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Purpose and preamble

The purpose of this policy is to establish a mechanism whereby the institution will be in compliance with federal mandates on the export of both physical and intellectual property. All activities at the institution are required to comply with the myriad of rules and regulations that govern export of goods and information. The websites of the Research Foundation of the State University of New York, and SUNY Stony Brook University serve as the foundation of this policy guide. In an effort to maintain national security federal rules, laws and regulations have been issued to restrict both physical and intellectual property that might adversely affect national security. Our government realizes that fundamental research is important to the nation and recognizes that such research be allowed free international access with some restrictions. With that in mind the National Security Decision Directive 189 defines fundamental research as basic or applied research in science and engineering at an accredited institution of higher learning in the U.S. where the resulting information is ordinarily published and shared broadly in the scientific community.

SUNY Optometry is an institution in which our research activities do not require national security clearance, are widely published, and do not enter into agreements which would restrict any members of the research group, including faculty, students and staff, from the ability to participate and share intellectually significant portions of the project. Because of this our endeavors generally fall within the Fundamental Research Exclusion.

Nonetheless, export controls may still apply to a project or to foreign nationals working on the project. If in doubt, contact the Grant Manager. Be ready to provide names of contacts, institutions, equipment, type of information, sponsor and other information that might bear on the issues.

Note that there are numerous live web links within this document to further explain export controls definitions and the federal mandates regulating those controls, as well as links to additional sources, including a web program designed to scan the widely dispersed databases that define restrictions in real property export, intellectual property and individuals restricted from receiving such property.

In many ways, export controls are similar to the controls placed on human and animal subjects. Compliance needs to be monitored when appropriate and due diligence should be used to determine whether controls need to be in place – this is can be more difficult to determine than whether IRB or IACUC guidelines need to be followed. For that reason RF has contracted with Visual Compliance to search through the myriad of governmental databases that regulate export controls. Both export of materials, and deemed export – the transfer of knowledge – must be considered.

For those activities originating in the Center for International Studies and the Confucius Institute, the Director of the Confucius Institute (Currently Dr. Michael Heiberger) is the point of contact. For issues centered on research or clinical activities please contact the Grant Administrator (Currently Arthur Eisenberg, x4159).

Scope

This policy applies to all personnel and projects within the institution.

Policy

Permitted Institutional Activities

All research conducted at, by, or on behalf of the College must be basic and applied so that the resulting information is of a type that would be ordinarily published and shared broadly within the scientific community, as distinguished from research the results of which are restricted for proprietary reasons or specific U.S. Government access and dissemination controls. Faculty, staff, or students will not accept restrictions on the publication of scientific and technical information resulting from a project or activity or conduct research that is funded by the U.S. Government if specific access and dissemination controls protecting information resulting from the research apply.

It is the express purpose of this policy that all research conducted by the College fall under the fundamental research exclusion to U.S. export control restrictions. Special exemptions will be considered based on written requests for such exceptions to this policy. Requests should be submitted to the Grant Administrator. A determination whether the proposed activity fits in the scope of permissible activities at the institution based on consultation with the Operations Manager and the VP for Academic Affairs or his designee and the Research Foundation.

Questions regarding the applicability of this policy or the fundamental research exception to specific research projects or actions should be directed to the Grant Administrator with approval for the project required from the Associate Dean for Graduate Studies and Research. If necessary, advice will be sought from SUNY's Office of General Counsel and or the SUNY Research Foundation.

Hiring foreign national to work on research projects:

Foreign nationals to be hired will be screened by use of www.visualcompliance.com's Restricted Party Screening (RPS) algorithm. The institution to which they are affiliated will also be screened. Those individuals with adverse data and/or to whom their affiliated institutions possess adverse information will receive further scrutiny and the travel or project may not be permitted. Those projects containing adverse data will be reviewed by the Operations Manager and the Dean and Vice President for Academic Affairs and a decision will be made on how to rectify the adverse data or to disallow the project.

Travel to international meetings:

Those SUNY Optometry personnel traveling to recognized international meetings in order to further their basic research or educational goals need not be screened, based on the Fundamental Research Exclusion, with the following exception: Travel related to a project that

requires national security clearance must have all relevant contacts and institutions screened. See the Grant Office. Travel to any recognized terrorist nation must be reviewed and approved by the Operations Manager and the Dean and Vice President for Academic Affairs.

SUNY Optometry personnel traveling internationally to further their expertise in any of the fields associated with the educational or clinical purpose need not be screened with the exception of travel to countries on the Travel Alert list at the Department of State (http://travel.state.gov/travel/cis_pa_tw/tw/tw_1764.html) and sanctioned countries identified by the Department of the Treasury (<http://www.ustreas.gov/offices/enforcement/ofac/programs>).

Transport of Equipment:

Contact the Grants Office in all instances in which there may be a requirement for an export license.

- Laptops: Off the shelf laptop computers that do not contain special encryption software nor non-commercially available software probably do not require an export license. When in doubt, contact the Grant Office.
- GPS: GPS devices may require an export license – contact the Grants Office should you be traveling with a GPS device to determine whether an export license is required.

In the event the traveler has any question about the devices or equipment with which they are traveling, contact the grant manager or the RF Operations Manager or his designee who may contact the RF directly for assistance. Be sure to have available the item make and model number and the ECCN number which the manufacturer can supply. Note that equipment does not fall under the Fundamental Research Exclusion.

When traveling with a laptop or other portable equipment outside the U.S.:

1. The equipment must be retained by the traveler exclusively at all times;

AND

2. The equipment must not be used by anyone in the foreign country.

Shipping:

Contact the Grant Manager and Purchasing to discuss shipping requirements if there are any concerns regarding shipment to foreign nationals. Note that equipment does not fall under the Fundamental Research Exclusion.

Technology Control Plan:

If an export control issue is identified a Technology Control Plan similar to the one at Stonybrook will be developed to ensure compliance with export control regulations. Alternatively, the RF Technology Control Plan will be acceptable. Search the Stony Brook or RF Websites for Technology Control plan for details or click the links above.

Supporting Information

SUNY Optometry wishes to thank SUNY Stony Brook University for permission to use sections of their well organized and informative web areas on Export Controls.

What are Export Controls:

Generally stated, export controls regulate the disclosure, shipment, use, transfer or transmission of any item, commodity, material, technical information or software, and encrypted software appearing on the U.S. government's controlled technologies lists for the benefit of a foreign person or foreign entity anywhere. Additionally, export controls regulate transactions or the provision of services involving prohibited countries, persons or entities based on trade sanctions, embargoes and travel restrictions.

The federal definition of an export is any item that is sent from the U.S. to a foreign destination:

- to anyone outside the U.S., including U.S. citizens
- to foreign entities, individuals, embassies or affiliates at any location, including the U.S.

Regulations:

The regulations are subdivided into three categories

- International Traffic in Arms Regulations (administered by the State Department)
- Export Administration Regulations (administered by the Commerce Department)
- Office of Foreign Asset Control Regulations (administered by the Treasury Department)

International Traffic in Arms Regulations (ITAR) control the export and temporary import of ITAR controlled military items like defense articles and defense services covered by the U.S. Munitions List (http://pmddtc.state.gov/regulations_laws/itar.html), inclusive of space and satellite technologies.

Export Administration Regulations (EAR) control the export and re-export of commercial and dual use (commercial and military/security applications) items, including encrypted software, appearing on the Commodities Control List (CCL) (<http://www.bis.doc.gov/policiesandregulations/index.htm>). Additional guidance on encrypted software, including a review checklist, can be found at: (<http://www.bis.doc.gov/encryption/checklistinstr.htm>)

Office of Foreign Asset Control Regulations (OFAC) enforces economic and trade sanctions based on U.S. foreign policy and national security goals against foreign targeted countries or entities, terrorists, international narcotics traffickers and those engaged in activities related to the proliferation of weapons of mass destruction. (www.access.gpo.gov/nara/cfr/waisidx_03/31cfr500_03.html)

- A list of countries subject to sanctions and/or boycotts can be found at:
<http://www.ustreas.gov/offices/enforcement/ofac/programs>
As of December, 2010, the affected countries include but are not limited to Burma, Belaruss, Cuba, Ivory Coast, Iran, Iraq, Lebanon, Syria, North Korea, Sudan and Zimbabwe.

Deemed exports:

The federal definition of a deemed export is an export of technology or source code (except encryption source code) that is "deemed" to take place when it is released to a foreign national within the U.S. (note a "deemed export" does not require that the technology or source code be actually transmitted or exported across the U.S. border).

A "deemed" export situation can occur by access/use in research or training, visual inspection, or an oral exchange of information.

- In a university situation, a deemed export might occur when an investigator requires a foreign national to have access to or use of a controlled laser. A determination must be made to identify whether or not an export license is needed prior to that individual accessing or using the laser.

Effective February 20, 2011 Form I-129 (<http://www.uscis.gov/files/form/i-129.pdf>) requires a Deemed Export Attestation for a foreign person on an H-1B, H-1B1 Chile/Singapore, L-1 or O-1A visa petition, as follows:

With respect to the technology or technical data the petitioner will release or otherwise provide access to the beneficiary, the petitioner certifies that it has reviewed the Export Administration Regulations (EAR) and the International Traffic in Arms Regulations (ITAR) and has determined that:

1. A license is not required from either the U.S. Department of Commerce or the U.S. Department of State to release such technology or technical data to the foreign person; or
2. A license is required from the U.S. Department of Commerce or the U.S. Department of State to release such technology or technical data to the beneficiary and the petitioner will prevent access to the controlled technology or technical data by the beneficiary until and unless the petitioner has received the required license or other authorization to release it to the beneficiary.

Restricted Parties Lists:

There are over fifty lists issued by various governmental agencies that restrict transactions with specific individuals, groups and entities. Restricted party designation is not based upon nationality but instead is based upon previous behavior or action. The Grant manager utilizes Visual Compliance to screen individuals against these lists. Some examples of these lists are:

- Department of Commerce Denied Persons List; Department of Commerce Entity List; Department of Commerce "Unverified" List; US Department of Treasury Specially Designated Nations and Blocked Persons; Department of State Terrorist Organizations; Department of State Terrorist Exclusion List; Department of State Arms Export Control Act Debarred Parties; Department of State Nonproliferation Orders; Weapons of Mass Destruction Trade Control Designations.
- USE the Visual Compliance website to check all lists simultaneously
[Visual Compliance Restricted Parties Screening List](#)

Compliance:

Any activity involving funding through the Research Foundation should be reviewed carefully because every export control issue is situational, especially if the project involves a foreign component.

The basic questions to ask include:

- **What** items or technologies are being used?
- **Where** are any items or technologies going?
- **Who** will access the research, items or technologies?

Please note that these questions should be asked for all facets of research, including but not limited to:

- foreign visitors entering your lab;
- shipping equipment, supplies, biologics or chemicals both inside and outside the U.S.;
- sending technical information, via electronic communications or hard copies, both inside and outside the U.S.;
- traveling abroad with electronic devices;
- use of research equipment and/or the access to technical specifications of research equipment by any foreign nationals in a campus laboratory.

Tools:

Several tools are available to conduct a preliminary export control assessment. These tools are intended to provide guidance and any final determinations should be made in conjunction with the Grant manager.

[Export License / No Export License Decision Tree](#)

[ITAR Decision Tree](#)

[EAR Decision Tree](#)

[Commonly Used Acronyms](#)

Several tools are used by the Grant manager to conduct an export control assessment.

At the time of proposal application submission the Project Director's answers to the [Export Control Questions on the SUSB299](#) (4-Page Form) are reviewed in conjunction with the funding announcement and the scope of work for potential export control issues.

The [License Assessment Form](#) is used by the Grant manager to gather additional information that is necessary to properly review an issue for potential export control issues.

The Department of Commerce website regarding Export Controls:

<http://www.bis.doc.gov/licensing/exportingbasics.htm>

Visual Compliance is a web based program that assists the Grant manager with properly identifying an export controlled item, commodity, material, technical information or software, or encrypted software. Visual Compliance also assists the Grant manager with properly identifying any restricted parties. www.visualcompliance.com

Violations:

Violations of these rules carry both personal (principal investigator) and institutional (SUNY RF, SUNY Optometry) civil, criminal and monetary penalties and sanctions. The federal government is carefully looking at educational institutions and their implementation of the export control requirements due to the intersection of cutting edge science, technology and engineering research with national security, foreign policy and homeland security in university laboratories.

Exemptions and Exclusions:

Even if the research you are conducting appears on the list, export may still be permissible if an exemption or exclusion is applicable. All exemptions must be adequately documented and kept on file with the grant manager.

One such exclusion is the "fundamental research exclusion" which is defined as basic and applied research in science and engineering conducted at a university located in the U.S. where the resulting information is ordinarily published (EAR) or is in the public domain (ITAR) and shared broadly within the scientific community (this exemption does not apply to: encrypted software, research conducted outside the U.S., and the physical item). **

**Please note that for the fundamental research exclusion to be in force, the institution cannot agree to any publication restrictions on an award. The fundamental research exclusion also does not apply to equipment use or shipment.

A list of common exemptions and exceptions are available on the Research Foundation Central Office's website

at: https://portal.rfsuny.org/portal/page/portal/The%20Research%20Foundation%20of%20OSUNY/home/export_controls/exclusions_and_exceptions

*Export Controls Exclusions and Exceptions
(from the Research Foundation's website)*

Publicly Available (EAR) or Public Domain (ITAR) Information

Export controls do not apply to information that is already published and widely available from:

- libraries, book stores or newsstands
- trade shows, meetings or seminars that are open to the public
- published patent information
- web sites that are accessible to the public
- courses listed in university catalogs.

The Department of Commerce defines this information as "Publicly Available" in the Export Administration Regulations (EAR), while the Department of State defines this information as "Public Domain" in the International Traffic in Arms Regulations (ITAR).

This exclusion may be **void** if the university or PI accepts any of the following conditions, regardless of sponsor:

- prepublication reviews
- sponsor approvals or conditions on publication or information
- foreign national controls or approvals
- access and dissemination controls on the research
- national security controls.

Fundamental Research Exclusion (FRE)

[National Security Decision Directive \(NSDD\) 189](#) defines fundamental research as basic or applied research in science and engineering at an accredited institution of higher learning in the U.S. where the resulting information is ordinarily published and shared broadly in the scientific community.

- **Note:** In a [Nov. 1, 2001 memo](#), Condoleezza Rice, in her role as assistant to the President for National Security Affairs, reiterated that NSDD 189 remains in effect.

The FRE generally applies provided there are no:

- restrictions to access or dissemination of the research or information
- restrictions to access by foreign nationals
- restrictions on proprietary/confidential information.

The FRE may not apply and an export license may be necessary if a project involves shipping controlled items to a sanctioned country and/or restricted person.

The FRE is **void** if the university:

- accepts any restrictions on the publication of information
- gives a sponsor the right to approve publications
- limits access of foreign nationals
- applies these limitations to any sponsor.

Educational Information Exclusion (EIE)

The EIE allows teaching commonly taught information at universities to continue.

For the Department of Commerce (EAR), the EIE:

- focuses on **venue**
- export controls do not apply to educational information conveyed in courses listed in course catalogs and associated teaching laboratories
- does not cover encrypted software
- this exclusion may be **void** if that same information is transferred to a foreign national outside of class.

For the Department of State (ITAR), the EIE:

- focuses on **subject matter**
- only covers general science, math and engineering principles commonly taught in universities.

Employment Exclusion

Under ITAR (**not** EAR), full-time employees have a license exemption. This exemption applies to disclosures in the U.S. by U.S. universities of unclassified technical data to foreign nationals.

However, this exclusion may be **void** unless these conditions are met:

- the person must be a full-time, regular employee - post-docs, students and visiting researchers usually do not qualify
- the employee must have a permanent U.S. residence during his or her period of employment
- the employee is not a foreign national of an embargoed country
- the university must notify the employee in writing that technical data cannot be transferred or re-exported to other foreign nationals without prior government approval.

Laptops, GPS and Other Equipment

When you travel outside the U.S. with your laptop computer, PDA, cell phone, data storage devices and/or encrypted software you may need an export license to take that equipment with you.

A laptop is generally an exception to the EAR and ITAR lists of controlled items/equipment. However, this exception is **NOT** automatically allowed:

- a license is required when a laptop with controlled research data or encrypted/proprietary software is hand-carried or shipped abroad to a restricted country and/or to a denied person/entity
- for example: A laptop being hand-carried to any country with research data on a genetically modified organism will currently require a license
- genetically modified organisms are controlled items for chemical, biological and anti-terrorism reasons and there are no applicable license exceptions

You should follow these practices when hand-carrying a laptop or other portable equipment outside the U.S.:

- you **MUST** retain exclusive control of the equipment at all times
- you **MUST** not let the equipment be used by anyone in the foreign country.

International Travel Guidance:

The Department of State issues International Travel Information (http://travel.state.gov/travel/cis_pa_tw/cis_pa_tw_1168.html) which includes: travel alerts, travel warnings, country specific information, required documentation and tips for traveling abroad.

[International Travel with Electronic Communication Devices](#) provides guidance on how to ensure compliance with export controls when traveling with electronic communication devices (i.e. laptop, cell phone, PDA and GPS). Note the inclusion of GPS equipment.

International Travel with Electronic Communication Devices
(from the Research Foundation's website [Stony Brook])

For guidance purposes only. Any electronic communication devices that are being taken abroad should be individually verified within the scope of the Export Administration Regulations and/or the International Traffic in Arms Regulations.

General Note: Hand-carried U.S.-origin computers and software cannot be taken to Cuba, Iran, North Korea, Sudan, and Syria except under very limited circumstances.

Laptop Computers: Laptop computers not specially designed for military use are classified on the Commerce Control List under ECCN 4A994. The following rules apply:

Laptops classified 4A994 may be hand-carried as temporary exports to any country except Cuba, Iran, North Korea, Sudan, or Syria under License Exception TMP as long as the use is consistent with the rules in EAR Part 740.9 for "tools of trade."

If a laptop is personally owned (as opposed to the Research Foundation of SUNY or Stony Brook University's property), it may be hand-carried as baggage under License Exception BAG to any country except Iran, Sudan, or Syria to which the owner can legally travel. (Note: BAG only applies to items originally taken by their owners from the United States, not to U.S.-origin items acquired in other countries. In addition, tighter controls apply to certain types of software, as discussed below.)

Laptops classified 4A994 may be exported (i.e., non-temporary exports) under License Exception NLR to any country except Cuba, Iran, North Korea, Sudan, or Syria.

Hand-Held Digital Devices: U.S.-origin cell phones and other hand-held communications devices having an encryption capability (but not capable of end-to-end encryption) are classified 5A992. For such devices, the following rules apply:

Hand-held devices classified 5A992 may be hand-carried as temporary exports to any country except Cuba, Iran, North Korea, Sudan, or Syria under the "tools of trade" provisions of License Exception TMP.

If the hand-held devices are personally owned, they may be hand-carried as baggage under License Exception BAG from the United States to any country except Iran, Sudan, or Syria.

Hand-carried devices classified 5A992 may be exported (i.e., non-temporary exports) under License Exception NLR to any country except Cuba, Iran, North Korea, Sudan, or Syria.

Software: For export control purposes, software (including pre-loaded operating systems) is generally considered separate from the computer on which it is used. For example, Microsoft Windows 2000 Professional is classified under ECCN 5D992.b.1, whereas Windows CE 3.0 is classified 5D002. Controls on software relate to the software's level of encryption and/or the equipment or special purpose for which it is designed, and the ECCN should be determined through a review of the Commerce Control List. For software hand-carried on a laptop, the following rules apply:

Software classified EAR99 or 5D992.b.1 (or 5D002, if it is preloaded on a laptop) may be hand-carried as a temporary export to any country except Cuba, Iran, North Korea, Sudan, or Syria under License Exception TMP as long as the use is consistent with the rules in EAR Part 740.9 for "tools of trade."

2 If software is personally owned (as opposed to the Research Foundation of SUNY or Stony Brook University's property), it may be hand-carried as baggage under License Exception BAG to any country except Iran, Sudan, or Syria to which the owner may legally travel, with the exception of encryption items controlled for "EI" reasons (e.g., 5D002 software), which may not be exported to Cuba, Iran, North Korea, Sudan, or Syria. (Note: BAG only applies to software taken by its owner from the United States, not to U.S.-origin software acquired abroad.)

Software classified EAR99 or 5D992.b.1 may be exported (i.e., non-temporary exports) under License Exception NLR to any country except Cuba, Iran, North Korea, Sudan, or Syria. Software classified 5D002 requires licenses for most destinations unless it satisfies the conditions in EAR Part 740.17 for License Exception ENC.

In an exception to the rule that software and hardware must be considered separately, U.S.-origin software that is classified EAR99 or 5D992.b.1 (or other ECCNs that are only subject to "AT" controls) and pre-loaded or re-exported together with a foreign-produced computer (i.e., "bundled" with the hardware) may be considered part of the computer for the purpose of de-minimis analyses (see EAR Part 734.4).

Technology/Data Files: Information stored on your laptop or in accompanying media (e.g., CDs or diskettes) is technology that might, depending upon the nature of the data and the destination, trigger export control requirements. The following rules apply.

General business information (as opposed to information about product design, manufacturing, etc.) is not subject to export controls.

Publicly available information (e.g., published materials), with the exception of publicly available encryption software classified 5D002, is not subject to export controls.

Product-related technology must be classified using the Commerce Control List and usually has a level of control comparable to that of the related products. For example, technology related to EAR 99 products is normally also classified EAR99 and may be exported under "NLR" (no license required) to any country except Cuba, Iran, North Korea, Sudan, or Syria.

Technology (except encryption technology classified 5E002) may be temporarily exported for the use of U.S. persons to any country other than Cuba, Iran, North Korea, Sudan, or Syria under the "tools of trade" provisions of License Exception TMP.

If personally owned, technology may be exported under License Exception BAG to any country except Iran, Sudan, or Syria (for encryption technology classified 5E002: Cuba, Iran, North Korea, Sudan, or Syria) by U.S. persons for their personal use.

Export Documentation: Hand-carried products and software are subject to AES (Automated Export System) requirements if the value of items classified under a single Schedule B number exceeds \$2,500. In addition, all items exported pursuant to a validated export license and all items destined for Cuba require an AES report. However:

Section 56 of the Foreign Trade Statistics Regulations lists certain exemptions to AES requirements, including for baggage (personal effects) and, for business travelers, for "tools of trade" exported under license exception TMP (see 15 CFR 30.56). Thus, laptops and software exported as "tools of trade" under TMP do not require AES reports.

Even if hand-carried items qualify for an AES exception, the exporter must be prepared to make an oral declaration if requested to do so by a Customs official

For More Information:

The Department of Commerce website regarding Export Controls:

<http://www.bis.doc.gov/licensing/exportingbasics.htm>

The Research Foundation Central Office has Export Controls guidance available on their public website at:

[https://portal.rfsuny.org/portal/page/portal/The Research Foundation of SUNY/home/export_controls](https://portal.rfsuny.org/portal/page/portal/The%20Research%20Foundation%20of%20SUNY/home/export_controls)

Approval

RF Operations Manager  **Date** 4/26/12
David A. Bowers

Vice President for Academic Affairs  **Date** 4/27/12
David Troilo

The President  **Date** 4/27/12
David Heath