## Pennsylvania State System of Higher Education **Procedure/Standard Number 2012-14** Compliance with United States Export Control Laws

# Supplemental Information

Appendices

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## Appendix A Export Controlled Areas/Activities

High Risk Areas

It is useful to note that export controls are frequently, but not exclusively, associated with items, information, or software within the following general areas:

Chemical, Biotechnology and Biomedical Engineering Materials Technology Remote Sensing, Imaging and Reconnaissance Navigation[(9e2 11.04 11 2064 524.4(g)]TJEe2

## EAR Commerce Control List

Categories of items on the list that is published by the Department of Commerce including dual-use items:

- 0 Nuclear Materials, Facilities and Equipment and Miscellaneous
- 1 Materials, Chemicals, ``Microorganisms" and Toxins
- 2 Materials Processing
- 3

## Appendix B An Additional Exemption under ITAR

The ITAR Exemption for Disclosures to Bona Fide Full-time Regular Employees

The bona fide full-time regular employee is an exemption available <u>for items</u> controlled only by the ITAR. It is not IS.-5()r-11(e si)-4( nce.6212A)]TJETC /P &MCID 518BDC /0-

## Appendix C Guidance For Export Controlled Research

#### A. Institutional Reviews

No program of research that requires secrecy may be conducted at a PASSHE University, other than the exceptions specifically allowed after careful and deliberate review by the Provost or President.

In regard to sponsored research, PASSHE Universities shall adapt the following for inclusion on Institutional Proposal Routing Forms:

#### Export Control

1. Does this project involve a) restrictions on publication or b) access to restricted or confidential data? YES/NO

If the answer is YES, the Sponsored Research Office (SRO) should have the principle investigator (PI) complete the additional questions contained on Form 1, which screens projects to determine if they do NOT qualify for the Fundamental Research Exclusion. Also, at the point that any research agreements are signed the SRO must complete Form 2, which is a final check on the Fundamental Research Exclusion.

- Does this project involve any foreign nationals or foreign travel? Yes/No If the answer is YES, the SRO must undertake a more comprehensive review of the research for export control compliance using Form 3. Documentation shall be retained in the SRO files.
- B. Export Licensing: Where export control regulations apply and where no regulatory exclusion or exemption is available, an export license will be required before exportcontrolled items or information can be shared, abroad or on campus, with foreign nationals participating or collaborating in affected research projects. The following activities, among others, might be restricted:

The ability of foreign scholars and students to participate in export-controlled research at PASSHE Universities;

The ability of PASSHE University researchers to disclose or discuss previously

## Appendix D Guidance For Travel

#### A. General

The guidance provided herein applies to all university funded or sponsored travel. It also applies to faculty who travel when on sabbatical.

In general, the majority of international exchanges among faculty and students may go forward without the requirement of an export license, provided they do not concern detailed information regarding controlled items or technologies (information and items subject to Export Controls). As you plan your trip, verify with the designated University office that your technology or information falls into one or more of the following categories prior to travelling:

Published information Publicly available software Educational information Patent applications

In addition, University travelers shoul G SHUIRUP D ´UHVWULFWHG SDUW\µ VFU that they are not doing export controlled business with an embargoed country or ´VSHFLDOO\ GHVLJQDWAHGconSoLDdA/tedROxDore@twing list is available at <u>http://export.gov/ecr/eg main\_023148.asp</u>. Instructions on completing such a screening are posted on this web site. University SROs or Travel Officers shall adopt procedures to ensure this screening occurs for University-sponsored travel. AdminiVWUDWRUV PD\ FRQVXOW ZLWK WKH 6\VWHP+V ([SRUW & RQW

While typical personal travel costs to an embargoed country are allowed, including lodging and meals; transactions of a business nature might be illegal. In some limited cases personal security services might be an appropriate travel cost.

#### B. Conferences

When planning a trip abroad, travelers should familiarize themselves with export controls and embargoes. The university traveler must ensure that any information that he/she will discuss or any items that he/she will transport are either not controlled, or, if controlled, proper licenses are in place. Because the traveler and the University can be held liable for improperly transferring controlled items or technology, it is important that travelers and travel approvers review the federal requirements. Most travel for conferences will fall under an exclusion to the export control regulations: Information that is published and is generally accessible to the interested public through publication in books or periodicals available in a public library or in bookstores, or information that is presented at a conference, meeting, seminar, trade show or other open gathering is conduct research or educational activities, check first with the designated university office. A determination will be made by the appropriate office in consultation with the PASSHE Export Control Officer as to whether a license is required. Some countries can require a specific license that might take several weeks to obtain. For the most current list of restricted countries please consult the OFAC's Sanctions Program and Country Summaries website.

#### D. Laptop computer, PDA, cell phone, and data storage devices.

When an individual is traveling outside of the United States, a laptop computer, PDA, cell phone, data storage devices and encrypted software might require an export license or other government approval to be taken to many countries outside of the United States. The University is required to document the export (even a temporary export) of these items if they are owned by the University.

A personal computer taken abroad might contain strong encrypted software that requires a government license or other government approval for export to many countries.

Regardless of ownership, any controlled technology must remain under your constant effective control. Temporary exports under the "Tools of Trade" or the %DJJDJHµ license exception apply when the laptop, PDA, cell phone, data storage devices and encrypted software are:

Hand-carried with you at all times while you travel, Carried in your luggage or baggage that travels with you, or Shipped no more than thirty days prior to your departure, or may be shipped to you at any time while you are outside the country

Generally, so long as the traveler (1) retains the laptop computer, PDA, cell phone, data storage devices and encrypted software under his/her personal custody and effective control for the duration of travel; (2) does not intend to keep these items in these countries for longer than 1 year; and (3) are not traveling to Cuba, Iran, North Korea, Sudan or Syria, no government export license is required. Note that this license exception is not available for equipment, components or software designed for use in/by/with most satellites or spacecraft. ´(IIHFWLYH FRQWUROµ PHDQV UHWDL possession of an item or maintaining it in a secure environment.

Two checklist certifications are available for travelers taking university OR personal laptop computer, PDA, cell phone, data storage devices and encrypted software to controlled countries. The certification should be carried with the person at all times. The checklist certifications follow in Appendix Fas Forms 5 and 6.

#### E. Other University Equipment

Researchers frequently need to take other university equipment temporarily outside of the United States for use in University-sponsored research. The tools of trade license exception will not always apply to research equipment. Some equipment (e.g., global positioning systems (GPS), thermal imaging cameras, magnetometers, inertial measurement units and specialty software), are highly restricted and might require an export license to take, even if hand-carried. If taking University equipment other than a laptop computer, PDA, cell phone, data storage devices, contact the designated University office, which shall consult with the PASSHE Export Control Officer to determine if an export license or other government approval is required prior to taking the equipment out of the country. A temporary transport out-of-country might be feasible if the equipment does not require a license; however, it still requires a Certification that is filed with the University and forwarded to the PASSHE Export Control Officer.

#### F. License Exceptions And Exemptions Related To Travel Outside The U.S.

A License Exemption <sup>[3]</sup> might be available to <u>ITAR controlled technical data</u> transmitted outside the U.S. if the individual transmitting the technical data can certify that:

- 1. the technical data is to be used overseas solely by a U.S. person(s);
- 2. the U.S. person overseas is an employee of the University or the U.S. Government and is not an employee of a foreign subsidiary;
- 3. if the information is classified, it will be sent overseas in accordance with the requirements of the Department of Defense Industrial Security Manual; and,
- 4. no export will be made to countries listed by 22 C.F.R. § 126.1.<sup>[4]</sup>

Please note that other exceptions or exemptions might be available. Any individual intending to travel or transmit controlled data outside the U.S. should first consult with the designated University office.

All exceptions or exemptions for research activities must be documented with the University Office of Sponsored Programs and forwarded to the PASSHE Export Control Officer. All exceptions or exemptions for non-research activities must be documented by the designated University office and forwarded to the PASSHE Export Control Officer. The record must be maintained for at least five years after the termination of the

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## Appendix E Technology Control Plans

If an activity requires an export control license, it also will require a Technology Control Plan (TCP) to manage security on export controlled projects. Security measures will be appropriate to the classification involved. Moreover, a project-VSHFLILF 7&3 VKRXOG EH D VLJQLILFDQW WRRO LQ HY compliance with the export control laws.

A comprehensive, institution-wide TCP can protect all controlled items (hardware, software and information) from access by unlicensed foreign nationals on campus and can, in some cases, actually alleviate the need for a government Export License, the processing of which requires extensive documentation and can greatly delay a project implementation.

A template activity-specific TCP is available from the Export Control Officer.

## Appendix F Forms and Processes

#### 1. FUNDAMENTAL RESEARCH EXCLUSION REVIEW For Researchers

It is important the University and its researchers are familiar and comply with the export control laws and regulations that govern research funding. Identifying proposals subject to export control laws and regulation early in the funding process aids in efficient and effective project management. Offices of Sponsored Programs must include the IROORZLQJ FKHFNOLVW DV SDUW RI WKH LQVWLWXWLRQ.V SURSF

Principal investigators shall use this tool to determine if export control regulations may apply to their proposal.

	YES	NO	' <b>RQ·</b> Know
Doesthisproposal, project or agreement:			
Restrict researcher participation (faculty, student, others)			
based on country of origin or citizenship?			
Prohibit the involvement of foreign persons or entities?			

3. EXPORT CONTROLS DECISION TREE for SRO

# shipping or hand-carrying the item (s) or software overseas. If you have any questions about the IRUPV RU SURFHVV SOHDVH FRQWDFW \RXU XQLYHUVLW\·V VSRQVRUHG

DESTINATION COUNTRY: \_\_\_\_\_

Yes

Detailed description of item to which this certification applies:

(Brand/Model and PASSHE/University Barcode Tag Number/Serial Number (if any) of item (s), list of software installed, etc. Continue on additional sheet if needed.)

By my signature below, I certify that:

- , ZLOO WDNH WKH LWHPV WHFKQRORJ\ RU VRIWZDUH DEURDG 21/< conduct PASSHEbusiness;
- 2. I will return the items, technology or software to the U.S. no later than 12 months from the date of leaving the U.S. unless they are certified by me to have been consumed or destroyed abroad during this 12 month period;
- I will keep WKH LWHPV WHFKQRORJ\ RU VRIWZDUH XQGHU P\ ´HIIHFWL` (defined as retaining physical possession of an item or maintaining it in a secure environment <sup>2</sup> such as a locked hotel business office safe [not a hotel room safe] or secure facility);
- 4. I will not take the items to Cuba, Iran, North Korea, Syria, or Sudan unless I have received DSSURYDO IURP 3\$66+(.V ([SRUW & RQWURO 211LFHU LQ ZULWLQJ
- 5. I will not take any item or software incorporating PASSHE-developed, non-commercial strong encryption source code outside the borders of the United States unless I have UHFHLYHG DSSURYDO IURP 3\$66+(.V ([SRUW & RQWURO 211LFHU LQ 2)

Sgned:\_\_\_\_\_

Print name: \_\_\_\_\_ Date: \_\_\_\_\_

\*Please keep a signed copy with you when traveling abroad and another in your files.\*

 TRAVEL OUTSIDE THE U.S. WITH PERSONAL-OWNED ELECTRONIC DEVICES (BAGGAGE EXCEPTION<sup>2</sup>) CERTIFICATION FOR LICENSE EXCEPTION for Export Administration Regulations (EAR) Controlled Items, Technology, and Software

<sup>&</sup>lt;sup>2</sup> Authorizes an individual leaving the US either temporarily or long-term... to take to any destination or series of destinations, the classes of commodities and software described in this section, for the personal use of the individuals or members of their immediate families traveling with them provided the transaction meets all to the criteria in EAR Part 740.14.

This form applies to travel with laptops, smart phones, etc., that are owned by the individual. It <u>applies if a license to export is normally required for your item</u> by the U.S. Export Control laws.

This checklist summarizes the requirements for an export license *exception* for temporary export of personal items or software that is otherwise controlled by U.S. Export Laws and regulations. Before shipping or hand-carrying any items or software abroad, you will need to COMPLETE AND RETAIN this certification to document this license exception. If you have any questions about the IRUPV RU SURFHVV SOHDVH FRQWDFW \RXU XQLYHUVLW\·V GHVLJQDWH

The export of items, technology, some software, and encryption code is subject to export control regulations (this includes laptops, PDAs and digital storage devices). The Department of & RPPHUFH·V ([SRUW \$GPLQLVWUDWLRQ 5HJXODWLRQV (\$5 PDNHV DQ F requirements for the temporary export or reexport of certain items, technology, or software for personal or professional use as long as the criteria to which you are certifying below are met. The exception does not apply to any satellite or space-related equipment, components, or software, or to any technology associated with high-level encryption products. In addition, this exception does not apply to items, technology, data, or software regulated by the Department RI 6WDWH·V, QWHUQDWLRQDO 7UDIILF LQ \$UPV 5HJXODWLRQV ,7\$5

Detailed Description of Items, Technology or Software to which this Certification applies: [Insert description here]

By my signature below, I certify that:

1.

## Appendix G Definitions

Actual Export <sup>2</sup>Technology and information leaving the shores of the United States.

Commerce Control List (CCL) - A list of goods and technology regulated by the Department of Commerce through the Export Administration Regulations (EAR). Items on this list are marked for dual-use, which means that they are commercial goods that could be used for military purposes.

Commodity Jurisdiction Ruling <sup>2</sup>A request that can be made to the State Department to determine whether the Export Administration Regulations (EAR) or International Traffic in Arms Regulations (ITAR) have jurisdiction over the export of a good or technology.

Controlled Physical Items <sup>2</sup>Defense articles listed on the International Traffic in Arms Regulations (ITAR) and dual use items listed under Export Administration Regulations (EAR).

Deemed Export <sup>2</sup>Providing, transferring or disclosing technology information to a foreign national within the U.S. See 15 CFR734.2(b)(2)(ii). The following are examples of how a deemed export can be transmitted:

Fax Telephone conversations Email communications Face-to-face discussions Tours of labs Training sessions Computer data

Defense Article <sup>2</sup> (ITAR 120.6) Any item designated in the U.S. Munitions List. Examples include specified chemical agents, cameras designated for military purposes, specified lasers, and GPS equipment. It also means any technical data recorded or stored in any physical form, models, mock-ups, or other items that reveal technical data directly UHODWLQJ WR WKH SDUWLFXODU LWHP RNUL GHIHQVH DUWLFOHµ

Defense Service <sup>2</sup> (See <u>22 CFR 120.9</u>) The furnishing of assistance, including training, to foreign persons, whether in the U.S or abroad, in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing, or use of defense articles (those listed on the USML). Furnishing any technical data controlled by ITAR to a foreign person in the U.S or abroad also constitutes a defense service under the regulations.

Dual-use <sup>2</sup>Items that are listed on the Commerce Control List (CCL). These goods and technologies are commercial in nature but could be used for military purposes.

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#### under one of the ten specific CCL categories.

Embargoed Countries <sup>2</sup>Designated by the US Treasury, Office of Foreign Assets Control and published at <u>http://www.ustreas.gov/offices/enforcement/ofac/programs/</u>. As of this date (11-24-2010) the list includes; Balkans, Cuba, Iran, Iraq, Libya, N. Korea, Burma (Myanmar), Liberia, Sudan, Syria, Zmbabwe and Palestinian Territories.

#### Export<sup>2</sup>

Transfer to a foreign person in the U.S. or abroad of:

Controlled technology Information Equipment Software Services

Transfers can be by:

Actual shipment outside the U.S. Electronic or digital transmission Visual inspection in or outside the U.S. Written or oral disclosure Actual use or application on behalf or for benefit of foreign person or entity

Reference should be made to the official definition of export under the <u>EAR</u> and <u>ITAR</u> when determining whether a specific act constitutes an export.  $V H[SRUW\mu LV FXUUHC]$ defined, it precludes a foreign national (either faculty or student) from participating in research that involves covered technology without first obtaining a license from the appropriate government agency.

Export Administration Regulations (EAR) <sup>2</sup>Federal regulations on dual-use (military and commercial) items through the U.S. Department of Commerce.

Export Control Officer (a.k.a. Empowered Official) <sup>2</sup> The Empowered Official/Export Control Officer is the chief senior official in the University/System who is responsible for compliance with export controls and embargoes. Their duties include completion of Commodity Jurisdiction requests, submission of license requests, preparation of Technology Control Plans, initiating and responding to investigations of noncompliance. ITAR regulations require that s/he is employed in a position having authority for policy or management; is legally empowered to sign license applications or other requests for approval; understands the provisions and requirements of the various statutes, regulations, criminal liability, civil liability and administrative penalties for violations. In addition, s/he must have the independent authority to: enquire into any aspect of a proposed export or temporary import; verify the legality of the transaction and the accuracy of the information; and refuse to sign any license application or other request for approval without prejudice or other adverse recourse. The system Chancellor has designated an Export Control Officer to serve all Universities in the system.

Foreign organization <sup>2</sup>see Foreign National/Person.

Foreign National/ Foreign Person <sup>2</sup>means any natural person who is not a lawful permanent resident (i.e. not a green card holder) or who does not have refugee or asylum status. It also means any foreign corporation, business association, partnership, trust, society or any other entity or group that is not incorporated or organized to do business in the United States, as well as international organizations, foreign governments and any agency or subdivision of foreign governments (e.g., diplomatic missions).

Fundamental Research <sup>2</sup>as it pertains to export controls, includes basic or applied research in science or engineering at an accredited institution of higher learning in the U.S. where the information is ordinarily published and shared openly in the scientific community or is about to be published, as distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which are ordinarily restricted for proprietary or national security reasons.

International Traffic in Arms Regulations (ITAR) <sup>2</sup> 7 KH 6 W D W H 'H S D U W P H Q W · V U H J X O goods or technologies inherently military in nature.

Office of Foreign Assets Control (OFAC) <sup>2</sup>Administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals through the Department of the Treasury.

Public Domain <sup>2</sup>Information that is published and generally accessible to the public: through sales at newsstands and bookstores; through subscriptions available without restriction to anyone who may want to purchase the published information; through second class mailing privileges granted by the U.S. Government; at libraries open to the public or from which the public can obtain documents; through patents available at any patent office; through unlimited distribution at a conference, meeting, seminar, trade show or exhibition that is generally accessible to the public and is in the U.S; through public release (i.e., unlimited distribution) in any form (not necessarily published) after approval by the cognizant U.S government department or agency; and through fundamental research. See 22 CFR 120.11

Published Information <sup>2</sup>Information is considered published when it appears or is

question must be free or for a fee that does not exceed the cost to produce and

### Appendix H Scenarios (provided by J. Norris and WPI)

1. A foreign national student from Syria enrolls in a summer program at the Marine 6FLHQFH & RQVRUWLXP·V IDFLOLW\ LQ :DOORSV, VODQG ,Q participating 0051\$00AcT,rocket launches. Do we need a license?cT,

Yes WKH DFWLYLW\LV QRW LQ WKH XQLYHUotVoLUAVNify VorffHe XUVH FD Educational Information Exclusion. However, the license ap 005pli005cation will be rejected due to the U.S. JRYHUQPHQW·V VWDQGLQ-0005Sa bu0055p Volva Fifdr NethiseOs Fo OS yria, 7. A faculty member is going to Germany to do research at a German university while on sabbatical. 6LQFH \*HUPDQ\ LVQ·W D WHUURULVW FRXQWU\ embargoed list, does he need any license or approval?

Yes. The research itself might be controlled and he might be sharing the results with foreign nationals from controlled countries while in Germany.

8. I am doing basic research in the area of remote sensing on a contract from the Department of Defense. The contract includes a clause restricting the release of unclassified information without sponsor approval. I would need approval from the sponsor to publish the information. Am I free to share the research results with all the students in my laboratory, including foreign students, prior to publication?

No. Accepting the clause negated the FRE and thus foreign nationals working on

## Appendix I Links

Introduction to Commerce Dept. Export Controls <u>http://www.bis.doc.gov/licensing/eccn.pdf</u>

<u>Office of Foreign Assets Control (OFAC)</u> -- Administers and enforces economic and trade sanctions against targeted foreign countries, terrorists, international drug traffickers, and those engaged in activities related to the proliferation of weapons of mass destruction

- o OFAC Boycotted Countries List http://www.ustreas.gov/offices/enforcement/ofac/programs/
- o OFAC List of Specially Designated Nationals and Blocked Persons List

Universities Leading the Way in Export Control Compliance

- o <u>MITExport Control Resources</u>
- o University of Pennsylvania
- o <u>University of Maryland Export Control Guidance</u>
- o Vanderbilt University

## Appendix J University Designated Officers (Italics indicates unconfirmed)

PASSHE	Human Resources	Information Technology	International Education	International Travel	Procurement	Sponsored Research
BL	Jerry Reed j <u>reed @bloomu</u> . <u>edu</u>	Wayne Mohr <u>wmohr@bloo</u> <u>mu.edu</u>	Madhav Sharma <u>msharma@bl</u> <u>oomu.edu</u>	Danielle Peters <u>dpeters@bloo</u> <u>mu.edu</u>	Jeff Mandel <u>jmandel@bloo</u> <u>mu.edu</u>	Jerrold Harris j <u>harris@bloom</u> <u>u.edu</u>
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