

**Office of the Chancellor  
Pennsylvania State System of Higher Education  
Procedures and Standards for University Operations**

**Procedure/Standard Number 2012-14  
Compliance with United States Export Control Laws**

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Chancellor

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**I. Introduction**

The Pennsylvania State System of Higher Education (PASSHE) is committed to the principle that teaching, research and service shall be conducted openly and without prohibitions or restrictions to the publication and dissemination of the results of academic, scholarly and research activities. However, Export Control Laws are federal laws and regulations that restrict the transfer of certain materials, technology, related technical data and certain services outside the United States in the interest of protecting the national security and domestic economy. These laws have been in existence for many years. Every University faculty member, researcher, department head, dean and administrator should have a fundamental understanding and general awareness of Export Control Laws to know when to raise questions and alert responsible officials to a possible export control or embargo issue.

**II. Definitions**

A. **Commerce Control List (CCL):** A list of items (technology, hardware and software) regulated by the U.S. 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. A CCL [index](http://cr.y.p.to/export/ear2001/indexccl.pdf) is available at <http://cr.y.p.to/export/ear2001/indexccl.pdf>. The complete CCL is available as [Supplement No. 1 to Part 774](#).

- B. **Deemed Export:** Providing, transferring or disclosing export controlled items to a foreign national within the U.S. (See 15 CFR 734.2(b)(2)(ii).) The following are examples of how a deemed export can be transmitted: face-to-face discussions, tours of labs, training sessions, computer access, fax, telephone conversations, email communications or social media.
- C. **Exclusions:** Activities that are specifically described as excluded from export control in the federal *legislation*. There are three exclusions from the EAR:
1. **Educational Information:** Information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities; or information in the public domain. This includes information released on the University's academic courses, which are listed in its catalog, or in teaching labs associated with those courses. Limits of this exclusion are reviewed on page 9-10.
  2. **Fundamental Research:** 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. Limits of this exclusion are reviewed on page 9.
  3. **Public Domain:** Information that is published and generally available to the public, as well as publicly available technology and software, is "public domain" and is excluded from export control laws. The scope of this exclusion is reviewed on pages 10-11.
- D. **Export:** Any oral, written, electronic or visual disclosure, shipment, transfer or transmission outside the United States to anyone, including a U.S. citizen, of any commodity, technology (information, technical data or assistance) or software/codes. 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; or actual use or application on behalf or for benefit of foreign person or entity.
- E. **Export Control Regulations:** The federal regulations most applicable to University activities include (but are not limited to) the following.
1. [Export Administration Regulations \(EAR\)](#), implemented by the U.S. Department of Commerce, which controls the export of dual use technologies, i.e., items that are used, or have the potential to be used, for both military and commercial purposes that could adversely affect national security if exported.
  2. [International Traffic in Arms Regulations \(ITAR\)](#), implemented by the U.S. Department of State to regulate military or defense-related articles, technologies and services.

3. Treasury Department's [Office of Foreign Assets Control \(OFAC\)](#) administers and enforces economic and trade sanctions to protect foreign policy and national security goals. It controls the transfer of items and services of value to embargoed nations and imposes trade sanctions, and trade and travel embargoes aimed at controlling terrorism, drug trafficking and other illicit activities.
- F. **Export Control Officer (a.k.a. Empowered Official):** The Export Control Officer/Empowered Official is the chief senior official in PASSHE who is responsible for compliance with export controls and embargoes. The Chancellor has designated an Export Control Officer to serve all Universities in the System. His/her functional responsibilities are described on page 5.
- G. **Foreign National/Foreign Person:** 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).
- H. **Items:** Include commodities, software and technology. Examples of commodities include computer equipment, research equipment and components.
- I. **License:** When export control regulations apply and when no statutory or regulatory exclusion or exception is available, an export license from the appropriate federal agency is required before export-controlled items or information can be shared, abroad or on campus, with participating or collaborating foreign nationals.
- J. **License Exception:** The Department of Commerce and the Department of State have published regulatory criteria for exceptions to the license requirement that *would otherwise apply* to the activity. Use of any exception requires classification of the exception that is used, and documentation and certification that University personnel will abide by the regulatory criteria/conditions for the exception. (License Exceptions should not be confused with Export Control Exclusions.)
- K. **Restricted or Embargoed Countries:** ITAR regulations (2 CFR 126.1) specify countries to which exports and sales of *defense articles and defense services* are prohibited.
- L. **Sanctioned Countries:** Identified by the U.S. Department of the Treasury, through its Office of Foreign Assets Control (OFAC), in order to administer economic and trade sanctions that at times can restrict transactions and travel, or require licensing in order to travel to a sanctioned country, or to conduct business with a foreign entity or individual.

- M. **Specially Designated Nationals (SDN) List:** OFAC publishes a list of individuals and companies owned or controlled by, or acting for or on behalf of, targeted countries. It also lists individuals, groups and entities, such as terrorists and narcotics traffickers designated under programs that are not country-specific. Their assets are blocked and U.S. persons are generally prohibited from dealing with them.
- N. **Technology:** Information related to the development, use or production of an item. Examples of technology include operating manuals, data, drawings and specifications.
- O. **Technology Control Plan (TCP):** A plan to manage security on export controlled items and activities. A TCP is required whenever an export or activity requires a license. It is a significant tool in institutional and personal compliance with the export control laws.
- P. **United States Munitions List (USML):** A list published by the Department of Defense featuring twenty-one categories of defense articles and services that are controlled by the International Traffic in Arms Regulations (ITAR). The list is available at the [State Department website](#).

### III. **General Requirements**

#### A. **International Travel or Transmission/Shipment**

In general, the majority of international exchanges among faculty and students can go forward without the requirement of an export license, provided they do not concern detailed information regarding controlled items or technologies. When an individual is traveling outside of the United States, taking encrypted software and/or research equipment, or even a laptop computer, smart phone, or data storage device, s/he might require an export license, or certification and documentation of a license exception. A laptop computer taken abroad to a controlled country might contain strong encrypted software that is regulated under export control laws. The University is required to document the export (even a temporary export) of licensed items, or exceptions, if the items are owned by the University. A checklist to determine license exceptions is included in Supplemental Information.

Any individual intending to travel with or transmit/ship controlled items outside the U.S. (or to foreign nationals) should first consult with the appropriate University office to determine if there are any export control issues or requirements.

All license *exceptions* 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. Details on license exceptions are included in Supplemental Information.

## B. **Functional Responsibilities**

1. **Export Control Officer:** The Chancellor shall designate an Export Control Officer for the following export control duties:
  - Assist University Designated Officials, administrators, faculty and staff in compliance with the Export Control restrictions;
  - Provide resources to enable compliance with the Export Control regulations, such as "Supplemental Information," consultations, screening checklists, model documents and training material;
  - Conduct high-level risk assessments and prepare a system-wide risk management plan;
  - Submit license requests for restricted or controlled activities to federal agencies;
  - Determine eligibility for license exception;
  - Approve Technology Control Plans for activities and projects;
  - Conduct inquiries into export activities;
  - Act as liaison to federal agencies;
  - Provide for central record keeping and retention;
  - Work to raise campus awareness of export control requirements; and
  - Organize and chair a system-wide Export Control procedures/standards committee that comprises university personnel from all areas of responsibility.
2. **University Designated Officials:** Each University shall identify Designated Officials who shall be responsible for Export Control compliance in their respective areas, e.g., travel, research, information technology, procurement, asset control, human resources and other areas as necessary. Officials from these areas may have significant roles and responsibilities to fulfill when implementing a Technology Control Plan, such as restricting computer access or securing controlled research equipment from unauthorized foreign persons. See Appendix J in the Supplemental Information document.
3. **Human Resources Officers:** Human Resources (HR) officers must be alert to the requirement for a certification on H1-B Visa applications, which require the University official to certify whether an export license is required, based on the technology or technical data that the University will release, or otherwise provide access to the beneficiary (i.e., employee). Internally, HR officers shall obtain information from academic deans on an H1-B visa holder's access to technology and technical data, both at the time of hiring an H1-B visa holder and at any time thereafter during the life of the H1-B visa when there is a change in access. Upon a change in the H1-B visa holders' technology access, research focus and other items subject to export control, HR officers shall consult with legal counsel and/or the Export Control Officer to determine if export license or TCPs are required.

4. **Academic Deans:** Academic deans shall cooperate with Human Resources when hiring an H1-B visa holder and provide information on an H1-B visa holder/employee's access to technology and technical data to HR officers, both at the time of hiring the H1-B visa holder and at any time thereafter during the life of the H1-B visa. Changes in the visa holders' technology access, research focus and other items subject to export control must be forwarded promptly to the Human Resources office for follow-up.

Academic deans have an important role in developing and implementing a TCP, particularly in designing security measures that involve export-controlled equipment and research projects that are housed within the department or college. A dean might have to ensure the appropriate project director creates, secures approvals and implements the TCP.

5. **Procurement Officers:** When purchasing items, University procurement officers shall request that vendors provide technical specification sheets and the Department of Commerce's assigned ECCN or the Department of State's USML classification number. Purchased commodities that are on an export control list shall be tagged. Computers on which controlled software is installed shall also be tagged. Both technology and information about technology that is controlled, such as operating manuals, technical specifications, etc., shall be tagged and stored securely. Before awarding bids and again at the time of signing contracts or placing orders, the purchasing officer shall confirm the vendor is not on the Specially Designated Nationals List by checking the federal consolidated list, available at [http://export.gov/ecr/eg\\_main\\_023148.asp](http://export.gov/ecr/eg_main_023148.asp).
6. **Travel "Approvers:"** University administrators who approve official travel requests must be aware that, when traveling to **embargoed or sanctioned** countries, regulations may actually prohibit traveling with research equipment, a laptop, GPS, smartphone or similar data devices and prevent one from purchasing certain in-country business services. In addition, travel advisories containing general precautions and entry requirements are posted by the Department of State and should be consulted and followed. Travel to countries with comprehensive embargoes or sanctions, specifically (as of August 2012) Sudan, Cuba, Iran, Syria and North Korea, must be reviewed with the Export Control Officer. In addition, the SDN list identifies individuals and entities with which the University may not do business. Financial transactions involving SDNs will be blocked, so advance screening is required.
7. **Chief Information Officers (CIOs) or designee:** CIOs shall provide "clean" laptops for travelers from high-risk program areas on University sponsored business to reduce risks and facilitate use of license exceptions. A clean laptop has no export-controlled hardware, software, data or information. It has no high-encryption software. It has no personal files or settings, no passwords, no student records, personnel records or other sensitive confidential information. It may contain commercially-available software,

and encryption that protects any PASSHE network log-in. Utilizing a “clean” laptop greatly reduces the risk of loss, theft or inadvertent disclosure of protected information.

In many cases, CIOs have an important role in developing and implementing a TCP. CIOs shall be prepared to adopt extra network security measures when members of the university community need to store export controlled information or data on the University computer system. This is particularly important when unauthorized foreign nationals might otherwise have access to the shared network resources.

CIOs will be the primary University resource for other Designated University Officials who might have questions on the nature of encrypted software that the University deploys. (For example, encryption that is used to prevent remote access or reverse engineering of software is not controlled by the EAR.)

8. **International Education:** Directors of Study Aboard programs should be aware of the Embargoes and Export Control Regulations. In most cases, study abroad programs are conducted in non-export controlled countries. However, the travel restrictions and concerns outlined in section B5, above, are relevant.

Faculty who lead an overseas joint faculty-student research project (and/or administrators who approve such travel) shall consult with the Sponsored Research Officer as outlined in Section B11, below.

9. **Distance Education Deans and Enrollment Managers/Registrars:** Foreign students residing in countries that are under a comprehensive embargo, as administered by OFAC, may not enroll in on-line courses. The Student information System must flag such residents and prevent their registration for on-line courses. (As of August 2012 those countries were Cuba, Sudan, Iran, Syria and North Korea.)
10. **Foreign National Visiting Scholars or Students:** Foreign national visiting scholars or Foreign national students involved in research create a risk of a deemed export of controlled items. The restrictions that apply to exports to a specific country also apply to visiting scholars and students from that country. For example, if a specific piece of research equipment or related technology is export controlled, meaning it cannot be exported to specific countries without a license, then visiting scholars and students from those countries are not authorized to access or operate that piece of equipment without a license. **University officials who approve the placement of foreign nationals as visiting scholars or as student research workers** must ensure that export control laws are applied and, if necessary, consult with the Export Control Officer who will determine if a license application is necessary or if a license exception covers the case or deny the placement of the foreign national in the specific capacity.

11. **Sponsored Research Officers:** Research is perhaps the area of University operations where compliance with Export Controls will be the most prevalent and varied. Sponsored Research Officers shall screen all research proposals (including internally sponsored research) to determine if the research activity involves any foreign travel or foreign nationals. It shall also determine if the project involves any restriction on publication or access to restricted or confidential data. If a project involves either of these elements, the Sponsored Research Officer shall screen proposals in depth to determine if the research qualifies for the Fundamental Research Exclusion and to determine compliance with EAR, ITAR and OFAC regulations. The following activities, among others, may be restricted:
- The ability of foreign scholars and students to participate in export-controlled research at PASSHE;
  - The ability of PASSHE researchers to disclose or discuss previously unpublished research at conferences and meetings where foreign nationals are in attendance;
  - The ability of PASSHE researchers to engage in collaborations with foreign researchers, including restrictions on teaching foreign collaborators how to use export-controlled items in research; and,
  - The ability to transfer research equipment abroad.
12. **ROTC Programs and Campus Police:** ROTC programs and campus police must securely store all firearms, preventing any and all public access. The University must ensure that no firearm is issued to a foreign national employee without first ensuring the weapon is not on the USML and consulting with the System's Export Control Officer. If campus police store student firearms they must determine if the firearm is on the USML and if the student is a foreign national or on the SDN list. If firearms or weapons are confiscated on campus, the items will be secured per normal campus security protocol and the subsequent investigation will include verification of any export controls that apply to the item through consultation with the System's Export Control Officer.
13. **Export Control Procedures/Standards Committee:** A system-wide Export Control Procedures/Standards Committee will include university representatives from all areas of functional responsibility. Its purpose will be to identify areas of non-compliance and procedures for compliance; provide input on the effect of federal Export Control Reform and regulatory changes and propose revisions/updates to the procedure/standards; provide assistance in preparing a system-wide risk management plan; develop additional supplemental information as needed; provide expertise in specific areas to the benefit of other system universities; and other functions that arise related to this purpose.



## C. Exclusions from Export Control Laws

There are several exclusions provided for in the export control legislation, making them outside the scope of the law. These exclusions cover many of the activities that occur in PASSHE and help preserve freedom to do basic research, teach and publish without restriction.

1. **Fundamental Research Exclusion:** Fundamental research 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. It is **not** proprietary research or industrial development, design, production and product utilization, the results of which are ordinarily restricted for proprietary or national security reasons. Only information, NOT the materials or software, resulting from fundamental research is excluded from Export Control Regulations.

The Fundamental Research Exclusion will be voided if researchers sign side agreements (including material transfer and non-disclosure agreements) that contain publication restrictions or restrictions on who can participate in the research. *It is vital that no one sign any agreements that pertain to export controls, or contain any language that restricts publication or who can participate in the research, without first consulting with the University Sponsored Research Officer to initiate legal review.*

Particular care must be exercised in the negotiation and acceptance of research projects that might be subject to restrictions on the export of data and information. PASSHE may accept research agreements that: (1) indicate that technical data generated under the agreement might be subject to export control regulations; and (2) include the requirement that foreign nationals be identified to the sponsor prior to their involvement in the project. If the sponsor exercises further restrictions on the publication of these data or on the access to, or the participation in, the research by foreign nationals, PASSHE may elect to decline or terminate the agreement if these restrictions are deemed unreasonable under the circumstances. Any agreement that goes beyond these basic parameters—which specifically indicates that the technical data resulting from the project shall be subject to export control and/or reserves sponsor approval in connection with the hiring of foreign nationals—must be evaluated on a case-by-case basis by the University.

2. **Educational Information Exclusion:** Export control regulations do not apply to information released in the University's academic catalog-listed courses or in teaching labs associated with those courses. This means that a faculty member teaching a University course may discuss what might otherwise be export-controlled technology in the classroom or lab without an export control license even if foreign national students are enrolled in the course. This exclusion is based on the recognition in ITAR that "information

concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities, or information in the public domain" should not be subject to export control restrictions.

The exclusion is available for courses available globally on-line (distance learning) but it does not allow residents of (OFAC's) comprehensive embargoed countries to enroll in such courses due to a specific prohibition on the transfer of "informational materials not currently created and in existence at the date of the transaction." (As of August 2012 those countries were Cuba, Sudan, Iran, Syria and North Korea.)

Independent study courses and courses not described in the University course catalog do **not** qualify for this exclusion. Encrypted software does **not** qualify for this exclusion.

3. **Public Domain Exclusion:** Information that is published and generally available to the public, as well as publicly available technology and software, is outside the scope of the export control regulations. This exclusion does **not** apply to encrypted software, to information if there is reason to believe it might be used for weapons of mass destruction, or where the U.S. government has imposed access or dissemination controls as a condition of funding.

Information and research results are considered "published" when they appear or are generally accessible to the interested public through print, electronic or any other media available for general distribution to any member of the public. It is considered "generally available" to the public when it is available through:

- Sales at newsstands and bookstores;
- Subscriptions available without restriction to anyone who purchases it;
- Second class mailing privileges granted by the U.S. government;
- Libraries open to the public or from which the public can obtain documents;
- Patents available at any patent office;
- Unlimited distribution at a conference, meeting, seminar, trade show or exhibition that is generally accessible to the public and is in the U.S.;
- Website publication where the site owner does not have knowledge or control of who visits the site or downloads the software/information;
- Public release (i.e., unlimited distribution) in any form (not necessarily published) after approval by the cognizant U.S. government department or agency; and,
- Fundamental research.

The exclusion applies to a project:

- That does not involve export controlled equipment, encrypted software, listed-controlled chemicals or bio-agents or toxins, and

- In which there is no reason to believe that any information or non-encrypted software being released will be used for a weapon of mass destruction, and
- For which any information or software involved in the project is already published.

Dissertation research must meet the standards for "fundamental research" to qualify as "publicly available."

If the research falls under the Public Domain Exclusion, there would be no further concerns about the need for an export license.

#### **D. Voluntary Disclosures of Violations**

Due to the complexity of the federal regulations, unintentional release of export-controlled items might occur. If such cases are discovered, the best response is voluntary disclosure. As such instances are discovered, they should be researched by the relevant designated University officer, who will relay and discuss the matter with the System's Export Control Officer, who will investigate further and make the final determination as to whether an unauthorized export has occurred and notify the appropriate federal agency.

#### **E. Record Keeping and Retention**

Compliance with export control requirements must be documented, through use of questionnaires, checklists and other tools. Use of any license *exception* and compliance with the limitation of the exception must be documented. The record must be maintained for at least five years after the termination of the project or the travel return date. Any license applications and related documents, such as TCPs, are to be centrally retained by the Export Control Officer.

#### **F. Supplemental Information**

PASSHE's Procedure/Standard 2012-14, *Compliance with U.S. Export Control Laws*, is accompanied by the "Supplemental Information" document that includes procedural details for specific areas; additional definitions; identification of high-risk areas; information on control lists, forms and processes; frequently asked questions; case studies; on-line links; University designated officials; and other resources. The Supplemental Information will be updated as necessary.

#### **G. Non-compliance**

Failure to comply with export control laws and regulations might result in prosecution by the federal government and the imposition of federal, civil, criminal and/or administrative penalties or sanctions. It might also result in disciplinary action in accordance with the appropriate Collective Bargaining Agreement or personnel policies.

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**Supplemental Information**

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**Internet Resource**

<https://secure.pashe.edu/asa/ExportControls/Pages/Export-Controls-Home.aspx>

## **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, Avionics and Flight Control
- Robotics
- Propulsion System and Unmanned Air Vehicle Subsystems
- Telecommunications/Networking
- Nuclear Technology
- Sensors and Sensor Technology
- Advanced Computer/Microelectronic Technology
- Information Security/Encryption
- Laser and Directed Energy Systems
- Rocket Systems
- Marine Technology

#### **ITAR Munitions List (USML)**

Categories of items contained on the export control list published by the Department of State relating to military items:

- I. Firearms
- II. Artillery projectors and armaments
- III. Ammunition
- IV. Launch vehicles, guided missiles, ballistic missiles, rockets, torpedoes, bombs and mines
- V. Explosives, propellants, incendiary agents, and their constituents
- VI. Vessels of war and special naval equipment
- VII. Tanks and military vehicles
- VIII. Aircraft and associated equipment
- IX. Military training equipment
- X. Protective personnel equipment
- XI. Military (and space) electronics
- XII. Fire control, range finder, optical and guidance and control equipment
- XIII. Auxiliary military equipment
- XIV. Toxicological agents and associated equipment
- XV. Spacecraft systems and associated equipment
- XVI. Nuclear weapons, design and testing equipment
- XVII. Classified articles, technical data and defense services not otherwise enumerated
- XVIII. Directed energy weapons
- XIX. Submersible vessels, oceanographic and associated equipment
- XX. Miscellaneous articles not listed above with substantial military applicability and which were designed or modified for military purposes.

## [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** Electronics
- 4** Computers
- 5** Telecommunications and Information Security
- 6** Lasers and Sensors
- 7** Navigation and Avionics
- 8** Marine Technology
- 9** Propulsion Systems, Space Vehicles and Related Equipment

## **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 for items controlled only by the ITAR. **It is not available for EAR controlled items.**

ITAR regulations exempt disclosures of unclassified technical data in the U.S. by U.S. universities to foreign nationals where 1) the foreign national is the University's bona fide full-time regular employee, 2) the employee's permanent abode throughout the period of employment is the U.S., 3) the employee is not a national of an embargoed country pursuant to [Sec. 126.1](#) of ITAR, and 4) the University informs the foreign national employee in writing that information disclosed may not be disclosed to other foreign nationals without governmental approval.

This exemption is not available to temporary and adjunct foreign national faculty, any foreign national students or full time employee foreign nationals from embargoed countries. It is not available for contractors or consultants.

A foreign-born faculty member who is tenured or on tenure track and a permanent resident of the U.S., and not from an embargoed country, should qualify for the exemption **for ITAR controlled items only**.

The University Office of Human Resources, in collaboration with other offices as appropriate, will issue the written notice (referenced above) to the ITAR-exempt, foreign national, bona fide full-time employee, provided s/he is NOT a resident of an embargoed country. This notice should be issued at the time of hire and annually if applicable. That is, if the employee will have access to ITAR controlled items.

The above exemption allows disclosure to other foreign nationals that are full time employees of the institution and have a permanent U.S. residence.

## **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.

2. 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 export-controlled 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 unpublished research at conferences and meetings where foreign nationals are in attendance;
- The ability of PASSHE University researchers to engage in collaborations with foreign researchers, including restrictions on teaching foreign collaborators how to use export-controlled items in research; and
- The ability to transfer research equipment abroad.

If a project is export controlled and a license is needed, the System's Export Control Officer may apply for an export license to allow the disclosure of information to foreign students and researchers. Note that each foreign student must be specifically licensed for each controlled project. An Export License application requires extensive documentation of the technology and its end use/users in the foreign country; its processing can greatly delay a project implementation. Also note that a Technology Control Plan (TCP) must be implemented whenever a license is requested. The responsible faculty member and the University SRO in coordination with the System's Export Control Officer, and legal counsel, will prepare and sign the TCP.



## **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 should perform a "restricted party" screening to ensure that they are not doing export controlled business with an embargoed country or "specially designated nationals." A consolidated screening list is available at [http://export.gov/ecr/eg\\_main\\_023148.asp](http://export.gov/ecr/eg_main_023148.asp). 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. Administrators may consult with the System's Export Control Officer for further guidance.

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 considered to be in the public domain. An open gathering is one in which members of the general public are eligible to attend and attendees are permitted to take notes.

### **C. Sanctioned Countries**

The Department of the Treasury, through its Office of Foreign Assets Control, administers economic and trade sanctions that at times can restrict transactions and travel, or require licensing in order to travel to a foreign country, or to conduct business with a foreign entity or individual. Before considering travel to embargoed countries to

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 "Baggage" 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. "Effective control" means retaining physical 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 F as 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 ITAR controlled technical data 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 project or the travel return date. In addition to Forms 5 and 6, certification forms for unique situations will be available from the System's Export Control Officer.

#### **G. Licensing**

If a project is export controlled and a license is needed, the System's Export Control Officer may apply for an export license to allow the travel to occur. In situations where the federal agency has a standard policy of denial, the Export Control Officer will not request a license. An Export License application requires extensive documentation of the technology and its end use/users in the foreign country; its processing can greatly delay a project implementation. Also note that a Technology Control Plan (TCP) must be implemented whenever a license is requested. The responsible traveler and the University Designated Official, in coordination with the System's Export Control Officer, and legal counsel, will prepare and sign the Technology Control Plan. A template TCP will be available from the Export Control Officer.

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<sup>[3]</sup> See 22 C.F.R. § 125.4.

<sup>[4]</sup> The full list of proscribed countries may be found at [http://www.pmdtc.state.gov/regulations\\_laws/documents/official\\_itar/ITAR\\_Part\\_126.pdf](http://www.pmdtc.state.gov/regulations_laws/documents/official_itar/ITAR_Part_126.pdf).

## **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-specific TCP should be a significant tool in every researcher's personal 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 following checklist as part of the institution's proposal review form.

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

	YES	NO	Don't Know
Does this proposal, project or agreement:			
Restrict researcher participation (faculty, student, others) based on country of origin or citizenship?			
Prohibit the involvement of foreign persons or entities?			
Contain restrictions on foreign travel?			
Require researcher to participate in meetings restricted to U.S. citizens only?			
Grant the sponsor a right of prepublication review for matters other than the inclusion of patent and/or proprietary sponsor information?			
Provide that any part of the sponsoring, granting, or establishing documents may not be disclosed?			
Limit access to confidential data?			
Accept proprietary information as part of the project?			
Involve materials, equipment or technology that may be regulated by export control laws?			

If the answer to any of these questions is "YES" or if you have other questions related to export controls, please contact the University Office of Sponsored Programs.

### 2. FUNDAMENTAL RESEARCH EXCLUSION – For Sponsored Research Offices

The principle of openness in research is one of overriding importance to PASSHE. Accordingly, 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. This checklist poses questions on research restrictions that might endanger the Fundamental Research Exclusion. It does NOT provide a comprehensive review under all Export Control Laws.

PASSHE University Sponsored Research Offices shall use this checklist when reviewing:

- requests for proposals or project solicitations;
- program award notices;

- Non-Disclosure Agreements (NDAs), Material Transfer Agreements (MTA's); and,
- any other documents related to research proposals, contracts, cooperative agreements and other arrangements for sponsored research projects to assure that they do not require secrecy or impose unacceptable restrictions.

If funding will be awarded **under a federal contract**, complete this checklist twice, initially at the time of submission in order to take exception to any restrictive clauses in the funding announcement and again at the time of award when reviewing the contract

If funding is to be awarded through a **grant agreement**, complete this checklist at the time of funding award.

In any proposals for research funding, the University will include language indicating its commitment to openness in research, and its intention to adhere to this principal.

	Initial Review		At Award	
	YES	NO	YES	NO
Does this project or agreement:				
Restrict researcher participation (faculty, student, others) based on country of origin or citizenship?				
Require researcher participation in US-citizen-only meetings?				
Prohibit the hiring of non-US citizens to be involved in the proposed research?				
Grant the sponsor a right of prepublication review for matters other than the inclusion of patent and/or proprietary sponsor information?				
Provide that any part of the sponsoring, granting, or establishing documents may not be disclosed?				
Limit access to confidential data so centrally related to the research that a member of the research group who was not privy to the confidential data would be unable to participate fully in all of the intellectually significant portions of the project?				

If the answer to any of the above question is "Yes," or if you have other questions related to openness in research, please contact the University Senior Sponsored Research Administrator, or the System's Export Control Officer.

	<b>Initial Review</b>		<b>At Award</b>	
	YES	NO	YES	NO
If accepting proprietary information as part of a project:				
Is the information clearly defined?				
Can the information be appropriately protected?				
Can proprietary information be removed from research results, so that results may be freely published?				

If the answer to any of the above questions is "No," please contact the Senior Sponsored Research Administrator or Export Control Officer.

	<b>Initial Review</b>		<b>At Award</b>	
	YES	NO	YES	NO
If accepting information identified as export-controlled:				
Has a Non-Disclosure Agreement been reviewed with the University's designated office				
Is there any need to share this information with others, including international students or other non-citizens?				

In either case, when dealing with export controls, please contact the System's Export Control Officer.

COMPLETED AT PROPOSAL REVIEW (for contracts only)

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

COMPLETED AT AWARD/CONTRACT EXECUTION

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

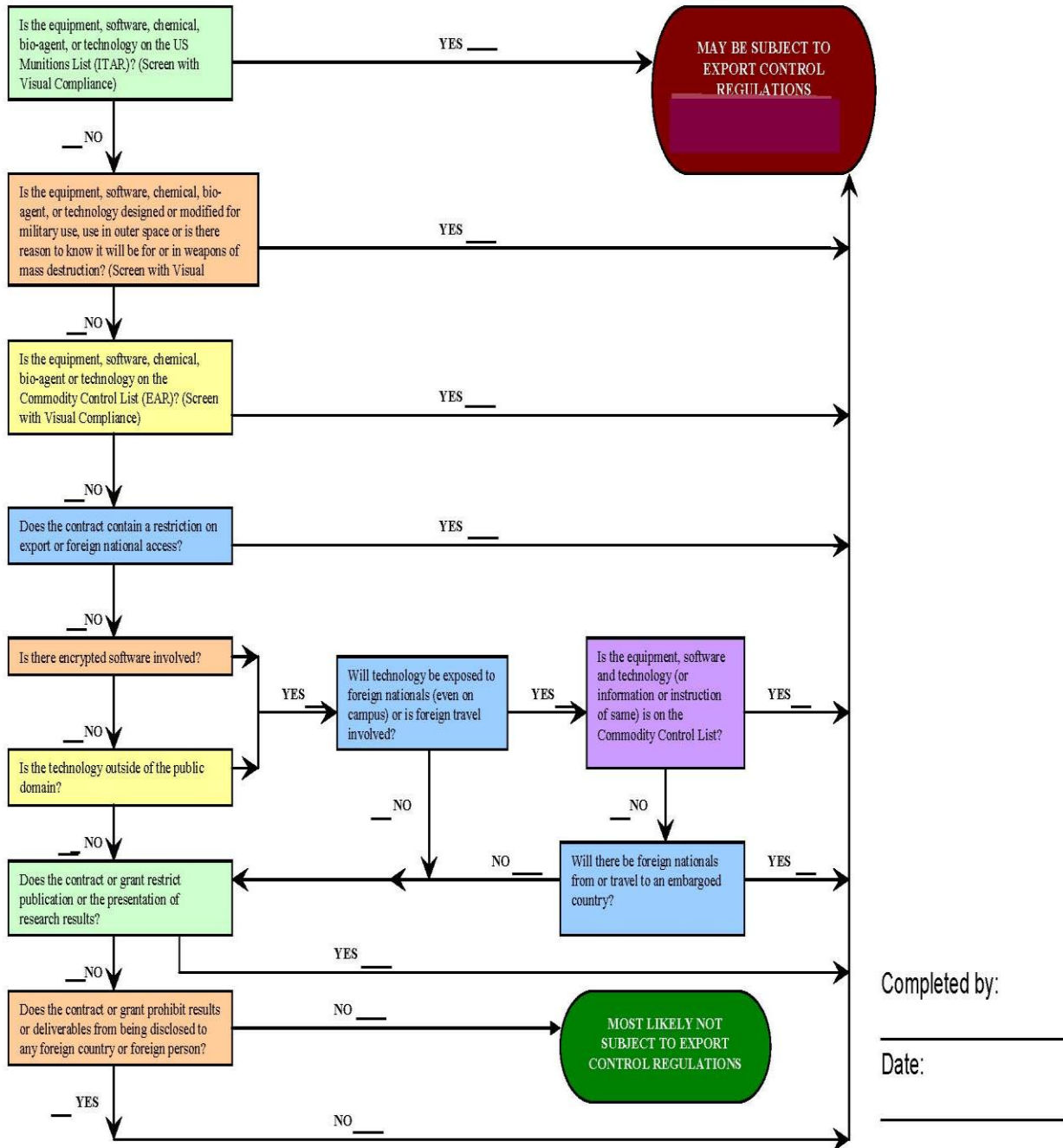
RETAIN THIS DOCUMENT IN THE PROPOSAL/PROJECT FILE WITHIN THE UNIVERSITY OFFICE OF SPONSORED PROJECTS.

### 3. EXPORT CONTROLS DECISION TREE for SRO

The following chart will assist in determining if any export controls apply to the proposed activity. The tree is available as a separate file, "Export Controls Decision Chart for SRO.pdf"

The Office of Sponsored Projects completes this, checking the correct answer for each question, sign, date and retain in files.

Export Controls Decision Chart





#### 4. ALTERNATIVE EXPORT CONTROL DECISION TREE

The University of Stanford has a well-developed, public website that provides guidance on export control as it affects research and travel. Another optional Export Control Decision Tree is available from its website at <http://export.stanford.edu/tree/index.html>. It is an excellent resource to use to determine the applicability of Export Controls to University activities and projects. When using the on-line tree, take note that PASSHE administrators and faculty may NOT contact the individuals named as resources for Stanford University.

##### Export Control Decision Tree [permission granted]

1. **Are you sharing, shipping, transmitting or transferring University-developed, non-commercial encryption software<sup>(1)</sup> in source code or object code<sup>(2)</sup> (including travel outside the country with such software)?**  
YES→**YOU MAY NEED TO OBTAIN AN EXPORT LICENSE** Don't go any further without getting advice!  
NO→ go to next
2. Do you know or have any reason to believe that the item, information or software to be shared, shipped, transmitted or transferred will support the design, development, production, stockpiling or use of a nuclear explosive device, chemical or biological weapons, or missiles<sup>(1)</sup>?  
YES→**YOU MAY NEED TO OBTAIN AN EXPORT LICENSE** Don't go any further without getting advice!  
NO→ go to next
3. Was the item, information or software to be shared, shipped, transmitted or transferred developed under a sponsored agreement imposing publication restrictions<sup>(1)</sup> beyond a brief review (up to 90 days) for patent protection and/or inadvertent release of confidential/proprietary information?  
YES→**YOU MAY NEED TO OBTAIN AN EXPORT LICENSE** Don't go any further without getting advice!  
NO→ go to next
4. Did an external sponsor, vendor, collaborator or other third party provide, under a Non-Disclosure Agreement or a Confidentiality Agreement<sup>(1)</sup>, the item, information or software to be shared, shipped, transmitted or transferred?  
YES → Is the item, information or software provided under a Non-Disclosure Agreement or a Confidentiality Agreement<sup>(1)</sup> **central to the research program** and/or do the disclosure restrictions affect the **ability to publish the research results**?  
Yes→**YOU MAY NEED TO OBTAIN AN EXPORT LICENSE** Don't go any further without getting advice!  
NO→ go to next
5. Is the item being shared, shipped, transmitted or transferred a defense article <sup>(1)</sup> other than information or software on the ITAR's US Munitions List (USML)?  
YES →**YOU MAY NEED TO OBTAIN AN EXPORT LICENSE**  
Don't go any further without getting advice!  
NO→ go to next
6. Is the information or software being shared, shipped, transmitted or transferred technical data<sup>(1)</sup> on the ITAR's US Munitions List (USML)?

YES → Is the USML-listed information or software being shared, shipped, transmitted or transferred either **published, patented or generally accessible and available**<sup>(1)</sup> to the public?  
Yes → go to 9  
NO → go to next

7. Are you shipping or transferring **items (2) on the Commerce Control List (CCL)**<sup>(1)</sup> of the Export Administration Regulations (EAR)?  
YES → Is the CCL-listed item to be shipped to a foreign country? Yes → **YOU MAY NEED TO OBTAIN AN EXPORT LICENSE** Don't go any further without getting advice!  
NO (go to 9)
8. Are you sharing, transmitting or transferring **technology (information)**<sup>(1)</sup> or **software code**<sup>(2)</sup> on the Commerce Control List (CCL)?  
YES → Is the Commerce Control-Listed information or software that you are going to share, ship, transmit or transfer either **published, patented or generally accessible** to the interested public in any form<sup>(1)</sup>?  
Yes → go to 9  
NO → go to next
9. Is the disclosure<sup>(1)</sup>, shipment, transmission, or transfer to an entity in a country subject to US economic or trade sanctions or identified by the US Department of State as a "State Sponsor of Terrorism," namely Iran, Cuba, Sudan, Syria or North Korea (or any country on the current list of embargoed countries ).  
YES → **YOU MAY NEED TO OBTAIN AN EXPORT LICENSE** Don't go any further without getting advice!  
NO

The tree may take one to this final screen: GOOD NEWS!! YOU DO NOT NEED TO OBTAIN AN EXPORT LICENSE. JUST TWO MORE STEPS BEFORE YOU CAN SHIP TANGIBLE ITEMS INTERNATIONALLY OR SHARE EXPORT CONTROLLED INFORMATION WITH FOREIGN PERSONS. Because several federal agencies restrict or prohibit transactions with certain individuals and organizations, you must first screen your recipient's name, location and institution against U.S. government "DENIED PARTIES LISTS."

## 5. TRAVEL OUTSIDE THE U.S. WITH PASSHE-OWNED ELECTRONIC DEVICES (TEMPORARY EXPORT OF TOOLS OF THE TRADE<sup>1</sup>) CHECKLIST FOR LICENSE EXCEPTION

### for Export Administration Regulations (EAR) controlled Items, Technology, and Software

This form applies to:

- university-sponsored travel with laptops, smart phones, etc., regardless of ownership; or,
- personal travel with university-owned laptops, smart phones, etc.

This checklist summarizes the requirements for an export license exception for temporary export of PASSHE -owned items or software that **is otherwise controlled** by U.S. Export Laws and regulations. (Note: University-owned items are considered PASSHE-owned.) Before shipping or hand-carrying any items or software abroad, you will need to file a certification to document this license exception. These forms must be filed with your University's designated office prior to

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<sup>1</sup> Usual and reasonable kinds and quantities of tools of trade (commodities, software, and technology) for use in a lawful enterprise or undertaking of the exporter may be exported and re-exported for temporary use abroad (including use in international waters). Consult EAR Part 740.9 for more on tools of the trade.

shipping or hand-carrying the item(s) or software overseas. If you have any questions about the forms or process, please contact your university's sponsored research/projects office.

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

		Yes	No	NA
1.	Is the item or software to be shipped or hand-carried abroad?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.	If the item or software is currently overseas, will it remain in the same country and with the same overseas custodian until it is returned to the US?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.	Is the item or software to return to the US within 12 months or either consumed or destroyed abroad?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4.	Is the item or software for temporary shipment, retransfer or hand-carry to any country <b>OTHER THAN:</b> Cuba, Iran, North Korea, Syria, or Sudan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5.	Will the item or software to be shipped, retransferred or hand-carried be used ONLY either a) as a "tool of the trade" to conduct PASSHE business, or b) for exhibition or demonstration, or c) for inspection, testing, calibration or repair?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6.	If for inspection, testing, calibration or repair, will the item or software be shipped, retransferred or hand-carried to any country <b>OTHER THAN:</b> Albania, Armenia, Azerbaijan, Belarus, Cambodia, China, Georgia, Iraq, Kazakhstan, Kyrgyzstan, Laos, Libya, Macau, Moldova, Mongolia, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan or Vietnam?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7.	Will the item or software remain under the "effective control" of PASSHE personnel while the property is abroad? Note: "Effective Control" is defined as retaining physical possession of an item or maintaining it in a secure environment such as a hotel safe (not in hotel room) or a locked or guarded facility.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8.	Is the encryption code incorporated in the item or on the software media limited to that available through retail purchase (phone order, mail, internet, or over-the-counter transactions)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If the answers to ALL of these questions are "Yes" or "N/A" **and your equipment, components or software are not designed for use in/with/by satellites or spacecraft or otherwise regulated as a defense article**, then your shipment, retransfer or hand-carry is eligible for shipment under License Exception. Please fill out the attached Certification and forward it to your university's designated office.

**If you answered "No" to any of the above, or if you have any questions, please contact your university's Designated Officials.**

### **TMP EXPORT LICENSE EXCEPTION CERTIFICATION**

Unlike the export of information resulting from fundamental research, the export of tangible items, commercial software and encryption code is subject to export control regulations. The Export Administration Regulations (EAR), however, make an exception to license requirements for the temporary export or re-export of certain tangible items or software for professional use as long as specific criteria to which you are certifying are met.

**NOTE: This certification does NOT apply to** laptops, PDAs, cell phones or digital storage devices incorporating information or software code designed for use in/with satellites, spacecraft or other defense articles that is not already in the public domain. If this situation applies to you, contact your university's designated office for an export license determination.

**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:

1. I will take the items, technology or software abroad ONLY as a "tool of the trade" to conduct PASSHE business;
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;
3. I will keep the items, technology or software under my "effective control" while abroad (defined as retaining physical possession of an item or maintaining it in a secure environment – 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 approval from PASSHE's Export Control Officer in writing;
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 received approval from PASSHE's Export Control Officer in writing.

Signed: \_\_\_\_\_

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

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

**6. 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>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 applies if a license to export is normally required for your item 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 forms or process, please contact your university's designated official.

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 Commerce's Export Administration Regulations (EAR) makes an exception to licensing 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 of State's International Traffic in Arms Regulations (ITAR).

Detailed Description of Items, Technology or Software to which this Certification applies:

*[Insert description here]*

By my signature below, I certify that:

1. I personally own the items, technology, or software I am taking abroad to *[insert country(s) traveling to]*
2. I am not shipping the items as unaccompanied baggage;
3. The items, technology, or software are intended for necessary and appropriate personal use only;
4. The items, technology, or software are not intended for sale or other disposal;
5. I will return the items, technology, or software to the U.S.;
6. I will keep the items, technology, or software under my "effective control" while abroad (defined as retaining physical possession of item or keeping it secured in a place such as a hotel safe, a bonded warehouse, or a locked or guarded exhibition facility);
7. I will take security precautions to protect against unauthorized release of the technology while the technology is being shipped or transmitted and used abroad such as:
  - a. use of secure connections when accessing e-mail and other business activities that involve the transmission and use of the technology,
  - b. use of password systems on electronic devices that store technology, and
  - c. use of personal firewalls on electronic devices that store the technology;
8. **I will not ship or hand-carry the items, technology or software to Iran, Syria, Cuba, North Korea, or Sudan.** If I am planning to travel to these countries, I will consult **the University's designated official and/or the PASSHE Export Controls Officer.**

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

***\*Keep a signed copy with you when traveling abroad***

## Appendix G Definitions

**Actual Export** – 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** – 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** – Defense articles listed on the International Traffic in Arms Regulations (ITAR) and dual use items listed under Export Administration Regulations (EAR).

**Deemed Export** – Providing, transferring or disclosing technology information to a foreign national within the U.S. See [15 CFR 734.2\(b\)\(2\)\(ii\)](#). 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** – (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 relating to the particular item or "defense article" listed in the USML.

**Defense Service** – (See [22 CFR 120.9](#)) 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** – 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.

**"EAR 99"** – The "catch-all category" that applies to any good or technology subject to the Department of Commerce's Export Administration Regulations that does not fall

under one of the ten specific CCL categories.

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

**Export –**

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 [EAR](#) and [ITAR](#) when determining whether a specific act constitutes an export. As “export” is currently 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)** – Federal regulations on dual-use (military and commercial) items through the U.S. Department of Commerce.

**Export Control Officer (a.k.a. Empowered Official)** – 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 non-compliance. 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** – see Foreign National/Person.

**Foreign National/ Foreign Person** – 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** – 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)** – The State Department's regulations for goods or technologies inherently military in nature.

**Office of Foreign Assets Control (OFAC)** – 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** – 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** – Information is considered published when it appears or is generally accessible to the interested public through the following ways:

- Periodicals
- Books
- Print
- Electronic or any other media available for general distribution to any member of the public.
- Published or ordinarily published material also includes the following:
  - literature readily available at libraries open to the public
  - Issued patents
  - Releases at an open conference, meeting, seminar, or trade show (N/A to ITAR).

A conference is considered “open” if all attendees are allowed to take notes and make a personal record of the presentations. In all cases, access to the information in



question must be free or for a fee that does not exceed the cost to produce and distribute the materials or conduct the conference.

**Restricted or Embargoed Countries** – ITAR regulations [22 CFR 126.1](#) specifies countries to which exports and sales are prohibited. Currently, it is the policy of the U.S. to deny licenses, other approvals, exports and imports of defense articles and defense services to: Afghanistan, Belarus, Cuba, Iran, Iraq, Libya, North Korea, and Vietnam; countries which the U.S. maintains an arms embargo (e.g. Burma, China, Haiti, Liberia, Rwanda, Somalia, Sudan and Democratic Republic of Congo (formerly Zaire); United National Security Council exports and sales embargoes (Angola); countries determined by the Secretary of State to have repeatedly provided support for acts of internal terrorism (Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria). Please use the [ITAR Embargo Reference Chart \(PDF file\)](#) for specific reference to Defense Trade Controls.

**Technical Data (ITAR 22CFR 120.1)** –

- Information, other than software as defined in [22 CFR 120.10\(4\)](#), which is required for the design, development, production, manufacture, assembly operation, repair, testing, maintenance or modification of defense articles. This includes information in the form of blueprints, drawings, photographs, plans, instructions and documentation;
- Classified information relating to defense services;
- Information covered by an invention secrecy order; and
- Software as defined in 22 CFR 121.8(f) directly related to defense articles.

Excluded from this definition is information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities or information in the public domain as defined in 22 CFR 120.11. It also does not include basic marketing information on function or purpose or general system descriptions of defense articles.

**United States Munitions List (USML)** – A list featuring twenty-one categories of defense articles and services that are monitored by the International Traffic in Arms Regulations (ITAR).

**U.S. Person** – (ITAR 120.15) A person who is a lawful, permanent resident of the United States. It also means any corporation, business association, partnership, society, trust, or any other entity, organization or group that is incorporated to do business in the United States. It also includes any governmental (federal, state or local) entity.

## Appendix H Scenarios

(provided by J. Norris and WPI)

1. A foreign national student from Syria enrolls in a summer program at the Marine Science Consortium's facility in Wallops Island. In her activity at the MSC she is participating in rocket launches. Do we need a license?

Yes, the activity is not in the university's course catalog so it does not qualify for the Educational Information Exclusion. However, the license application will be rejected due to the U.S. government's standing practice of non-approval for licenses to Syria, classified as a terrorist supporting nation. There are currently (as of August 2012) five countries subject to the no-approval policy: Syria, Iran, Cuba, North Korea and Sudan.

2. I am giving students and visitors from a foreign country a tour of the research laboratories in my school. Does this constitute an export?

Yes, the tour may include access to areas containing export controlled materials or technology. Compounding the problem might be the countries represented by the visitors.

3. I plan to publish my telecommunications research results in a foreign journal. Do I need a license to send the manuscript to the publisher?

Telecommunications is in an EAR (dual use) category. However, the transaction is not covered by the EAR because the research results would be made public by the proposed action.

4. I teach a graduate course on solid-state lasers that is listed in our course catalog. Many of the students are foreign persons. Do I need a license?

No. Release of information by instruction in catalog courses and course laboratories of academic institutions is not subject to EAR.

5. May I have a foreign graduate student work in my lab? Do I need a license?

Yes. A foreign graduate student may work in your laboratory but only on research that qualifies as "fundamental research."

6. I am building a small satellite to be launched on a Russian rocket. Do I need a license?

Yes. This is equipment that will be launched into space and is, therefore, covered by ITAR. The research may well be exempt under the fundamental research exemption but the export of the satellite is not.

7. A faculty member is going to Germany to do research at a German university while on sabbatical. Since Germany isn't a terrorist country or on the Treasury's 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 the projects or learning the research details would require a license.

9. I am working with a company on GEMS (ITAR controlled material). The contract includes a restriction on information "generated under the contract" as well as "provided by the sponsor." I am a U.S. citizen and the information is provided directly to me. Can foreign nationals work on the contract if all the ITAR controlled information is restricted to the PI and not shared with the students?

No. The problem has to do with information "generated under the contract." If that language were out, everything done on campus that did not utilize the proprietary information given to the faculty member would be FRE. Since it is in the contract, the FRE is not available.

# Appendix I

## Links

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

### **ON-LINE TRAINING:**

- [Worcester Polytechnic Institute](#)
- [COGR Export Control Guidance and Case Studies](#)
- [NCURA: UT Austin](#)
- [Bureau of Industry and Security on-line training room](#)

### **[Department of Commerce](#)**

### **[Department of Defense](#)**

### **[Department of Energy](#)**

### **[Department of State](#)**

**[Countries under special consideration](#)** via U.S. Department of Commerce, Bureau of Industry and Security

- **[Export Control Basics](#)** via U.S. Department of Commerce, Bureau of Industry and Security  
**Export Controls and Embargoes Key** (Section VI of [The War on Terrorism Affects the Academy](#) by Jamie Lewis Keith) in *Journal of College and University Law* (Vol. 30, Issue 2)
- **[Export Controls and Universities: Information and Case Studies](#)** via Council on Governmental Relations
- 
- **[International Traffic in Arms Regulation \(ITAR\)](#)** via U.S. Department of State, Directorate of Defense Trade Controls
- **[Lists to Check](#)** via U.S. Department of Commerce, Bureau of Industry and Security. Includes "Denied Persons," "Debarred" and more.
- **[Overseas Travel Tips](#)** Traveling overseas with mobile phones, laptops, PDA's and other electronic devices.
- **[United States Munitions List \(22CFR121\)](#)** via U.S. Department of State, Directorate of Defense Trade Controls
- EAR
  - [Export Administration Regulations \(EAR\), 15 CFR §§730-774 including the CCL and index](#)
  - [BIS Encrypted Software Guidance](#)
- ITAR
  - [International Traffic in Arms Regulations \(ITAR\), 22 CFR §§120-130](#)
  - [ITAR US Munitions List \(USML\), 22 CFR §121.1 \(PDF\)](#) -- A listing of defense articles, defense services, and related technical data subject to ITAR.
  - [ITAR Short List \(PDF\)](#)
  - [Directorate of Defense Trade Controls, US Department of State](#) -- Controls the export and temporary import of defense articles and defense services subject to ITAR.

**Office of Foreign Assets Control (OFAC)** -- 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

- OFAC Boycotted Countries List  
<http://www.ustreas.gov/offices/enforcement/ofac/programs/>
- [OFAC List of Specially Designated Nationals and Blocked Persons List](#)

#### **Universities Leading the Way in Export Control Compliance**

- [MIT Export Control Resources](#)
- [University of Pennsylvania](#)
- [University of Maryland Export Control Guidance](#)
- [Vanderbilt University](#)
- [Stanford University](#)
- [University of Tennessee - Knoxville](#)
- [Coastal Carolina University](#)

#### **Software Licensing Links**

- [Exporting Microsoft Products](#)
- [Adobe Product Export Information](#)
- [Symantec Export Control Classifications](#)
- [McAfee Export Compliance](#)
- [Blackberry ECCN](#)
- [Apple Export compliance](#)
- [Dell Regulatory Data Sheets](#)
- [IBM Export Control](#)
- [Adobe Product Export Information](#)
- [Secure CRT/Secure FX/Van Dyke ClientPack Export Information](#)
- [Sun Microsystems Export Information](#)

#### **Export Decision Trees**

- [Stanford University](#)
- [University of Pennsylvania](#)
- [Worcester Polytechnic Institute](#)
- [Penn State](#)

#### **Software encryption tree:**

- [BIS Encryption flow Chart 1](#)
- [BIS Encryption flow Chart 2](#)

## Appendix J University Designated Officers

*(Italics indicates unconfirmed)*

PASSHE	Human Resources	Information Technology	International Education	International Travel	Procurement	Sponsored Research
<b>BL</b>	Jerry Reed <a href="mailto:jreed@bloomu.edu">jreed@bloomu.edu</a>	Wayne Mohr <a href="mailto:wmohr@bloomu.edu">wmohr@bloomu.edu</a>	Madhav Sharma <a href="mailto:msharma@bloomu.edu">msharma@bloomu.edu</a>	Danielle Peters <a href="mailto:dpeters@bloomu.edu">dpeters@bloomu.edu</a>	Jeff Mandel <a href="mailto:jmandel@bloomu.edu">jmandel@bloomu.edu</a>	Jerrold Harris <a href="mailto:jharris@bloomu.edu">jharris@bloomu.edu</a>
<b>CA</b>	Pamela Murphy <a href="mailto:murphy_p@calu.edu">murphy_p@calu.edu</a>	Chuck Mance <a href="mailto:mance@calu.edu">mance@calu.edu</a>	John G. Watkins <a href="mailto:watkins@calu.edu">watkins@calu.edu</a>	Tom Taylor <a href="mailto:taylor@calu.edu">taylor@calu.edu</a> □	Judy Laughlin, <a href="mailto:Laughlin@calu.edu">Laughlin@calu.edu</a>	Cheryl Vogrig, <a href="mailto:Vogrig@calu.edu">Vogrig@calu.edu</a>
<b>CH</b>	Jo-Anne Harris <a href="mailto:jharris@cheyne.edu">jharris@cheyne.edu</a>	Sheng Yao <a href="mailto:syao@cheyne.edu">syao@cheyne.edu</a>	Ivan Banks, Provost	None provided	Monique Baylor <a href="mailto:MBaylor@cheyne.edu">MBaylor@cheyne.edu</a>	Lawrence Green <a href="mailto:lgreen@cheyne.edu">lgreen@cheyne.edu</a>
<b>CL</b>	Timothy Fogarty, <a href="mailto:tfogarty@clarion.edu">tfogarty@clarion.edu</a>	Samuel Puleio, <a href="mailto:spuleio@clarion.edu">spuleio@clarion.edu</a>	Jocelind Gant, <a href="mailto:jgant@clarion.edu">jgant@clarion.edu</a>	Patricia Cyphert, <a href="mailto:pcyphert@clarion.edu">pcyphert@clarion.edu</a>	Rein Pold <a href="mailto:rpold@clarion.edu">rpold@clarion.edu</a>	Art Acton <a href="mailto:AACTON@clarion.edu">AACTON@clarion.edu</a>
<b>EA</b>	Teresa Fritsche <a href="mailto:ffritsche@po-box.esu.edu">ffritsche@po-box.esu.edu</a>	Robert D' Aversa <a href="mailto:rfd@esu.edu">rfd@esu.edu</a>	Michael Laffey <a href="mailto:mlaffey@esu.edu">mlaffey@esu.edu</a>	Vicki Sanders <a href="mailto:vsanders@po-box.esu.edu">vsanders@po-box.esu.edu</a>	Michael Crapp <a href="mailto:mcrapp@esu.edu">mcrapp@esu.edu</a>	vacant
<b>ED</b>	Sid Booker <a href="mailto:Sbooker@edinboro.edu">Sbooker@edinboro.edu</a>	Andy Lawlor <a href="mailto:Lawlor@edinboro.edu">Lawlor@edinboro.edu</a>	Terry Carlin <a href="mailto:Carlin@edinboro.edu">Carlin@edinboro.edu</a> OR Linda Kightlinger <a href="mailto:Lkightlinger@edinboro.edu">Lkightlinger@edinboro.edu</a>	Debbie Hosler <a href="mailto:Dhosler@edinboro.edu">Dhosler@edinboro.edu</a>	Darla Spaid <a href="mailto:dspaid@edinboro.edu">dspaid@edinboro.edu</a>	Rene Hearn <a href="mailto:rhearns@edinboro.edu">rhearns@edinboro.edu</a>
<b>IN</b>	Judy Gallo <a href="mailto:Judith.Gallo@iup.edu">Judith.Gallo@iup.edu</a> (724) 357-2431	Todd Cunningham <a href="mailto:Todd.Cunningham@iup.edu">Todd.Cunningham@iup.edu</a> (724) 357-7872	Michele Petrucci <a href="mailto:Michele.Petrucci@iup.edu">Michele.Petrucci@iup.edu</a> (724) 357-2295	None	Bob Bowser <a href="mailto:Robert.Bowser@iup.edu">Robert.Bowser@iup.edu</a> (724) 357-3077	Hilliary Creely <a href="mailto:Hilliary.Creely@iup.edu">Hilliary.Creely@iup.edu</a> (724) 357-2655
<b>KU</b>	Sharon Picus <a href="mailto:picus@kutztown.edu">picus@kutztown.edu</a>	Mitch Freed <a href="mailto:freed@kutztown.edu">freed@kutztown.edu</a>	Robyn Apgar <a href="mailto:apgar@kutztown.edu">apgar@kutztown.edu</a>	Ken Steward <a href="mailto:steward@kutztown.edu">steward@kutztown.edu</a>	Joseph Coco, <a href="mailto:coco@kutztown.edu">coco@kutztown.edu</a>	Pamela Vargas
<b>LH</b>	Deanna L. Hill <a href="mailto:dhill@lhup.edu">dhill@lhup.edu</a>	Donald W. Patterson <a href="mailto:dpatters@lhup.edu">dpatters@lhup.edu</a>	Rosanna Campbell, <a href="mailto:rcampbel@lhup.edu">rcampbel@lhup.edu</a>	None provided	Becky Proctor, <a href="mailto:bproctor@lhup.edu">bproctor@lhup.edu</a>	Don Woodhouse <a href="mailto:dwoohouse@lhup.edu">dwoohouse@lhup.edu</a>
<b>MA</b>	Dia Carleton <a href="mailto:dcarleto@mansfield.edu">dcarleto@mansfield.edu</a>	Alan Johnson <a href="mailto:ajohnson@mansfield.edu">ajohnson@mansfield.edu</a> and Suzanne Murphy <a href="mailto:smurphy@mansfield.edu">smurphy@mansfield.edu</a>	Danielle Gephart <a href="mailto:dgephart@mansfield.edu">dgephart@mansfield.edu</a>	Tammy Felondis <a href="mailto:tfeldoni@mansfield.edu">tfeldoni@mansfield.edu</a>	Tekeste Abraham, <a href="mailto:tabraham@mansfield.edu">tabraham@mansfield.edu</a>	Anne Loudenslager <a href="mailto:aloudens@mansfield.edu">aloudens@mansfield.edu</a>
<b>MI</b>	Charmayne L Brubaker <a href="mailto:Charmayne.Brubaker@millersville.edu">Charmayne.Brubaker@millersville.edu</a>	Chip German, VP <a href="mailto:Chip.German@millersville.edu">Chip.German@millersville.edu</a>	Kirsten N. Bookmiller <a href="mailto:Kirsten.Bookmiller@millersville.edu">Kirsten.Bookmiller@millersville.edu</a>	None provided	David Erickson <a href="mailto:derrickson@millersville.edu">derrickson@millersville.edu</a>	Rene Munoz <a href="mailto:munoz@millersville.edu">munoz@millersville.edu</a>

<b>PASSHE</b>	<b>Human Resources</b>	<b>Information Technology</b>	<b>International Education</b>	<b>International Travel</b>	<b>Procurement</b>	<b>Sponsored Research</b>
<b>SH</b>	David Topper <a href="mailto:datopp@ship.edu">datopp@ship.edu</a>	Rick Ruth <a href="mailto:reruth@ship.edu">reruth@ship.edu</a>	Jonathan Skaff <a href="mailto:jkskaf@ship.edu">jkskaf@ship.edu</a>	Jane Thompson <a href="mailto:MJThompson@ship.edu">MJThompson@ship.edu</a>	Deborah Martin <a href="mailto:dkmart@ship.edu">dkmart@ship.edu</a>	Christopher Wonders <a href="mailto:cwonder@ship.edu">cwonder@ship.edu</a>
<b>SR</b>	Lynne Motyl <a href="mailto:lynne.motyl@sru.edu">lynne.motyl@sru.edu</a>	Simeon Ananou <a href="mailto:simeon.ananou@sru.edu">simeon.ananou@sru.edu</a>	Pam Frigot <a href="mailto:Pamela.frigot@sru.edu">Pamela.frigot@sru.edu</a>	Charles Curry <a href="mailto:Charles.curry@sru.edu">Charles.curry@sru.edu</a>	Mark Combine <a href="mailto:mark.combine@sru.edu">mark.combine@sru.edu</a>	Nancy Cruikshank <a href="mailto:nancy.cruikshank@sru.edu">nancy.cruikshank@sru.edu</a>
<b>WC</b>	Mike Maloy <a href="mailto:mmaloy@wcu.edu">mmaloy@wcu.edu</a>	Adel Barimani <a href="mailto:abarimani@wcupa.edu">abarimani@wcupa.edu</a>	David Wright <a href="mailto:dwright@wcu.edu">dwright@wcu.edu</a>	Linda Lamwers <a href="mailto:llamwers@wcupa.edu">llamwers@wcupa.edu</a>	Bernadette Hinkle <a href="mailto:bhinkle@wcupa.edu">bhinkle@wcupa.edu</a>	Mike Ayewoh <a href="mailto:mayewoh@wcupa.edu">mayewoh@wcupa.edu</a>
<b>OC</b>	Angela Smith-Aumen, Export Control Officer, <a href="mailto:asmith-amen@passhe.edu">asmith-amen@passhe.edu</a> , 717-720-4018 Cathleen McCormack, Legal Counsel, <a href="mailto:cmccormack@passhe.edu">cmccormack@passhe.edu</a> , 717-720-4030					