Mount Holyoke College
Export Control Policy (DRAFT)

Statement
Mount Holyoke College recognizes the importance of complying with all U.S. export control regulations and is committed to full compliance with these regulations.

Scope
This Policy extends to the entire College community. Specifically, the following areas will be most affected by Export Controls:

1. All College research and academic programs which
   a. Conduct activities with international scope, or
   b. Conduct research utilizing specialized instruments or materials
2. College operational and business functions including, but not limited to, Human Resources, Facility Management, Library/Information/Technology Services, Study Abroad, EH&S, Grants/Sponsored Research, Purchasing-Accounts Payable, and others.

Responsibilities
All members of the College community, including faculty, students, and staff, are responsible for complying with this policy.

Policy
All members of the College community must comply with U.S. export control regulations and adhere to College procedures established to maintain institutional compliance with such regulations.

No member of the College community may engage in any activity, or commit the University to engage in any activity, that violates U.S. export control laws and regulations. Specifically, personnel may not:

- Export commodities, software, or technology subject to the Export Administration Regulations (EAR), except as authorized by the U.S. Department of Commerce;
- Export hardware, technical data, or services subject to the International Traffic in Arms Regulations (ITAR), except as authorized by the U.S. Department of State;
- Engage in transactions subject to restriction under the Foreign Assets Control Regulations, except as authorized by the U.S. Department of the Treasury; or
- Violate any other U.S. export control law or regulation.

Community members involved in research and academic projects that are subject to export controls must follow the procedures that are appropriate for the roles they serve. These individuals are
responsible for reviewing the materials on the College's export controls website and consulting the Export Controls Task Force when export controls apply.

### Procedures

1. **Classification of international transfers/shipments**

   International transfers or shipments of laboratory instruments, prototypes, raw materials, chemicals, engineered materials, specialized scientific software, and proprietary technical data (i.e. data which is not already in the public domain or which is not going to be published) should be referred to the Sponsored Research Officer prior to the proposed transfer to determine whether an export license is required. This includes any item being sent internationally pursuant to a Material Transfer Agreement (MTA) and any item hand-carried to an international destination.

   *Exception:* This requirement does not include laptops or mobile communication devices that do not contain any proprietary export controlled data. If there is any question as to whether data which has been stored on a device is export controlled, please contact the Export Control Task Force.

   In some cases, an item must be “classified” prior to export. This involves evaluating the item’s specifications and capabilities. Contact the MHC Export Control Task Force at the earliest opportunity of the planned export, so as to allow sufficient time to complete this analysis.

   **License Required:** The Sponsored Research Officer will work closely with you and/or your designated staff member to apply for and obtain a license from the governing agency. Typically, export licenses take from 30 to 60 days to obtain.

   **No License Required:** MHC Export Control Task Force will maintain a record of this classification, so that subsequent proposed exports of identical items need not be reevaluated prior to shipment, unless the proposed shipment is to OFAC-sanctioned country (e.g. Iran, Cuba, Syria, and Sudan).

2. **Laboratory access to controlled instruments: deemed exports**

   When an item (e.g. instrument, software, etc.) has been identified as EAR (dual use) or ITAR controlled, foreign national access must be restricted as specified below, unless specifically authorized by MHC Export Control Task Force.

   **EAR:** Access restrictions pertain to activities which involve use, development, or production technology—activities which provide insight into how the item is designed or engineered. Mere operation of a dual use instrument does not confer such technology. However, access to proprietary export controlled data about a dual use instrument (for example, data used in the proprietary co-development of an instrument with an external party) may trigger a “deemed export” and be restricted.

   **ITAR:** The Sponsored Research Officer and supervising lab personnel (PI, lab manager etc.) will have jointly created a documented technology control plan (TCP) at the time the item was procured that sets forth the security measures for safeguarding export compliance.
Not all export controlled activities can be identified during procurement. For example, it may be necessary to repair or overhaul an export controlled instrument; or, MHC may plan to co-develop an item that is not covered under the Fundamental Research Exclusion (i.e. there is no intent to publish on the activities). Situations like these may involve sharing controlled technology. The MHC Export Control Task Force should be proactively alerted regarding such plans, in order to determine whether it is necessary to implement foreign national restrictions or obtain an export license for foreign national project participants.

If you think that an export controlled item may be accessed and/or used by foreign nationals for activities which are not covered under an existing TCP, please contact the MHC Export Control Task Force so that the matter can be resolved as quickly as possible.

3. Denied and restricted parties screening

The College may not engage in any activity with a party that is identified on the U.S. Government’s various denied and restricted parties lists. To prevent involvement with denied and restricted parties, the College screens academic, research, and business contacts through its Visual Compliance software program. Screening can be performed quickly and provides an essential layer of compliance protection. The following parties should be screened:

- Signatories to MOUs/MTAs: refer to Sponsored Research Officer for screening.
- Recipients of international transfers/shipments of commodities, including research collaborators to the extent that we are providing them with any commodity, sample, prototype, unpublished software, or third party proprietary export controlled data: refer to Sponsored Research Officer for screening.
- All foreign institutions with whom Mount Holyoke College engages for research, academic and business functions (including for example foreign institutions hosting Mount Holyoke students/scholars and companies providing international logistics services to facilitate Mount Holyoke’s transactions abroad): refer to Immigration Advisor for International Students for screening.
- Vendors and distributors: refer to Director of Purchasing for screening.
- Foreign delegations visiting Mount Holyoke, including any delegations that are scheduled to tour our scientific and laboratory facilities: refer to Immigration Advisor for International Students for screening.
- Research sponsors (international and domestic), including industry partners with whom we may engage in proprietary research or service contract work: refer to Grant Accountant for screening.
- H1 visa employees and J-1 visiting scholars (regardless of whether the J-1 is a compensated employee): refer to Dean of Faculty Senior Administrative Assistant for screening.
- International payees are pre-screened by Accounts Payable prior to payment.

If you have reason to believe that an individual or institutional partner has not undergone the screening process as noted above, please notify the MHC Export Control Task Force so that Visual Compliance screening can be conducted.
4. **International travel to Sanctioned Countries or any travel involving the transfer of commodities**

International travel to any OFAC-sanctioned country (Iran, Cuba, Syria and Sudan) should be reviewed in advance by the MHC Export Control Task Force.

OFAC has expanded its General License to include a broader range of research and academic activity in Cuba, as well as the ability for US institutions to host Cuban scholars. However, some activities still require a specific license. All proposed activities involving travel to Cuba or engaging with a Cuban institution must be evaluated by the MHC Export Control Task Force in advance.

As noted, travel with laptops or mobile devices is not controlled, unless such devices contain stored export controlled data. In this case, please confer with the MHC Export Control Task Force to verify the status of the data. Any intention to travel with prototypes, scientific instruments, or samples should likewise be evaluated by the MHC Export Control Task Force well in advance of scheduled departure.

5. **Purchasing**

When purchasing capital equipment or consumables for research, please work with the Director of Purchasing to confirm the export control classification with the vendor. Personnel procuring items should follow these procedures:

   a) In the quotation and/or purchase order documentation, require that the vendor check a box marked “export controlled” if the item is controlled, and specify whether it is controlled under EAR or ITAR jurisdiction.

   b) Review purchasing documentation, user manuals, and/or software to identify export control notifications from vendors. Such notification may state “Export Controlled under ECCN XXXXXX” or “ITAR Controlled under USML Category XX” or use similar language.

   c) Notify the MHC Export Control Task Force immediately regarding any export controlled items. MHC Export Control Task Force will contact the requisitioning party to determine whether the intended use of the item will conflict with any access restrictions that apply based on the export control status. If there is a conflict, the Director of Purchasing may suggest identifying a less-controlled or non-controlled item instead.

6. **Non-Disclosure Agreements (NDAs) and Material Transfer Agreements (MTAs)**

If a research partner or other collaborator intends to provide export controlled data or a controlled commodity to the College, advance notice is required so that the College can address compliance requirements accordingly. External parties are required to include the following type of notification language (or equivalent thereof) pursuant to a mutual or incoming NDA or MTA Agreement:

“Export Control: During the course of any activity conducted under this Agreement, [name party] must first notify the College of its intention to provide any export controlled data, material, software, or commodity at least 30 days in advance of actually providing this data or item, as well as the export classification of such data or item. The College will then respond by
accepting such data or item (including any special compliance requirements for transmittal to the College), or alternatively, provide the basis for declining to accept such data or item.”

All NDAs and MTAs should be forwarded to the Sponsored Research Officer for review.

7. Asset Management

Asset management systems should flag export controlled items as such. In particular, ITAR items should have a unique “identifier.” This will alert personnel to potential export control issues when such items are proposed for transfer from one Department within the College to another or, for example, divested by the College to an external party. The Asset Management System is managed in Financial Services.

8. International Scholars and Human Resources

When visa petitioning for an H1-B or O-1 foreign national employee beneficiary, the College must follow this process:

a) Prior to certification of H-1 and O-1 visa candidates, the Dean of Faculty Senior Administrative Assistant will have the host complete a brief export control questionnaire. This questionnaire will identify whether the candidate’s intended position would potentially expose him/her to export controlled data, either through technology sharing or through access to an ITAR instrument.

b) If an export control issue is identified, the host contacts the MHC Export Control Task Force for requirements for managing the issue. This may include establishing a Technology Control Plan (TCP) or applying for an export license to authorize a deemed export. This step will inform the timing of the hire so as to allow these types of procedures to be established prior to the foreign national’s on-boarding.

While J-1 visiting scholars (whether or not compensated as employees) do not require the same immigration petition certification, the College follows a similar process when a J-1 scholar is going to be introduced into a potentially export-sensitive research department. In this case, the questionnaire is issued by the Immigration Advisor for International Students, who determines next steps for compliance.

The College also recognizes that in certain cases, students (attending the College under an F-1 visa) may also participate in research activities, either informally or as hired research assistants. In the case of controlled research or items, MHC Export Control Task Force will address the potential deemed export exposure through a Technology Control Plan (TCP) that governs restricted aspects of the research program.

9. Foreign Travel

When traveling with potentially-controlled College equipment, data, or other items, please review the Traveling with Technology and contact the MHC Export Control Task Force with any concerns. The MHC Export Control Task Force will ensure that requirements are flagged and met concerning the potential transfer of export controlled assets.
Export Control requirements pertain to a) items intended for use in international research and/or collaborations; b) export controlled data or software stored on a portable electronic device that the traveler intends to bring; c) the planned importation of any item acquired during travel abroad that is intended for eventual use in research; d) and travel to OFAC-restricted countries.

If an export restriction is triggered because of controlled data or software on a portable electronic device, IT will recommend that the prospective traveler remove the data and find an alternative data storage method if possible, or potentially travel with a clean laptop or other device that is configured to meet the traveler’s objectives.

10. Recordkeeping

The U.S. Government agencies responsible for enforcing export control require that certain records be maintained for a minimum of 5 years. These records include but are not limited to the following: export shipping records, including Bureau of Census AES filings; export license records and commercial documentation substantiating shipments made pursuant to a license; denied and restricted parties screening records; self-classification determinations of an item’s export controlled status; export control training attendance records; and export control certification documentation related to I-129B visa petitions. Records may be maintained as hard or electronic copies and must be accessible for internal audit purposes. For any questions concerning the College’s export record retention requirement, please contact the MHC Export Control Task Force.

11. Training

All affected members of the College community are expected to attend an annual export control training. These trainings are designed to familiarize faculty and staff with export control requirements and Mount Holyoke compliance program.

In addition to coordinating annual training, MHC Export Control Task Force will routinely conduct specialized briefings on various topics and requirements. If you believe that your research department or operational function would benefit from an ad-hoc export training, please contact the MHC Export Control Task Force, who will arrange for a session oriented to your situation.

12. Compliance Monitoring

The MHC Export Control Task Force routinely monitor the College’s export control program to detect process issues and to implement enhancements. Self-assessment is also a campus wide function and should be conducted periodically to ensure that the foregoing processes are being properly implemented as applicable to you and your department. Please direct any assessment-related concerns to the MHC Export Control Task Force.

13. Individual Departmental Responsibilities

a. Sponsored Research Administration

Sponsored Administration performs two important functions with respect to export control.

i. Identifies clauses in sponsored research agreements (such as U.S. citizenship requirements or publication restrictions) which may potentially cause the research to
be export controlled i.e. outside the FRE; in these cases, Grants Administration must either negotiate the removal of the export restrictive clause, or refer the matter to the Dean of Faculty for further evaluation and resolution, and

ii. Evaluates proprietary industry opportunities and contracts for export control implications. As these agreements fall outside the fundamental research framework, they require a determination of whether the proposed service work will not only be proprietary to the sponsor, but also export controlled and, therefore, potentially restricted from participation by foreign nationals.

If the work is export controlled, Sponsored Research works with the involved faculty and staff to develop a documented technology control plan (TCP) with processes to implement access restrictions and other required controls.

b. Accounts Payable
Accounts Payable will screen selected payment recipients against the U.S. Government denied and restricted parties lists to ensure that the College is not inadvertently conducting business with such parties. Any possible match against the denied or restricted parties’ lists is referred to the Export Control Task Force for resolution.

c. Information Technology (IT)
Export controlled technical data or software is governed by a Technology Control Plan (TCP). IT helps implement data access, use, storage and transfer controls under the TCP. IT works closely with the data or software owner, and the Export Control Task Force to ensure that the safeguards accomplish compliance requirements while remaining user-friendly. In addition, IT coordinates with foreign travelers to provide clean laptops as needed, i.e., if the traveler’s laptop contains export control data or software.

Policy Violations (if applicable)

Violations of college policies are adjudicated according to procedures outlined in the Student Handbook and the Employee Handbook, with disciplinary consequences imposed by the adjudicating authority up to and including dismissal. Some offenses are punishable under state and federal laws.

U.S. Government export authorities strictly enforce export control through substantial civil and criminal penalties and sanctions, federal debarment and revocation of export privileges. In addition, because of the national security implications to export control, liability for violations can be enforced against an individual to whom an intentional violation is attributable, separate from institutional liability.

Definitions
These definitions apply to terms as they are used in this policy.

Export is defined in two principal ways:
1) International shipments or transfers of items or data abroad by any means; cargo shipments; electronic data transmission (email), spoken communication, hand carried articles, fax, and courier.

2) “Deemed exports”: foreign national access and/or use of export controlled items, technology, materials, software or data (hard or soft copy) occurring in the U.S. The export is “deemed” to occur upon the foreign national’s return to his/her country of citizenship or third country. However, if the access to or use of the controlled item (activity) would have required an export license given the foreign national's citizenship, the violation occurs immediately when, in fact, such unauthorized activity occurs.

For additional Export Control definitions, please refer to the following:

ITAR Definitions

EAR Definitions

Related Information

Other Resources:

Additional reference material here: [https://www.mtholyoke.edu/risk/export-control](https://www.mtholyoke.edu/risk/export-control)