlled Goods Regulations](#) (CGR). Compliance is based on prevention, detection and deterrence by way of industry administration, outreach activities and inspections.

Canada's strategic export controls are based on national and international commitments concerning transfers of conventional weapons, missiles, chemical and biological weapons and nuclear-related goods and technology, and components thereof. CGD, a domestic security program, facilitates the promotion of global security through strategic export controls by ensuring the controlled goods and/or controlled technology are accessed only by registered, exempt or excluded persons within Canada. In this manner CGD strives to ensure that access to controlled goods and/or controlled technology contributes to security, rather than exacerbates international tensions, and at the same time, the CGD strives to strike a fair and equitable balance between the basic rights and freedoms of Canadians and the freedom of industry to conduct economic activities.

This Policy describes the responsibilities of the Inspection Unit in delivering the CGD's national compliance program. It also outlines key principles and describes the roles of regulated parties and the Inspection Unit's relationship with registered and non-registered persons, excluded persons, and industry associations.

More detailed information relating to the Inspection Unit's compliance activities will be issued from time to time in the form of Guidance documents flowing from this policy.

2. OBJECTIVE

The purpose of this document is to provide CGD staff with guiding principles for the fair, consistent, and uniform application and enforcement of the DPA and CGR. It is also intended to increase transparency by providing industry with a clear description of the Directorate's compliance and inspection role.

3. SCOPE

This policy applies to any individual, corporation, partnership or other business enterprise / organization carrying out business in Canada that examines, possesses or transfers controlled goods and/or controlled technology, as defined in the DPA.



4. DEFINITIONS

Compliance: The state of conformity of a regulated party (including a corporation, institution, individual or other legal entity) with a legislative or regulatory requirement or a recognized standard.

Inspector: Any person designated as an inspector for the purpose of compliance under [subsection 41\(1\)](#) of the DPA.

Inspection Unit: The CGD directorate whose primary role is to deliver a national compliance program under the mandate of the CGD.

Regulated Party: Any individual, corporation, partnership or other business enterprise / organization carrying out business in Canada that examines, possesses or transfers controlled goods and/or controlled technology within Canada.

Registered Person: any individual, corporation, partnership or any other business enterprise registered under the CGD.

Examine: means to investigate controlled goods and/or controlled technology by any means so as to provide a person with detailed knowledge of the controlled goods and/or controlled technology's inherent properties and performance characteristics that would allow that person to use this knowledge so that the good could be reproduced or replicated, or the performance of a similar article could be improved.

Possess: means either actual possession, where the person has direct physical control over a controlled good at a given time, or constructive possession, where the person has the power and the intention at a given time to exercise control over a controlled good, either directly or through another person or persons.

Transfer: means, in respect of a controlled good, to dispose of it or disclose its content in any manner.

5. POLICY STATEMENT

The following guiding principles govern the CGD Inspection Unit in the application of the Act and Regulations under its mandate:

- Transparency

The Compliance Policy is a public document.

Consistent with and in the spirit of the Privacy and Access to Information Acts, the Inspection Unit will make aggregate information that does not identify individual parties or companies on compliance activities available to the public.



- Fairness

The Act and Regulations will be applied in a manner that is fair and equitable. The Inspection Unit will follow a predictable, uniform, and national approach to compliance for all of CGD inspections.

A non-discriminatory and unbiased approach to compliance will be followed. The same practices and procedures are used when enforcing the legislation, irrespective, amongst others, of the race, national or ethnic origin of the person.

Other than in exceptional circumstances, inspections will be conducted during normal working hours. Inspectors will avoid situations where they may be placed in a conflict of interest, including the acceptance of gift or gratuities (see [Treasury Board policies and code of conduct](#)).

- Based on Risk Management

The Inspection Unit's decision-making process will be guided by the level of risk that controlled goods and/or controlled technology may be transferred to unauthorized persons and will follow the risk management decision-making principles outlined in the CGD- decision making framework document (under development).

Compliance activities will be based on a prioritization of the level of risk, including the sensitive nature of the goods and the threat posed to improper handling and access.

- Qualified Staff

Inspection Unit employees will be given adequate training to ensure they are qualified and knowledgeable of the products and activities being regulated, the clients they are serving, and the environment in which they are operating.

6. RESPONSIBILITIES / POLICY REQUIREMENTS

6.1 RESPONSIBILITIES

The security of controlled goods and/or controlled technology is a responsibility that is shared between government, industry, their respective associations and consumers. Regulated parties have the primary responsibility for ensuring the controlled goods and/or controlled technology, which they manufacture, import or distribute are not examined, possessed or transferred to unauthorized persons. These regulated parties must comply with all legislative and regulatory requirements.

The Inspection Unit, pursuant to Section 42 of the DPA has the legislative authority to conduct compliance activities including the delivery of inspections.



6.2 AUTHORITIES

The Minister of Public Works and Government Services Canada (PWGSC) has the responsibility for ensuring compliance with the relevant legislation and regulations identified in section 1 of this document. This responsibility is discharged on a day-to-day basis by the CGD.

The Director General of the Industrial Security and Controlled Goods Sector has the responsibility for approving the use of the most invasive inspection tools, such as the removal and detention of controlled goods and/or controlled technology, or the most invasive compliance actions, such as the revocation of a Certificate or prosecution for non-compliance.

The Director of the CGD has the responsibility for ensuring the fair and consistent application of the compliance policy.

Inspectors are designated under subsection 41 (1) of the DPA. Their primary role is to ensure compliance of the relevant legislative and regulatory requirements.

The Ministry of International Trade Canada is responsible for the Export Control List (ECL) and the determination as to whether an item is a controlled good as defined in the schedule of the DPA, which is based on the ECL.

6.3 COMPLIANCE ACTIVITIES (PREVENTION)

6.3.1 Education, Consultation, and Information

Compliance is facilitated when legislative and regulatory requirements are clearly identified and understood, and accessible to all stakeholders. The Inspection Unit will encourage industry and other stakeholders to participate in the development of standards related to controlled goods and/or controlled technology. Through a close cooperative approach, the Directorate will strive to consult with industry and stakeholders on legislative, regulatory, and policy issues, as well as amendments thereto.

The Inspection Unit will primarily encourage compliance through educational activities and the sharing of information on regulatory matters.

6.3.2 Inspection

Normally the Inspection Unit conducts basic compliance inspections, in order to ensure regulated parties comply with the relevant Act and Regulations. These inspections are by their very nature non-confrontational and are conducted during normal work hours.



Where the Inspection Unit identifies, or is notified of, a potential problem, the Inspection Unit will take steps to determine whether non-compliance has occurred. Problems may also be identified by other means, including industry complaints, referrals from other provincial and federal regulatory agencies, international partners, or other CGD units.

6.4 ACTIVITIES FOR NON-COMPLIANCE

Where non-compliance is brought to the attention of a regulated party by the Inspection Unit or otherwise, it is the regulated party's responsibility to take timely and appropriate action to comply with legislative and regulatory requirements. Compliance will primarily be achieved through a close cooperative approach between the regulated party and the Inspection Unit; however, when this is not possible, or when the regulated party is unable to correct non-conformities, a number of enforcement options may be used.

When discussing non-compliance with a regulated party, the Inspection Unit will clarify what is necessary to achieve compliance; however, except for specific legislative requirements, the Inspection Unit will not dictate how compliance is to be achieved. A standard of reasonableness will be applied.

The primary objective is to manage the risk of unauthorized access and to have the responsible regulated party comply with the Act and Regulations using the most appropriate level of intervention: starting from the least intrusive level of intervention to the most invasive. The most intrusive level of intervention, such as the removal of controlled goods and/or controlled technology must be approved by Directorate senior management, except under exceptional circumstances. Exceptional circumstances are defined as the risk of an immediate transfer of controlled goods and/or controlled technology to an unauthorized person or when there are reasonable grounds to believe an imminent danger to public safety exists.

The Inspection Unit will evaluate instances of non-compliance to determine the most appropriate action(s) to be taken. This determination will consider the various circumstances of each case and will take into account, along with other applicable information, the following or any combination of the following factors:

- the risk of unauthorized access;
- the compliance history of the regulated party;
- whether the regulated party acted with indifference or premeditation;
- the degree of cooperation offered by the regulated party to Inspection Unit officials once the problem is identified;
- the likelihood that the same problem will reoccur;
- the likelihood that appropriate remedial action is taken;
- the need to maintain public confidence in the programs administered by Inspection Unit; and,
- the CGD's priorities and available resources.

One or more of the following actions may be taken to achieve compliance for violations of the Act and Regulations.



6.4.1 Voluntary Disposal

A voluntary disposal is a decision by a regulated party to destroy a controlled good for which they are not registered or to have it transferred to an authorized person. Voluntary disposal is normally reserved for persons who are not registered with the CGD, but are in possession of controlled goods and/or controlled technology. In considering whether to seek a voluntary disposal, the Inspection Unit will consider the following factors:

- the degree of cooperation offered by the regulated party;
- the possibility of transfer to an authorized person; or
- the possibility of conversion into a non controlled good; and
- the extent to which the disposal can be monitored.

Prior to any voluntary disposal-taking place, the regulated party will be given the opportunity to register with the CGD.

6.4.2 Negotiated Compliance

Where a regulated party is made aware of non-compliance of which it was not aware, but is willing to comply with, the Inspection Unit will negotiate a resolution with the regulated party based on the following factors:

- compliance must take place within an appropriate time frame;
- the risk of unauthorized access;
- the compliance history of the regulated party;
- the current willingness to comply; and
- the likelihood of success.

6.4.3 Warning Letter

The CGD may issue a warning letter to a regulated party when it is believed that non-compliance has occurred or is continuing and the risk of unauthorized access, possession or transfer of controlled goods and/or controlled technology is such that it does not warrant stronger enforcement action. The CGD will consider the compliance history of the regulated party and any efforts to achieve compliance. If a warning is ignored or disregarded, the CGD may escalate its enforcement activities.

The CGD will provide the regulated party reasonable time to explain non-compliance and/or to comply, prior to escalating enforcement activities.

6.4.4 Formal Hearing

A Formal Hearing is an official meeting with the regulated party to discuss issues of non-compliance. The meeting is held at the discretion of the Director of the CGD as a means of obtaining compliance following an inspection. Such a hearing may be appropriate when previous enforcement options (e.g. a warning) have not been effective, or prior to



initiating more serious enforcement options (suspension or revocation of certificate, or prosecution). A hearing may also be appropriate before registrations are reinstated.

6.4.5 Suspension or Cancellation of Registration

In exceptional circumstances, and where there are reasonable grounds to believe that provisions of the Act and Regulations have been contravened, a risk of unauthorized access exists and there is no indication that the regulated party will comply, the Inspection Unit will consider recommending that steps be taken towards suspending or revoking a certificate of registration. The Inspection Unit's role will be to ensure that the regulated party complies with the CGD's decision to suspend or revoke a registration certificate, including the removal and detention of controlled goods and/or controlled technology.

The Inspection Unit may also recommend that the regulated party take reasonable measures to ensure compliance, if there are reasonable grounds to believe that these measures are necessary to prevent unauthorized access to controlled goods and/or controlled technology.

6.4.6 Removal and Detention

Under [subsection 42\(2\)](#) of the DPA, inspectors may detain or remove any controlled good, until the inspector is satisfied that the requirements of the DPA or the Regulations are met.

Removals and detentions of controlled goods and/or controlled technology are usually the last resort in ensuring compliance. These measures will only be applied in exceptional circumstances, and normally with the approval of Directorate senior management.

Removals or detentions are immediate tools for controlling non-compliance. When determining whether to implement a removal and/or detention, the Inspection Unit will consider the risk of unauthorized access and the compliance history of the regulated party. Removals or detentions with respect to registered persons must have the approval of the Director General of the Industrial Security and Controlled Goods Sector, except in circumstances where public safety is at risk or where there is an immediate risk of the transfer of controlled goods and/or controlled technology to an unauthorized person.

In cases where a regulated party is not registered with the Controlled Goods Directorate, the immediate removal and detention of controlled goods and/or controlled technology may be authorized by the Director of the Controlled Goods Directorate when regulated parties refuse to register with the Directorate.

6.4.7 Prosecution

A prosecution is a legal proceeding in which the criminal courts determine whether the applicable legislation has been contravened and if so, may apply an appropriate penalty. As stated in [subsection 45\(1\)](#) of the DPA, every person who knowingly transfers a controlled good to, or permits the examination of a controlled good by, a person who is not registered or exempt from registration is guilty of:



- an offence punishable on summary conviction and liable to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding two years; or to both; or
- an indictable offence and liable to a fine not exceeding \$2,000,000 or to imprisonment for a term not exceeding 10 years, or to both.

The Inspection Unit may recommend that charges be laid for non-compliance. Factors to be considered include :

- non-compliance creates a risk of unauthorized access;
- non-compliance is continuing in nature;
- non-compliance was premeditated, indifferent, reckless or a marked departure from a reasonable standard of care; or
- other enforcement activities have proven unsuccessful.

Prosecutions may be undertaken in conjunction with other enforcement measures such as removals, if the circumstances warrant it.

7. RECOURSE MECHANISM

The CGD recognizes that some of inspection-related decisions may be disputed by regulated parties. In the interest of transparency and fairness, the CGD has implemented an appeal process to facilitate the resolution of contentious issues.

8. APPROVAL/EFFECTIVE DATE

This Compliance Policy is effective as of June 11, 2004.