SPONSORED PROGRAM EXPORT COMPLIANCE PROCEDURES

June 5, 2014

I.   Purpose

To establish procedures to be followed in connection with Sponsored Projects subject to International Traffic in Arms Regulations (ITAR), Export Administration Regulations (EAR), Foreign Assets Control Regulations (FACR), Nuclear Regulatory Commission Export and Import of Nuclear Equipment and Material (NRC) Regulations, and other applicable export and sanctions regulations.

II.   General

The Office of Sponsored Programs (OSP) shall comply with export control and sanctions regulations governing applicable sponsored projects. The Principal Investigator (PI) of an export- or sanctions-controlled sponsored project shall be responsible for complying with applicable export or sanctions regulations, and preparing and implementing a project-specific Technology Control Plan (TCP). OSP should coordinate with the PI and the Office of Research Integrity and Assurance (ORIA) to determine if a proposed sponsored project is subject to export and/or sanctions regulation. ORIA and OSP will assist the department and the PI in determining the appropriate export control and/or sanctions regime and, if the sponsored project is export- or sanctions- restricted, will assist in determining security measures needed to prevent unlawful export of controlled items (including software, technology, or technical data) to foreign nationals, or participating in sanctioned transactions without an appropriate license or other government approval.

III.   Procedures

A.   OSP and ORIA are responsible for ensuring that sponsored project contracts are executed in compliance with applicable export control and trade sanctions laws.

B.   The Associate Vice President of Research Operations (AVP OSP) and the Director of Export Compliance and Secure Research (DEC) are responsible for this procedure.

C.   The DEC is responsible for issuing requests for export licenses, commodity jurisdiction requests, commodity classifications, and other documents required by applicable export control regulations that relate to sponsored projects.

D.   The PI and the departments will:

1. Prepare and approve a project-specific TCP for any sponsored project subject to export controls.

2. Comply with the security measures in the TCP

3. Annually certify to ORIA that they are complying with the TCP for each export-controlled sponsored project for which they are responsible.

E. OSP will:

1. Identify any proposal to perform research funded by the Department of Defense (DoD) or the National Aeronautic and Space Administration (NASA) (including industry flow-down) and provide the PI with the appropriate attachment, Attachment A: Memo to Faculty Proposing Research Funded by DoD or Attachment B: Memo to Faculty Proposing Research Funded by NASA.

2. Identify sponsored projects that meet the following criteria for ORIA review:

   a) All Department of Defense, NASA, or internationally funded sponsored projects (including industry flow-down);

   b) Sponsored projects that contain terms and conditions relating to export controls restrictions, foreign person restrictions, publication restrictions, or security language;

   c) Sponsored projects involving international collaboration or international travel.

3. Provide adequate documentation to ORIA to perform an export review. Sponsored projects that meet the criteria identified above will result in export review by ORIA. If a TCP is required, OSP will ensure that the TCP is approved by ORIA prior to the release of funds. In order to facilitate the ORIA review process, ORIA may require the following documents from OSP, as applicable:

   a) Award;

   b) Proposal, including the Statement of Work;

   c) Budget;

   d) Solicitation (e.g. Broad Agency Announcement, Request For Proposal (RFP)), if applicable;

   e) Federal Flow Down Terms and Conditions, if applicable;

f) DoD Source of Funding (e.g. 6.1 Basic Research, 6.2 Applied Research), if applicable.

4. Assist the PI and ORIA in negotiating sponsored projects terms and conditions, including written confirmation of fundamental research.

5. File a copy of the TCP, if required, in the OSP project folder/documentation.

6. Review any sponsored project modifications for international collaboration, export control restrictions, foreign person restrictions, publication restrictions, or security language, and notify ORIA.

7. Verify that sponsored projects with a TCP requirement have a red folder containing the TCP.

8. Consult with the PI and/or ORIA when changes are proposed to a sponsored project that has a TCP (e.g. personnel or equipment added, venue or scope of work changed).

9. When directed by AVP OSP, freeze any accounts identified as a source of a potential export or sanctions violation or noncompliance issue.

10. Forward all international travel requests to ORIA for review.

F. ORIA will:

1. Assist the PI and the OSP Contracts Team in determining if a sponsored project will be restricted under export control regulations.

2. Classify the OSP Contracts Team and, if applicable, the sponsor, the equipment, materials, software, and technology involved in the sponsored project in coordination with the PI. In the event that a self-classification is not possible, prepare and submit in coordination with the PI a commodity jurisdiction/commodity classification request to the appropriate government agency.

3. If required, seek legal assistance for applying and obtaining export licenses.

4. If required, advise the PI and OSP of the need for a TCP for any export-controlled sponsored project and assist in the preparation and review of the TCP.

5. Conduct training for all personnel in a sponsored project that requires a TCP, unless such training is waived in writing by the DEC.

6. Conduct training for all personnel in a fundamental research sponsored project when considered necessary by ORIA and/or OSP to ensure compliance with export and sanctions regulations.

7. Notify AVP OSP in writing of any potential export or sanctions violation(s) or noncompliance issues affecting sponsored projects, and direct freezing affected sponsored project funds, if required.

8. Maintain a record of all documentation required by export control regulations relating to sponsored projects.

G. Departments, faculty, staff, and students will:

1. Assist ORIA and OSP in implementing TCPs, preventing unauthorized export of controlled items.

2. Forward necessary documentation to ORIA for recordkeeping.

3. Attend training to ensure compliance of research and other activities.

4. Consult ORIA regarding export controls to ensure any controlled items, technology, and information are correctly categorized, approved, and licensed, and to ensure that any end-users are properly screened.

IV. Definitions

Technology Control Plan (TCP): A plan, prepared by PI and approved by the department and ORIA, for ensuring that there will be no unauthorized export of restricted commodities, defense articles or defense services, software, technology, or technical data in a sponsored project without an appropriate government approval.

V. References

Nuclear Regulatory Commission (10 CFR §110)
Export Administration Regulations (EAR) (15 CFR §§734-774)
International Traffic in Arms Regulations (ITAR) (22 CFR §§120-130)
Bureau of Alcohol, Tobacco, Firearms and Explosives (27 CFR §444-555)
Foreign Asset Control Regulations (FACR) (31 CFR §§500-599)
Office of Patents and Trademarks (PTO) (37 CFR §5)
GMU Technology Control Plan (February 19, 2014)
National Industrial Security Program Operating Manual (NISPOM) (February 2006)
National Security Decision Directive 189 (September 21, 1985)
DoD Policy Memorandum Contracted Fundamental Research (May 24, 2010)
DDTC Compliance Program Guidelines
BIS Export Management System Guidelines
Department of Energy (10 CFR 810)

Procedure revised June 5, 2014 and approved by Associate Vice President of Research Operations, Office of Sponsored Programs, and the Director of Export Compliance and Secure Research.

Attachment A: Memo to Faculty Proposing Research Funded by DoD

Please be advised that Department of Defense (DoD) funded research agreements must be carefully reviewed due to the high risk of intersection with export control laws, particularly the International Traffic in Arms Regulations (ITAR). The Office of Research Integrity and Assurance (ORIA) recommends that faculty review each DoD solicitation carefully for references to export controls, security, access restrictions on foreign persons, fundamental research, and/or restricted research. Engaging in non-fundamental research creates an intersection with export control laws and places students' graduate thesis work at risk, which may impact their ability to graduate. Export controlled, non-fundamental research projects require the establishment of a technology control plan, export control training for all researchers, and implementation of security protocols to protect the research results from inadvertent disclosure to unauthorized personnel.

Fundamental research is defined in 22 C.F.R. 120.11 as:

> Fundamental research is defined to mean basic and applied research in science and engineering where the resulting information is ordinarily published and shared broadly within the scientific community, as distinguished from research the results of which are restricted for proprietary reasons or specific US Government access and dissemination controls. University research will not be considered fundamental research if:
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> (i)   The University or its researchers accept other restrictions on publication of scientific and technical information resulting from the project or activity, or
> (ii)   The research is funded by the US Government and specific access and dissemination controls protecting information resulting from the research are applicable.

If you feel that your research proposal supports fundamental research, it is very important to notify the OSP grants administrator to insert the following language into the proposal document:

George Mason University as a prime contractor:
The DoD Policy Memo on Fundamental Research dated May 24, 2010 provides guidance to ensure that DoD personnel will not restrict disclosure of the results of fundamental research George Mason University considers the scope of the proposed research to be fundamental research and anticipates there will be no publication approval or other requirements in the award that would restrict disclosure of the research results.

George Mason University as a subcontractor:
The DoD Policy Memo on Fundamental Research dated May 24, 2010 provides guidance to ensure that DoD personnel will not restrict disclosure of the results of fundamental research. George Mason University is submitting this proposal and participating in this project based on the condition that the research can be conducted as fundamental research. It is agreed by George Mason University and the Contracting Officer, contracting activity, and research performer that the work to be subcontracted to George Mason University is unclassified research that has been scoped, negotiated, and determined to be fundamental research.

The offeror/prime contractor shall use its best efforts to obtain such certification by the DoD contracting component and shall negotiate provisions in the prime contract to accommodate this subcontract as fundamental research, ensuring that DoD restrictions on the prime contract do not flow down to George Mason University.

NEW CHANGES TO INTERNATIONAL TRAFFIC IN ARMS REGULATIONS:
Developmental items produced under DoD funding, including specially designed parts, components, accessories, and attachments may be subject to the ITAR (regardless of fundamental research) unless these items are identified in the relevant DoD agreement as being developed for both civil and military applications. If you are creating or modifying equipment or materials under a DoD agreement (grants, cooperative agreements, contracts) and believe that the items have both civil and military applications (i.e., "dual use"), it is strongly recommended that you explicitly state this in the agreement and/or statement of work. You may consider inserting the following language in the statement of work:

It is understood that any developmental items and specially designed parts, components, accessories, and attachments generated under this DoD agreement are being developed for both civil and military applications.

If the item truly doesn't have civil applications, do not try to make the case that it does, just be aware that the item will likely be subject to control under the ITAR. If the funding agreement does not include this or similar language, any such hardware or materials created or modified under the agreement will need to be handled as "developmental" items subject to the ITAR unless George Mason University has a Commodity Jurisdiction from the Department of State determining it is not.

If you have questions regarding these instructions, please do not hesitate to contact Shannon MacMichael, Director of Export Compliance and Secure Research, at smacmich@gmu.edu or (703) 993-2308.

Attachment B: Memo to Faculty Proposing Research Funded by NASA

Please be advised that National Aeronautics and Space Administration (NASA) funded research agreements must be carefully reviewed due to the high risk of intersection with export control laws, particularly the International Traffic in Arms Regulations (ITAR). The Office of Research Integrity and Assurance (ORIA) recommends that faculty review each solicitation carefully for references to export controls, security, access restrictions on foreign persons, fundamental research, and/or restricted research. Engaging in non-fundamental research creates intersection with export control laws and places students' graduate thesis work at risk, which may impact their ability to graduate. Export-controlled, non-fundamental research projects require the establishment of a technology control plan, export control training for all researchers, and implementation of security protocols to protect the research results from inadvertent disclosure to unauthorized personnel.

Fundamental Research. If you believe the proposed research meets the definition of fundamental research, which is excluded from the licensing requirements of export controls, you should state these intentions in the proposal document (see language below). Fundamental research is defined in 22 C.F.R. 120.11 as:

> Fundamental research is defined to mean basic and applied research in science and engineering where the resulting information is 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. University research will not be considered fundamental research if:
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> > (i) The University or its researchers accept other restrictions on publication of scientific and technical information resulting from the project or activity, or
> > (ii) The research is funded by the U.S. Government and specific access and dissemination controls protecting information resulting from the research are applicable.

If you feel that this research proposal supports fundamental research, it is very important to notify the OSP grants administrator to insert the following language into the proposal document:

> *George Mason University is submitting this proposal and participating in this project based on the condition that the research can be conducted as fundamental research. George Mason University anticipates there will be no publication approval or other requirements in the award that would restrict disclosure of the research results.*

Restrictions on Funding Activities with China. NASA is restricted by Section 1340(a) of The Department of Defense and Full-Year Appropriations Act, Pub. L. No. 112-10 and Section 539 of the Consolidated and Further Continuing Appropriation Act of 2012, Pub. L. No. 112-55, from using funding appropriated in the Acts to contract to participate, collaborate, or coordinate bilaterally in any way with China or any Chinese-owned company, at the prime contract or any tier subcontract level. ORIA has compiled the following guidance:

> 1. No person on a J-1 Visa from China may work on any NASA award, including collaboration agreements and agreements where no funds are exchanged.
> 2. No person (regardless of nationality) with an affiliation with a Chinese institution, including adjunct faculty, may work on a NASA award. Determinations of whether or not status of "honorary faculty" with a Chinese institution is an "affiliation" shall be determined on a case-by-case basis by NASA.
> 3. Those persons on J-1 Visas from China, and those with a Chinese affiliation, may not use equipment, software, etc., purchased using NASA funds on a restricted project.
> 4. Although commercial items of supply may be procured in and from China as needed, no subcontracts are allowed for research or consulting.
> 5. NASA funds cannot be used for travel costs or otherwise to support direct collaboration between an investigator and any person employed by a Chinese institution; no matter what their citizenship. The cost of attending multi-national conferences held in China may be acceptable, but should be pre-approved.

If you have questions regarding these instructions or the China Rule, please do not hesitate to contact Shannon MacMichael, Director of Export Compliance and Secure Research, at smacmich@gmu.edu or (703)-993-2308.