



## **POLICY ON EXPORT CONTROL MANAGEMENT**

Dated: March 21, 2023

Supersedes: None

Last Reviewed: \_\_\_\_\_

### **I. PURPOSE**

The purpose of this policy is to facilitate compliance with Export Controls.

### **II. BACKGROUND**

In general, Export Controls govern:

- The export from the United States to a foreign country of certain items, information, or software;
- Verbal, written, electronic, or visual disclosures or transfer of scientific and technical information related to controlled items to foreign persons or entities inside or outside the United States;
- Transactions with, or travel to, certain sanctioned or embargoed countries for the conduct of activities such as teaching or research, or attending conferences; and
- Financial transactions, Exports, re-exports, and Deemed Exports of items and information to Restricted Parties or end users, or for restricted end uses.

In practice, the impact of Export Controls are limited to a narrow set of issues and individuals. Research that falls under fundamental research is excluded from Export Controls. Fundamental research includes basic or applied research in science at an accredited institution of higher learning in the United States where the resulting information is ordinarily published and shared broadly in the scientific community. Fundamental research is distinguished from other types of research that results in information, which is restricted for proprietary reasons or restricted pursuant to specific U.S. government access and dissemination controls. However, fundamental research applies only to the dissemination of research data and information, not to the transmission of material goods. Physical goods, software, encryption, research when there is no intention to publish the results, and research conducted out of the United States never qualify for fundamental research.

Failure to comply with Export Controls exposes both the individual and the College to severe criminal and civil penalties as well as administrative sanctions (loss of research funding and export privileges). Criminal penalties can range from \$50,000 up to \$1,000,000 per violation for individual and/or the College. Prison sentences of up to 20

years may be imposed. Administrative monetary penalties can reach up to \$300,000 per violation.

### III. POLICY

It is the policy of New York Medical College (NYMC or the College) to comply with all United States Export Controls, including, but not limited to, those implemented by the Department of Commerce through its Export Administration Regulations (EAR), the Department of State through its International Traffic in Arms Regulations (ITAR), and trade controls imposed by the Treasury Department through its Office of Foreign Assets Control (OFAC). NYMC faculty, staff, or students may not engage in any activity, or commit the College to engage in any activity, that violates U.S. Export Controls.

### IV. SCOPE

This policy applies to all Investigators, employees, students, and research volunteers.

### V. DEFINITIONS

**Deemed Export:** A deemed export is any release of technology or source code subject to the EAR to a Foreign National.

**Export:** An export is the transfer of export-controlled data, items, equipment, materials, and software or providing a defense service to a Foreign National. An export can occur in a number of ways, such as a physical shipment, hand-carrying an item out of the U.S., email transmission of data, presentations, discussions, visually accessing export-controlled data.

**Export Administration Regulations (EAR):** The US Department of Commerce EAR found at 15 C.F.R. § 730 et seq. regulates dual-use items which have both civil and military-related applications and applies to both physical shipments as well as to transfers of information or technology. The EAR applies to transfers out of the U.S., as well as to some transfers made solely within the U.S. In addition, the EAR implements anti-boycott and restrictive trade practice regulations.

**Export Controls:** U.S. Government statutes and regulations that prohibit the unauthorized export of certain commodities, technologies, software, services, money, or information to non-U.S. destinations, persons, and entities.

**Foreign National or non-U.S. Person:**

- An individual who is not a U.S. citizen or permanent resident of the U.S., and who has not been granted political asylum or other protected status;
- A corporation, business association, partnership, trust, society, or any other entity or group that is not incorporated or organized to do business in the U.S.; or
- An international organization or foreign government (including agencies or subdivisions).

**International Traffic in Arms Regulations (ITAR):** The ITAR controls the manufacture, sale, and distribution of defense and space-related articles and services, as defined on the U.S. Munitions List (USML), as well as the associated technical data. Like the EAR, the ITAR applies to transfers out of the U.S., as well as to transfers made solely within the U.S.

**Investigator:** Any person, regardless of title or position, who is responsible for the design, conduct, or reporting of research or proposed research associated with NYMC, which may include, for example, collaborators or consultants.

**Office of Foreign Assets Control Regulations (OFAC):** The OFAC administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals. OFAC publishes lists of countries, individuals, and entities with which College individuals are prohibited from engaging with. OFAC sanctions restrict the exchange of anything of value including services and travel.

**Restricted Party:** A restricted party is an individual, organization prohibited from receiving U.S. exports and/or with whom U.S. persons are restricted from engaging in export transactions.

**U.S. Person:** An individual with U.S. citizenship, permanent residency, or protected individual status such as refugees and asylees. Corporations incorporated in the United States are U.S. Persons for purposes of the ITAR and EAR.

## **VI. PROCEDURES**

### **A. Identification of activities that may need an export license**

#### **1. Research**

Before initiating any new research or collaborations including unfunded, funded, under a grant, or contractual the Principal Investigator (PI) is required to determine whether or not the activity will require an export permit. PIs must promptly contact their department chair or administrator if any of the following situations apply:

- Collaboration with colleagues in foreign countries;
- Training provided to foreign nationals, including students, on the use of controlled equipment and/or software (i.e, listed in EAR or ITAR);
- Sponsor requirement of prior-approval rights over publications; or
- Sponsor requirement of prior approval regarding the hire and/or participation of employees and/or foreign nationals, including students.

#### **2. International travel**

International travel may be subject to Export Controls depending on the travel destination. Investigators, employees, students, and research volunteers traveling internationally, on NYMC sponsored travel, must register their travel with their department chair or administrator to ensure that travel complies with Export Controls. Travel should be registered 6-8 weeks before travel.

#### **a. Hand-carrying electronic devices abroad**

Investigators, employees, students, and research volunteers must review the Touro Information Security mobile device safety guidelines when traveling internationally and contact the IT Department ([helpdesk@nymc.edu](mailto:helpdesk@nymc.edu) or 914-594-2000) prior to travel to determine if computers contain non-commercial, special purpose or certain encryption software that may be subject to export control. The Touro Information Security mobile device safety guidelines are available on TouroOne portal, under IT & Information Security policies. If requested by the Office of Research Administration, IT will offer clean laptops to employees traveling abroad.

### **3. International shipments of research materials or equipment**

All international shipments of research materials or equipment must be assessed for export control concerns related to both the items being shipped and the end user/end use of the items. All College employees and students must contact the Department of Environmental Health and Safety (EHS) prior to making international shipments of research materials or equipment ([NYMC\\_EHS@NYMC.EDU](mailto:NYMC_EHS@NYMC.EDU)). EHS will provide technical assistance to determine shipping license requirements, classification, and documents needed. Requests for shipment review should be made at least one week before the anticipated ship date.

#### **B. Training**

Mandatory export control training must be completed by any member of the College community working on projects or research that is controlled for export purposes, and their department chairs and administrators will ensure they complete the training entitled, "Export Compliance: An Overview for Staff, Students, and Faculty" that is available through their NYMC affiliation on skyprep (online training software). Work on export-controlled projects may not begin until after training is completed. EHS will provide training on export control, involving international shipments, during shipping training courses and annual safety/compliance refreshers.

#### **C. Record Retention**

Records regarding export control must be retained for five years after the completion of the export activity and made available to regulating bodies upon request. Records that must be retained include all memoranda, notes, correspondence (including email), financial records, shipping documentation, as well as any other information related to the export activities.

#### **VI. EFFECTIVE DATE**

This policy is effective immediately.

#### **VII. POLICY MANAGEMENT**

Responsible Executive Stakeholder: Senior Vice President for Research

Responsible Oversight Office: Office of Research Administration