

CLARK ATLANTA UNIVERSITY

11.4 Export Control Policy



CLARK ATLANTA UNIVERSITY		
POLICY/PROCEDURE	Subject: Export Control	
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TABLE OF CONTENTS

	<u>Page</u>
1.0 Policy Statement.....	1
2.0 Procedural Narrative.....	1
2.1 Responsibilities:.....	1
2.1.1 Joint Responsibilities PI/PD and RSP.....	1
2.1.2 Particularly Responsibility of the PI's/PD's:.....	2
2.1.3 Responsibility of Vice President for Research and Sponsored Programs.....	2
2.1.4 Responsibility of the Export Control Committee.....	2
2.1.5 Responsibility of Research and Sponsored Programs:	3
2.2 Potentially Non-allowable Activities.....	3
2.3 Fundamental Research Exclusion.....	4
2.4 Website Address for This Policy.....	4
3.0 Entities Affected by This Policy.....	4
4.0 Definitions of Key Terms.....	4
4.1 Export Control Committee.....	4
4.2 Export.....	5
4.3 Export Control.....	5
4.4 U.S. Person.....	5
4.5 Foreign Person or Foreign National.....	5
4.6 Export Control Laws.....	5
4.7 International Traffic in Arms Regulations (ITAR).....	5
4.8 Export Administration Regulations (EAR).....	5
4.9 Office of Foreign Assets Control (OFAC) Regulations.....	6
4.10 Deemed Export Rule.....	6
4.11 Technical Data.....	6
4.12 Public Domain Exclusion.....	6
4.13 Education Exclusion.....	7
4.14 Employment Exclusion.....	7

APPENDIX

Export Controls Compliance Review Flow Chart.....	8
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1.0 Policy Statement:

Clark Atlanta University (CAU) adheres to all United States (U.S.) laws, regulations and policies related to the transfer of controlled technology, information, equipment, software or services to a foreign person in the U.S. or abroad by any means (e.g. email, phone, letter, travel or package), which includes the application abroad of knowledge acquired in the U.S. In instances where dissemination may be restricted by export control laws, regulations, and policy, each employee is expected to adhere to this policy and is responsible for being aware of his or her obligations and addressing them in a prompt and pro-active manner.

United States export controls exist to protect the national security and foreign policy interests of this country. Export controls govern the **shipment, transmission, or transfer** of certain sensitive **items, information or software** to foreign persons or entities. A fundamental principle of CAU is that the teaching and research environment should be open so that ideas can be published and exchanged freely among faculty and students. Publications, presentations at professional meetings and student dissertations and these are an integral part of CAU's mission and should remain unencumbered by external restrictions. Most of the items, information or software that Clark Atlanta University ships or shares with its colleagues and research partners is not of a nature that would be restricted for such purposes nor are they destined for countries or individuals subject to US embargoes or sanctions. There may be instances in which some University research or activities will involve the dissemination of technical data, information, materials or equipment that are subject to federal export control regulations.

2.0 Procedural Narrative:

The procedures provide assurances that CAU employees understand and follow U.S. Export Control laws, regulations and policies.

The Export Control laws and regulations include the following:

- Department of Defense's International Traffic in Arms Regulations (ITAR)
http://pmddtc.state.gov/regulations_laws/itar.html
- Department of Commerce's Export Administration Regulations (EAR)
http://www.access.gpo.gov/bis/ear/ear_data.html
- Office of Foreign Assets Control's (OFAC) sanctions related to specific countries
<http://www.treas.gov/offices/enforcement/ofac>

2.1 Responsibilities

2.1.1 Joint Responsibilities PI/PD and RSP

It is the joint responsibility of the Division of Research and Sponsored Programs (RSP) and each principal investigator (PI)/ project director (PD) and their staff to understand any export control requirements related to his or her work. Jointly working together, they are to ensure that no exports or transfers are made contrary to those requirements. These responsibilities include:

- 1) Understanding the export implications of research and other activities undertaken at Clark Atlanta University and
- 2) Obtaining the proper license prior to the export or transfer of any export controlled item, whether abroad or within the United States.

During the proposal review and submission process, Research and Sponsored Programs (RSP) may also identify an export control law that governs the proposed sponsored program. If this

occurs, RSP notifies the VPRSP and he forwards the proposal to the Export Control Committee for review and recommendation.

2.1.2 Particular Responsibility of the PI's/PD's:

- No item of equipment or biological or chemical material is sent outside the U.S. or to any foreign national without first determining if an export license is required. If required, obtain a license.
- All domestic and international shipments are in conformance with applicable regulations governing the licensing, packaging and shipment of the material and
- All transfers of export controlled information or technical data, whether to an individual in a foreign country or to a foreign national in the U.S., are in compliance with applicable export regulations and University policy.

It is the responsibility of each PI/PD, using the *Export Controls Compliance Review Flow Chart* (see Appendix) to identify when a potential export control law governs their sponsored program and notify by email the appropriate CAU Export Control Committee (oversight committee). Failure to comply with this Policy on Compliance with Export Control Laws, regulation, and policies may result in actions taken. This may also include the possibility of prosecution by the federal government and the imposition of federal, civil, criminal and/or administrative penalties or sanctions.

2.1.3 Responsibility of Vice President for Research and Sponsored Programs

The Vice President for Research and Sponsored Programs (VPRSP) is the “Empowered Official” responsible for making and documenting decisions at CAU related to export control and communicating that decision to the Provost/V.P. for Academic Affairs.

2.1.4 Responsibility of the Export Control Committee

An Export Control Committee is established to provide oversight and make recommendations to the VPRSP. The University’s Export Control Committee (ECC) consists of six faculty members, and a representative from Research and Sponsored Programs. . The faculty members should represent the following areas: School of Arts and Sciences, STEM disciplines, and the School of Business.

When notified by the PI/PD, the ECC determines whether the fundamental research exclusion is applicable or an application for one or more licenses is required. Upon their recommendation, the committee forwards the request to the VPRSP who makes the final decision. Contacting the VPRSP allows an official determination to be made and documented by CAU.

2.15 Responsibility of Research and Sponsored Programs

During the proposal review and submission process, Research and Sponsored Programs (RSP) may also identify an export control law that governs the proposed sponsored program. If this occurs, RSP notifies the VPRSP and he forwards the proposal to the Export Control Committee

for review and recommendation. Additionally, during the award set-up process terms and conditions may be identified that could inhibit a sponsored program from being defined as fundamental research, thus making the sponsored program ineligible for the fundamental research exclusion and requiring one or more licenses. This may include, but is not limited to:

- A. Limitations on the participation of non-U.S. citizens in the sponsored program
- B. Publication limitations
 - CAU is prevented from publishing results of the sponsored program
 - Sponsor must approve material before publication
 - A significant delay is required before the material can be published.

If this occurs, these terms and conditions are negotiated and if they are not modified to the satisfaction of CAU the VPRSP determines whether the sponsored program can be classified as Fundamental Research as defined by the Code of Federal Regulation (CFR) and whether one or more licenses may be required to conduct the sponsored program in compliance with the existing export control laws and regulations. The VPRSP notifies the PI/PD of his decision in writing by email.

2.2 Potentially Non-allowable Activities

While export control regulations may affect some activities at CAU, the following is a non-exhaustive list of situations that could trigger export control laws, regulations, and policies:

1. Shipping tangible items internationally
2. Paying for services in a foreign country
3. Sharing proprietary, confidential or otherwise restricted information or software code with foreign nationals at Clark Atlanta University
4. Sharing proprietary, confidential or otherwise restricted information or software code with a destination outside the U.S.
5. Sending samples to a foreign collaborator
6. Interactions with countries or organizations/individuals from a country currently subject to sanctions or an embargo
7. Hand carrying laptops, cell phones containing certain microprocessors and other equipment while traveling to a foreign destination
8. Exporting or importing an item that has been designed, developed, configured, adapted or modified for a military application
9. Incorporating fundamental research products or components into a defense technology
10. Providing foreign sponsors with deliverables other than scientific or scholarly publications or presentations

If it is determined that a license is not required, no additional action is necessary. If it is determined that a license is required, the VPRSP determines whether the cost and time necessary to apply for a license is in Clark Atlanta University's best interest. If the decision is made to apply for a license, the PI/PD is responsible for completing the application. As necessary, Research and Sponsored Programs provide guidance on this process.

2.3 Fundamental Research Exclusion

No license is required for fundamental research, defined as basic or applied research in science or engineering

- at an accredited institution of higher learning in the U.S.; and
- the resulting information is ordinarily published and shared broadly in the scientific community.

Fundamental research is to be distinguished from research the results of which are restricted for proprietary reasons. The Fundamental Research Exclusion is destroyed if the University accepts any contract clause that:

- Gives the sponsor the right to withhold from publication information resulting from the research;
- Forbids the participation of foreign nationals; or
- Otherwise operates to restrict participation in research and/or access to and disclosure of research results.

2.4 Website Address for This Policy

This policy will be listed on the Clark Atlanta University website and can be found at www.cau.edu/research and <http://www.cau.edu/compliance-office>

3.0 Entities Affected By This Policy

All units, both functional and academic are governed by University policies and are therefore affected by this policy. Additionally, sub-recipients and subcontractors doing business with the university must comply with all federal laws and regulations as stipulated by this policy.

4.0 Definition of Key Terms

- 4.1 Export Control Committee (ECC)** – The committee is responsible for the development and updating of the Export Control Policy. The ECC also determines whether the fundamental research exclusion is applicable or an application for one or more licenses is required.
- 4.2 Export** – Export is the transfer of controlled technology, information, equipment, software or services to a foreign person in the U.S. or abroad by any means, example: email, phone, letter, travel or package. It also includes application abroad of knowledge acquired in the U.S.

- 4.3 Export Control** – Prohibiting the unlicensed export of certain materials or information for reasons of national security or protection of trade. Most exports do not require government licenses.
- 4.4 U.S. Person** – An individual who is a U.S. citizen, permanent resident, or been formally granted asylum in the U.S.; any entity legally organized to do business in the U.S.; and U.S. federal, state, and local government agencies.
- 4.5 Foreign Person or Foreign National** – Any foreign government, corporation, or organization that is not incorporated or organized to do business in the U.S. Any individual who is not a U.S. citizen or lawful permanent resident of the U.S. (green card holder).
- 4.6 Export Control Laws** – Export Control Laws (ECL) are U.S. federal laws and regulations that control the conditions under which certain information, technologies, and commodities can be transmitted overseas to anyone, including U.S. citizens, or to a foreign national on U.S. soil. The laws are 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 the Department of the Treasury through its Office of Foreign Assets Control (OFAC).
- 4.7. International Traffic in Arms Regulations (ITAR)** – The ITAR regulations are rules and procedures that are controlled by the State Department through its Directorate of Defense Trade Controls (DDTC). The regulations cover controlled technologies of an inherently military nature. Exporters of defense services or related technical data are required to register with the federal government and may need export licenses.
- 4.8 Export Administration Regulations (EAR)** – EAR regulations are implemented by the Department of Commerce through its Bureau of Industry and Security (BIS). The regulations cover equipment, materials and other technologies with both commercial and military applications, the so called “dual use” technologies (e.g., chemicals, satellites, software, computers, etc.). Detail information can be found: <https://www.bis.doc.gov/index.php/regulations/export-administration-regulations-ear>
- 4.9 Office of Foreign Assets Control (OFAC) Regulations** – The OFAC in the Department of the Treasury, administers and enforces economic and trade sanctions against specific foreign countries, terrorists, international narcotics traffickers and those engaged in weapons of mass destruction proliferation. The sanctions can be either comprehensive or selective, using the blocking of assets and trade restrictions to accomplish foreign policy and national security goals.

Countries currently sanctioned are the Balkans, Belarus, Burma, Cote d’Ivoire (Ivory Coast), Cuba, Democratic Republic of the Congo, Iran, Iraq, Lebanon, Libya, North Korea, Somalia, Sudan, Syria, Venezuela, Yemen, and Zimbabwe.

Sanctions enforced by OFAC can be highly restrictive. Sanctions programs may restrict:

- **Payments** (compensation, honoraria, contracts) to embargoed countries/nationals/entities
- **Attendance** at planning of international conferences
- **Surveys** and **Services** to embargoed countries/nationals/entities
- **Editing** or **Joint Authorship** of articles with nationals of sanctioned countries.

Since the list of sanctioned countries is constantly evolving, one must check the following website to see the most current listing:

www.treas.gov/offices/enforcement/ofac/.

4.10 Deemed Export Rule

The deemed export rule states that the release of controlled technology or software to a foreign national in the United States is deemed to be an export of such technology/software to the home country of the foreign national. This may include visual inspection by foreign nationals of U.S.-origin equipment and facilities and oral exchanges of information.

4.11 Technical Data

Technical data is information required for the design, development, production, manufacturing, assembly, operation, repair, testing, maintenance or modifications of defense articles on the Munitions Control List that is regulated by ITAR. Examples of Technical Data include blueprints, drawings, plans, instructions, diagrams, and photographs.

Technical Data does not include information concerning general scientific, mathematical or engineering principles commonly taught at universities or information in the public domain.

4.12 Public Domain Exclusion

No license is required to export or transfer information and research results that are generally available to the interested public through:

- ✓ Libraries, bookstores, or newsstands
- ✓ Trade shows, meetings, seminars in the U.S. open to the public
- ✓ Published in certain patent applications
- ✓ Websites accessible to the public

The public domain exclusion applies to information and research results – not physical equipment substances, etc.

4.13 Education Exclusion

No license is required to transfer information to students, including students who are foreign nationals, concerning general scientific, mathematical or engineering principles commonly taught in school, colleges or universities.

4.14 Employment Exclusion

No license is required to share information subject to export control laws with a foreign national if the foreign national:

- Is a full-time, bona-fide employee of the University;
- Is not a national of certain countries of concern;
- Has a permanent address in the U.S. while employed at the University; and
- Has been informed in writing not to transfer the information to other foreign nationals.

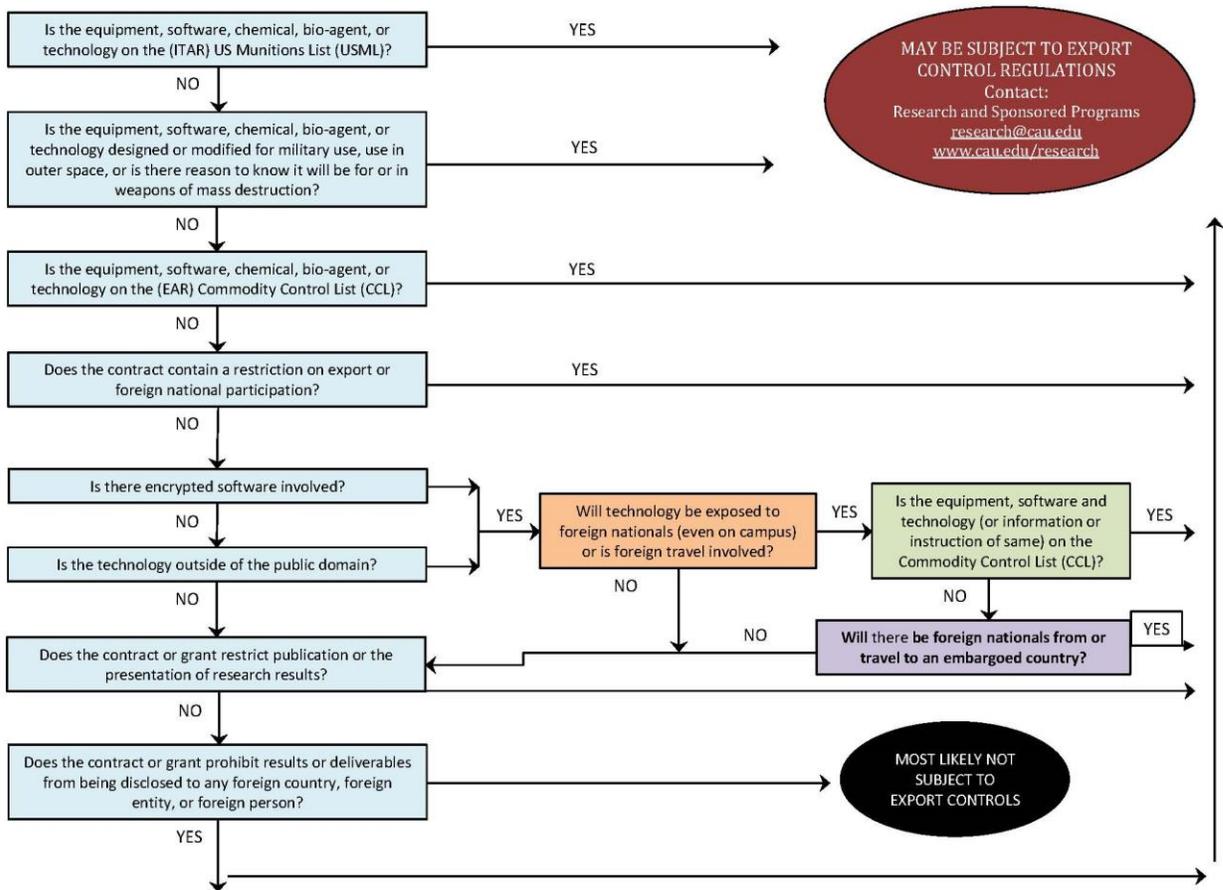
APPENDICES

EXPORT CONTROLS COMPLIANCE REVIEW FLOW CHART

Export controls govern the **shipment, transmission, or transfer** of certain sensitive **items, information, or software** to foreign persons or entities. Where applicable, they may require authorization from the U.S. Government in the form of an export license. Most of the items, information, or software that Clark Atlanta University (CAU) ships or shares with its colleagues and research partners are not of a nature that would be restricted for these purposes, nor are they destined for countries or individuals subject to U.S. embargoes or sanctions. CAU however, is required to exercise due diligence. The following **Compliance Review Flow Chart**, which was crafted by Vanderbilt University and adapted for CAU with their permission, will be used for the purpose of complying with U.S. trade law.

The Chart will walk you through a series of “Yes” or “No” questions, leading to a determination of whether or not an export control license is applicable to any particular situation. The questions in this Chart use terminology derived from the regulations of the U.S. Departments of State, Commerce and Treasury.

Export Controls Compliance Review Flow Chart



Additional Resources

Agency	Law	Regulations	Goals
State Department	Arms Export Control Act	http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title22/22cfr120_main_02.tpl	Avoid enabling foreign military capability that might be used against us
Commerce Department	Export Administration Act	http://www.bis.doc.gov/index.php/regulations/commerce-control-list-ccl	National security, foreign policy, and economic objectives
Treasury Department	Trading With the Enemy Act et al	https://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx	National security, foreign policy
Nuclear Regulatory Commission	Energy Reorganization Act	10 CFR 110	Nuclear reactor/materials safety
Energy Department	Atomic Energy Act	10 CFR 810	Control assistance to foreign nuclear activities
Department of Defense	Executive Order 12829 National Industrial Security Program	National Industrial Security Program Operating Manual	Safeguard classified information, licensees, and grantees of the US Government.