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## Policy IT015: Export Control Policy

Recommended for Approval by:

A handwritten signature in black ink, appearing to read "Fawn J. Petrosky", written over a horizontal line.

Fawn Petrosky, Vice President for Finance

Approved by:

A handwritten signature in black ink, appearing to read "Dale-Elizabeth Pehrsson", written over a horizontal line.

Dr. Dale-Elizabeth Pehrsson, President

**Effective Date:** 2/24/2023

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### A. Intent

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.

### B. Definition(s)

- **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 is available at <http://cr.y.p.to/export/ear2001/indexccl.pdf>). The complete CCL is available as Supplement No. 1 to Part 774. 2
- **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.
- **Exclusions:** Activities that are specifically described as excluded from export control in the federal legislation. There are three exclusions from the EAR:

- **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.
- **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.
- **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.
- **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.
- **Export Control Regulations:** The federal regulations most applicable to University activities include (but are not limited to) the following.
  - **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.
  - **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.
- **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.
- **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).
- **Items:** Include commodities, software and technology. Examples of commodities include

computer equipment, research equipment and components.

- **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.
- **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.)
- **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.
- **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. 4
- **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.
- **Technology:** Information related to the development, use or production of an item. Examples of technology include operating manuals, data, drawings and specifications.
- **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.
- **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.

## C. Policy

- **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.

- **Functional Responsibilities**

- **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.
- **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.
- **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.

- **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 exportcontrolled 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.

- **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).
- **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.
- **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.)

- **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.

- **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.)
- **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.
- **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 exportcontrolled 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.
- **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.
  - **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.
- **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.

- **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.

- **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.

- **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 nonencrypted 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.

○ **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.

○ **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.

- **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.

- **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.

**D. Procedure(s)**

Not Applicable.

**E. Related policies**

Not applicable.

**F. Contact Information**

Information Technology Services.

**G. Policy Review Schedule**

All policies will be reviewed every two years or on an as needed basis if a change in BOG, PASSHE or Pennsylvania law would create the need for an immediate change.