

Macalester College Form  
**Export Control Regulations**  
Business Services



### What is export control?

Export control regulations are federal laws that control the conditions under which certain information, technologies, and commodities may be transmitted overseas to anyone, including U.S. citizens, or to a foreign national on U.S. soil. They govern the **shipment, transmission, or transfer** of certain sensitive **items, information or software** to foreign persons or entities. Export controls usually arise for one or more of the following reasons:

- The nature of the export has actual or potential military applications or economic protection issues
- Government concerns about the destination country, organization, or individual, and
- Government concerns about the declared or suspected end use or the end user of the export

### What is an export?

An export is any item that is sent from the U.S. to a foreign destination. Additionally, the release of technology or source code to a foreign national in the U.S. is “deemed” to be an export to the home country of the foreign national.

### Who is a foreign national?

A “foreign national” is anyone who is not a:

- U.S. citizen
- U.S. lawful permanent resident
- Person granted asylum
- Person granted refugee status
- Temporary resident

### How may exports be disclosed?

Exports may be disclosed through any of the following methods:

- Telephone discussions
- Fax
- E-mail communications
- Computer data disclosure
- Face-to-face discussions
- Training sessions
- Tours which involve visual inspections

Export controls apply whenever tangible items are being sent or hand-carried outside U.S. borders or when controlled information or software code is being shared with “foreign persons or entities” in the U.S. or transferred physically, visually or orally to foreign persons abroad. This includes information and software on your **laptop, PDA, tablet, and cell phone**.

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## Which agencies have oversight of export control laws?

Most exports do not require government licenses. However, licenses are required for exports that the U.S. government considers “license controlled” under the following:

1. **The Department of Commerce’s** Export Administration Regulations (EAR) control items that have both a commercial and potential military use. Commerce Control List (CCL) categories:
  - Nuclear materials, facilities and equipment (and miscellaneous items)
  - Materials, Chemicals, Microorganisms and Toxins
  - Materials Processing
  - Electronics
  - Computers
  - Telecommunications and Information Security
  - Sensors and Lasers
  - Navigation and Avionics
  - Marine
  - Propulsion Systems, Space Vehicles and Related Equipment
  
2. **The Department of State’s** International Traffic in Arms Regulations (ITAR) control defense-related items and services, including:
  - Military items or defense articles
  - Goods and technology designed to kill or defend against death in a military setting
  - Space related technology because of application to missile technology
  - Technical data related to defense articles and services
  
3. **The Treasury Department’s** Office of Foreign Assets Control (OFAC) administers and enforces economic and trade sanctions that have been imposed against specific countries based on reasons of foreign policy, national security, or international agreements. The sanctions:
  - Regulate the transfer of items/services of value to embargoed nations
  - Impose trade sanctions, and trade and travel embargoes aimed at controlling terrorism, drug trafficking and other illicit activities
  - Prohibit payments/providing value to nationals of sanctioned countries and some specified entities/individuals
  - May prohibit travel and other activities with embargoed countries and individuals even when exclusions to EAR/ITAR apply

## How can export controls affect my research?

There are several scenarios that may require an export license including, but not limited to:

- A physical transfer/disclosure of an item outside the U.S.
- Any transfer/disclosure of a controlled item or information within the U.S. to a foreign national
- Participation of foreign national faculty, staff, or students in affected research
- Presentation /discussion of previously unpublished research at conferences or meetings where foreign national scholars may be in attendance
- Research collaborations with foreign nationals and technical exchange programs

- Transfers of research equipment abroad
- Visits to your lab by foreign national scholars

### **Are there exclusions to export control laws?**

Yes, there are several exclusions, and two that are particularly relevant to academic research: *the fundamental research exclusion* and *the public domain exclusion*. These exclusions can be lost, however, 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 crucial that you not sign any such agreements – or any agreements that mention export controls – on your own.**

### **What is the fundamental research exclusion for colleges and universities?**

Even if an item appears on one of the lists of controlled technologies, generally there is an exclusion for fundamental research (as long as there are no restrictions on publication of the research or other restrictions on dissemination of the information) or, in some cases, as long as the research or information is made public or is intended to be made public.

**Fundamental research**, as used in the export control regulations, includes basic or applied research in science and/or engineering at an accredited institution of higher learning in the U.S. where the resulting information either is ordinarily published and shared broadly in the scientific community or where the resulting information has been or is about to be published. Fundamental research is distinguished from research that results in information that is restricted for proprietary reasons or pursuant to specific U.S. government access and dissemination controls. University research will not qualify as fundamental research if (1) the institution accepts any restrictions on the publication of the information resulting from the research, other than limited prepublication reviews by research sponsors to prevent inadvertent divulging of proprietary information or to insure that publication will not compromise patent rights of the sponsor; or (2) the research is federally funded and specific access or dissemination controls regarding the resulting information have been accepted by the university or the researcher.

**Tangible items**, however, do not fall under the fundamental research exemption. If a researcher is fabricating an item for shipment outside the U.S., that item must be checked against the EAR, ITAR and OFAC lists to see whether a license is required.

### **What is considered published information as used in the definition of fundamental research?**

The EAR and the ITAR approach the issue of publication differently. For the EAR, the requirement is that the information has been, is about to be, or is ordinarily published. The ITAR requirement is that the information has been published.

Information becomes "published" or considered as "ordinarily published" when it is generally accessible to the interested public through a variety of ways. Publication in periodicals, books, print, electronic or any other media available for general distribution to any member of the public or to those that would be interested in the material in a scientific or engineering discipline. Published or ordinarily published material also include the following: readily available at libraries open to the public; issued patents; and releases at an open conference, meeting, seminar, trade show, or other open gathering. A conference is considered "open" if all technically qualified members of the public are eligible to attend and attendees are permitted to take notes or otherwise make a personal record (but not necessarily a recording) of the proceedings and presentations. In all cases, access to the information must be free or for a fee that does not exceed the cost to produce and distribute the material or hold the conference (including a reasonable profit).

## **What is public domain?**

Public domain is the term used for "information that is published and generally accessible or available to the public" through a variety of mechanisms. Publicly available software or technology is that which already is, or will be, published.

## **What happens if export control laws are violated?**

The consequences of violating the regulations can be severe, and include loss of research funding, fines, and/or prison time. The College will provide assistance to comply with export control laws, but the primary responsibility rests with the Principal Investigator(PI) of the research.

## **What kinds of projects raise export control concerns?**

Any research activity may be subject to export controls if it involves the actual export or "deemed" export of any goods, technology, or related technical data that is either:

- "Dual-use" (commercial in nature with possible military application) or
- Inherently military in nature

Research in the following areas can frequently require export control:

- Engineering
- Space sciences
- Computer Science
- Biomedical research with lasers
- Research with encrypted software
- Research with controlled chemicals, biological agents, and toxins

In addition, any of the following will raise export control questions for your project:

- Sponsor restrictions on the participation of foreign nationals in the research
- Sponsor restrictions on the publication or disclosure of the research results
- Indications from the sponsor or others that export-controlled information or technology will be furnished for use in the research
- The physical export of controlled goods or technology is expected

Helpful questions to consider:

- What is the nationality of the researchers, including faculty, staff, and students?
- Will the results be publicly available?
- Will there be restrictions on publications, access, dissemination or proprietary information?
- Will I be receiving any restricted information?
- Is the research going overseas to a foreign company, government or individual?
- What do the end-users intend to do with the research results?

## **As a Principal Investigator, what should I do?**

The PI has the best understanding of the research and should know best whether particular technology, data, or the information involved is subject to export control regulations. The PI is responsible for:

- Determining if the research you are performing; the information you are developing, receiving or disseminating; or the technology you are developing, receiving or disseminating, is restricted by export control laws and regulations.
- If it is restricted, you have the responsibility of protecting the information or technology from export or deemed export, either intentionally or inadvertently.
- For informing undergraduate students, faculty, and staff who are likely to come into contact with this information or technology of the proper protection regulations.
- Periodically reviewing your research to ascertain if its status relative to export control regulations has changed.
- Carefully reviewing the information on export controls provided on this website.
- Contacting the **Grants Accountant** at 651-696-6354 or [mketter@macalester.edu](mailto:mketter@macalester.edu) for any of the following:
  - Help in determining whether any export control restrictions may apply to the research
  - If the export control status of your research changes
  - If you become aware of any violations of export control laws and regulations

### Where can I get help?

- **Export Administration Regulations (EAR)**, Title 15, sections 730-774 of the Code of Federal Regulations (CFR) are promulgated and implemented by the Department of Commerce. The EAR regulate the export of goods and services identified on the Commerce Control List (CCL), Title 15 CFR section 774, Supp. 1. The EAR and CCL are available online at <http://www.bis.doc.gov/policiesandregulations/index.htm>.
- **International Traffic in Arms Regulations (ITAR)**, 22 CFR sections 120-130, are promulgated and implemented by the Department of State and regulate defense articles and services and related technical data that are identified on the Munitions Control List (MCL), 22 CFR § 121.1. The ITAR is available online at [http://www.pmdtc.state.gov/regulations\\_laws/itar.html](http://www.pmdtc.state.gov/regulations_laws/itar.html).
- **Treasury Department's Office of Foreign Assets Control (OFAC)** administers and enforces economic and trade sanctions. Full descriptions of all countries currently subject to boycott programs are available at <http://www.treasury.gov/resourcecenter/sanctions/Pages/default.aspx>.

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