PURPOSE

This policy is intended to ensure compliance with the Nevada System of Higher Education (NSHE) Export Control and Economic Sanctions Policy set forth in the Procedures and Guidelines Manual (PGM), Chapter 16, and with U.S. export control and economic sanctions laws and regulations. This policy is applicable to all University of Nevada, Reno employees, students, and volunteers.

POLICY STATEMENT

The University Nevada, Reno will comply with all U.S. export control and economic sanctions laws and regulations. It is the responsibility of all University employees, students and volunteers to be aware of and comply with the federal laws and regulations, as well as with the University’s written procedures.

BACKGROUND

This policy implements U.S. laws and regulations regarding the export or re-export of items, technologies, software and services regulated for reasons of national security, foreign policy, prevention of the spread of weapons of mass destructions and for competitive trade reasons, as well as economic sanctions regulations that support foreign policy and national security goals by prohibiting trade, financial transactions and other dealings with countries, entities and individuals of concern.

SCOPE

The regulations are applicable to all institutional activities such as research, education, international travel, international shipping, procurement, accounts payable, study abroad, hosting foreign visitors and human resources. While most activities at U.S. institutions of higher education are excluded from these regulations, some activities and transactions may be restricted.

COMPLIANCE AUTHORITY

The president shall appoint or approve the appointment of an export control officer (ECO) and an empowered official (EO) for the purposes of compliance with U.S. export control laws.
and regulations. Both ECO and EC shall receive authority from the institution president to perform his/her job duties.

DEFINITIONS AND EXPLANATIONS OF TERMS

**Commodity Classification:** A request to the U.S. Department of Commerce for an official determination of the Export Control Classification Number (ECCN) of a product or technology. The ECCN, when used in combination with the country of destination, recipient and the intended use, determines whether an export license is required under the Export Administration Regulations (EAR).

**Commodity Jurisdiction Request:** A request to the U.S. Department of State to determine whether an item or service is covered by the U.S. Munitions List and, therefore, subject to export controls by the International Traffic in Arms Regulations (ITAR).

**Controlled Activity:** An activity involving the export of controlled technology or goods or that, due to its nature or the parties involved, is subject to export control or economic sanctions regulations under the jurisdiction of the U.S. Departments of State, Commerce, Treasury or any other U.S. government agency with export control regulations.

**Deemed Export:** The release of technology or software source code subject to the EAR to a foreign national in the United States is “deemed” to be an export to the home country of the foreign national under the EAR. Although the ITAR doesn’t use the words “deemed export,” disclosing or transferring technical data subject to the ITAR to any non-U.S. person is considered to be an export “whether in the United States or abroad.”

**Empowered Official (EO):** A U.S. citizen who is legally empowered (in writing) by an institution to sign export license applications or other requests for approval on behalf of the institution. The EO has the independent authority to inquire into any aspect of a proposed export, verify the legality of the transaction and the accuracy of the information to be submitted, and refuse to sign a license application or other request for approval without prejudice or other adverse recourse.

**Export:** An actual shipment or transmission of items, services or technology/technical data subject to export control regulations out of the United States or the release of technology or software source code (EAR) or technical data (ITAR) to a foreign person in the United States. Technology, software or technical data can be “released” for export through visual inspection, oral exchanges, transfer or shipment, or provision of a service.

**Export Control Officer (ECO):** A person who is identified formally at an institution for the purposes of institutional compliance with export control and economic sanctions regulations. It is not the role of the ECO to determine what research or activities that academic and institution research personnel may engage in. Such a determination will fall to the individual’s college, department or unit, and the Office of the Vice President for Research and Innovation.
Foreign Person: A natural person who is not a U.S. citizen, lawful permanent resident ("Green Card" holder) or protected individual (formally granted asylum). It also means any foreign corporation, business association, partnership, trust, society or any other entity or group that is not incorporated or organized to do business in the United States, as well as international organizations, foreign governments and any agency or subdivision of foreign governments (e.g., diplomatic missions). An equivalent term is “foreign national.”

Sponsoring Entity: Any federal, state, public or private entity that enters into an agreement or contract to provide funding to support an activity at the University.

Technical Data (ITAR): Information required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of items controlled by ITAR.

Technology (EAR): Any specific information and know-how (whether in tangible or intangible form) that is required for the development, production or use of an item controlled by the EAR.

Technology Control Plan (TCP): A written plan that describes the steps to be taken to control the access and dissemination of export controlled items, information, materials, technology and/or data in accordance with federal export regulations. Elements of a TCP include, but are not limited to, an identification of the item/technology to be protected, physical security, information security, project personnel requirements, accountability and recordkeeping.


CONTROLLING LAW AND JURISDICTION

Federal laws and regulations supersede any conflicting contractual requirements, state laws or regulations and any institutional policies or procedures that are in conflict with federal regulations. Only the federal agencies responsible for the export control and economic sanctions regulations have the authority to make determinations and issue licenses. Neither the institution nor a sponsoring entity has such authority.

KEY FEDERAL REGULATIONS

Export control laws and regulations restrict two principal areas of activity: 1) the shipment, transmission or transfer of certain items, software, technology and services from the U.S. to foreign countries; and 2) the disclosure or transfer of certain items, software, technology, information or materials to foreign persons located in the U.S. (a “deemed” export). These
laws and regulations also restrict exports for prohibited end uses and to prohibited end users. In addition, economic sanctions laws and regulations restrict certain transactions such as financial transactions and providing goods or services to sanctioned or embargoed countries or to entities or individuals identified on any Restricted Parties lists.

Although many University activities subject to federal export and economic sanctions regulations can be carried out without prior written authorization from one or more U.S. government agencies due to specific exemptions and exclusions, a license may be required to carry out certain research, academic, administrative or other activities. It is critical that employees, students and volunteers assess how export controls or economic sanctions laws may apply to activities early in the process in order to allow time for obtaining a license when required.

The three agencies that regulate and enforce the majority of federal export control and economic sanctions regulations are:

**U.S. Department of State:** Enforces the *International Traffic in Arms Regulations* (ITAR), which regulates defense articles, defense services and related technical data listed on the *U.S. Munitions List* (USML).

**U.S. Department of Commerce:** Enforces the *Export Administration Regulations* (EAR), which regulate the export and re-export of most commercial items including “dual-use” items that have both commercial and military or proliferation capabilities and are enumerated on the *Commerce Control List* (CCL).

**U.S. Department of the Treasury:** Enforces U.S. economic sanctions and embargos through its *Office of Foreign Assets Control* (OFAC) and prohibits a wide range of transactions and the export of anything of value, either tangible or intangible, to sanctioned countries, organizations or individuals.

Additional export regulations from the Department of Energy (DOE), Nuclear Regulatory Commission (NRC), the Environmental Protection Agency (EPA) and other agencies also apply to University activities.

**EXCLUSIONS AND EXEMPTIONS**

The federal government has excluded certain kinds of information from export controls. The most common exclusions applicable to institutions of higher education are the following.

**A. Fundamental Research Exclusion (FRE)**

Fundamental research (basic or applied research in science and/or engineering at an accredited institution of higher learning in the United States resulting in information that is ordinarily published and shared broadly within the scientific community) is excluded from
export control regulations. This means that the intellectual product of fundamental research (publishable results) is excluded from export controls.

Research will not qualify for this exclusion if:

- The institution or investigator accepts any restrictions on the publication of the information resulting from the research, other than limited prepublication review by research sponsors to ensure that proprietary information is not inadvertently disclosed in publication or to ensure that publication will not compromise the patent rights of the sponsor.

- The research is federally funded and specific access and dissemination controls have been accepted by the institution or investigator.

Whenever possible, the University structures its projects to qualify for the FRE. Principal Investigators (PIs) and others involved in identifying and negotiating research, educational or other activities should make every effort to ensure that the FRE applies to the activity.

**What is Not Covered by the FRE**

The FRE applies only to information, not to the export or deemed export of controlled material items or technology. Even if a project qualifies for the FRE, research materials including hardware, software and technology/technical data, whether owned by the University or supplied by a third party, are still subject to U.S. export controls. There are other restrictions on using this exclusion; notably, some encryption source code is not eligible. Contact the Office of Sponsored Projects whenever there is uncertainty about the use of the FRE.

**B. Educational Information Exclusion**

The EAR provides that educational information released by instruction in academic catalog-listed courses or in teaching laboratories associated with those courses is not subject to the EAR, with the exception of certain encryption software.

The ITAR provides that information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities is not included in the definition of technical data subject to the ITAR. The references to specific academic fields, use of “principles” rather than “information,” and the inclusion of undefined terms such as “general” and “commonly taught” makes the ITAR definition potentially narrower and subject to interpretation.

Sensitive nuclear technology is another exception to the educational information exclusion.
C. Information in the Public Domain/Publicly Available Exclusion

Information that is published and generally available to the public, as well as publicly available technology and some encryption software, is outside the scope of the export control regulations. This exclusion does not apply to information if there is reason to believe it may be used for weapons of mass destruction or where the U.S. government has imposed access or dissemination controls.

D. Exemption for Disclosure to Bona Fide Full-Time Employees (ITAR–Regulated Research Only)

The ITAR exempts disclosures of unclassified technical data in the U.S. by U.S. universities to foreign persons when:

- The foreign person is a bona fide full-time regular employee.
- The employee’s permanent abode throughout the period of employment is in the U.S.
- The employee is not a national of an embargoed country.
- The institution informs the employee in writing that information disclosed may not be disclosed to other foreign nationals without government approval.

Most graduate students are not regular full-time employees and disclosures to them will not qualify for this exemption.

RESPONSIBILITIES

Senior University Management

- Ensure the existence of adequate resources and management support to comply with regulations and to resolve identified export control and economic sanctions compliance issues.

Empowered Official

- Represent the University to export control and economic sanctions regulators in matters related to registration, licensing, commodity jurisdiction and commodity classification requests, and voluntary or directed disclosures.

Export Control Officer

- Monitor and interpret U.S. export control and economic sanctions regulations.
• Identify areas at the University that are impacted by export control and economic sanctions regulations.

• Develop policy and procedures to assist the University in remaining in compliance with the regulations.

• Provide training and informational materials to University employees, students and volunteers regarding the laws, regulations, and University policy and procedures associated with export control and economic sanctions regulations.

• Seek advice from the Office of General Counsel in analyzing and handling export control and economic sanctions compliance issues, including potential violations.

• Create an advisory Export Controls Advisory Committee and facilitate meetings.

• Assist investigators and others at the University with compliance measures regarding export controlled equipment, technology, information or services.

• Assist PIs in developing a Technology Control Plan for research involving export controlled items or information to ensure compliance with export control regulations.

• Review international travel requests for export control and economic sanctions issues.

• Apply for export licenses, commodity jurisdiction and commodity classification requests.

• Conduct restricted party screenings of visa applicants, persons associated with export controlled research and others as needed to verify that entities and individuals are not restricted parties or specially designated nationals.

• Provide assistance to other departments conducting restricted party screenings to determine status of possible matches.

• Advise and assist with record keeping for export controlled activities at the University.

• Serve as University liaison with external agencies regarding export control and economic sanctions compliance.

• Maintain the export controls and economic sanctions website.

**Office of Sponsored Projects**

• Review sponsored project proposals for information that identifies potential export control issues.
• Review terms and conditions of sponsored project agreements to identify restrictions on publication and dissemination of results, access based on citizenship and other export control issues and attempt to negotiate out such restrictions where reasonable.

• Communicate potential export control and economic sanctions issues to the export control officer.

• Restricted party screening of subawardees, non-government sponsors and foreign parties to non-disclosure agreements and other sponsored project agreements to verify that the entities and individuals are not restricted parties or specially designated nationals.

• Work with the Office of the Assistant Vice President for Enterprise and Innovation to ensure that technology transfers are compliant with export control and economic sanctions regulations.

**Export Controls Advisory Committee**

- Provide stakeholder expertise to guide the development of export control and economic sanctions policy and procedures to ensure an effective compliance program that fits with the University’s administrative, academic and research cultures.

**Principal Investigators**

Principal Investigators (PIs) have expert knowledge of the items, information and technology involved in a research project or other University activity such as presenting at conferences and discussing research findings with fellow researchers or collaborators. PIs must ensure that they do not disclose controlled information or technology, transfer controlled items or provide controlled services to a foreign national without prior authorization as required. It is the responsibility of each PI to:

• Consult with and provide assistance to the Office of Sponsored Projects to ensure that:
  
  a. Controlled technology, regardless of whether it is instructional or research technology, used or produced by them or under their supervision, is classified correctly under export control regulations.
  
  b. Controlled activities are identified, approved and licensed if necessary.
  
  c. All exports of controlled technology, both physical and deemed, including those associated with international travel, are conducted in compliance with applicable export controls and economic sanctions regulations.
• Know and comply with the terms and conditions of sponsored projects and other agreements including export controls and limitations on publication of research data and results.

• Assist the University in preventing unauthorized exports.

• When applicable, assist with the development of a Technology Control Plan, submit the plan for approval and follow the requirements of the approved plan.

• Seek advice from the export control officer in the Office of Sponsored Projects regarding activities with the potential for export control or economic sanctions concerns.

• Ensure that employees, students and volunteers under their supervision are made aware of any applicable requirements (e.g., University, regulatory or sponsor imposed) and that they receive adequate training in how to conduct their activities in compliance with those requirements.

**Business Center North – Procurement**

• Include terms and conditions in University purchase orders requiring vendors to provide written notice prior to shipping any export-controlled equipment, information or materials.

• Notify the export control officer prior to submitting purchase orders for equipment or technology controlled under the ITAR or one of the more restrictive categories of the EAR.

• Conduct restricted party screenings on new foreign vendors to verify that the entities and individuals are not restricted parties or specially designated nationals.

**Business Center North – Risk Management Office**

• Forward International Travel Authorization Request forms to the export control officer for review and approval.

**Central Services**

• Notify the export Control Officer for assistance with international shipments to ensure that all items comply with export control and economic sanctions regulations.
Controller’s Office

- Conduct restricted party screening on foreign payees/vendors to verify that the entities and individuals are not restricted parties or specially designated nationals.

Environmental Health and Safety

- Review transfers of hazardous materials from the University to ensure compliance with export control and economic regulations prior to shipment.

- Include the export control officer when evaluating research for potential Dual Use Research of Concern.

Human Resources

- Assist the export control officer with annual batch screenings of employees against Restricted Parties lists.

Office of International Students and Scholars

- Ensure that all applications for H-1B, J-1 Scholar, J-1 Professor and J-1 Short-term Scholar visa applicants have been screened for export control and economic compliance issues prior to submitting application documents.

All University Employees, Students and Volunteers

- Know and comply with export controls and economic sanctions requirements applicable to their activities.

- Seek assistance from the export control officer prior to exporting any controlled items, technology, software or services.

- Report any suspected non-compliance with export control or economic sanctions regulations or this policy to the export control officer.

RECORDKEEPING REQUIREMENTS

Per federal regulations, records relating to export activities must be retained for five years after the completion of the activity and made available to the regulating authority 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 activity. Additionally, when a license exception (EAR) or license exemption (ITAR) is used or if a record is requested from a regulatory authority, additional
records documenting the applicability of the exception/exemption may be required, and in some cases there may be additional reporting requirements.

**PENALTIES AND DISCIPLINARY ACTION**

In addition to civil and criminal penalties that may apply under applicable laws to individual University employees, students and volunteers and to the University itself, violation of export controls and economic sanctions laws and regulations may subject the violator to remedial or disciplinary action in accordance with the Board of Regents’ Code, Title 2, Chapters 6, 8 and 10 and applicable institutional policies and procedures for misconduct up to and including termination and dismissal.

**PROCEDURES**

Procedures for compliance with export controls and economic sanctions regulations related to the following activities are incorporated into this policy and are posted on the Office of Sponsored Projects website.

**ADDITIONAL INFORMATION**

Additional information on U.S. export control and economic sanctions regulations and compliance is available on the website of the Office of Sponsored Projects.