THE UNIVERSITY OF IOWA

OFFICE OF THE VICE PRESIDENT FOR
RESEARCH AND ECONOMIC DEVELOPMENT

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August 3, 2015

Director Hillary Hess
Regulatory Policy Division
Bureau of Industry and Security
U.S. Department of Commerce
Room 2099B
14th Street and Pennsylvania Ave. NW
Washington, DC 20230

Via email to: publiccomments@bis.doc.gov

RE: RIN 0694-AG32: Comments to proposed revisions in the Export Administration Regulations

Dear Director Hess:

The University of Iowa ("Iowa" or "University") is one of the nation's top public educational and research universities, with over $438M in external funding during the last fiscal year. Iowa is a member of the Council on Government Relations ("COGR") and the Association of American Universities ("AAU"), which represents many of the country's elite public and private research-intensive universities.

Iowa appreciates this opportunity to provide its perspective to the Department of Commerce regarding the proposed revisions to various definitions in the Export Administration Regulations ("EAR") to enhance clarity and consistency with the International Traffic in Arms Regulations ("ITAR") and update and clarify the application of controls to electronically transmitted and stored technology and software. The University supports the comments submitted by COGR and AAU, but wishes to specifically comment on the impact particular proposed changes would have on its educational and research missions.

§734.3(b)(3)(iii) "Education Exemption". The proposed restatement of the "education exemption" in EAR §734.3(b)(3)(iii) incorporates some current language of ITAR §120.10(b) to state "information and software that ...concern general scientific, mathematical, or engineering principles commonly taught in schools, **and** released by instruction in a catalog course or associated teaching laboratory of an academic institution." The University suggests the "**and**" be changed to "**or**" to clearly include catalog courses in areas of emerging technology as well as associated teaching laboratories.

§734.8(a) as it relates to "fundamental research," "technology," and "software." Currently §734.3(b)(3) of the EAR states in part that "publicly available technology and software...[that] arise during, or result from, fundamental research" are not subject to the EAR. Proposed §734.3(b)(3) and §734.7(a) treat technology and software similarly. However, under proposed §734.8(a), "technology" that arises during, or results from, fundamental research and is "intended to be published" would not be subject to the EAR. To address this apparent inconsistency and considering how research findings resulting from fundamental research may be written in natural language or computer language, Iowa suggests the proposed rule clarify that software arising during, or resulting from, fundamental research is not subject to the EAR.

§734.8(c) Fundamental Research Definition. To decrease anticipated disputes about whether research extends beyond "applied research" and then erodes the fundamental research definition, The University suggests omitting definitions of basic and applied research in §734.8(c) and retaining a stated presumption, as is currently in §734.8(b), that university research is fundamental.

§734.13(a)(6) Export defined to include release or transfer of decryption keys. Iowa supports how proposed §734.13(a)(6) introduces a knowledge element for determining when an "export" occurs.

§734.18(a)(4)(iii) and (iv) Sending, taking or storing technology or software. The University supports the option in §734.18(4)(iii) of providing for "other similarly effective cryptographic means" for securing technology or software. With respect to the restriction in §734.18(a)(4)(iv) on countries not listed in Country Group D:5 or the Russian Federation, Iowa suggests BIS further consider the impact of most cloud providers insisting on storing data internationally. To address that reality, BIS may want to add a note to clarify that sufficient individual compliance can be accomplished and documented by imposing a contractual obligation on a provider/vendor.

Iowa commends the Department of Commerce for undertaking this effort and appreciates the opportunity to provide its perspective on these issues.

Sincerely,

Daniel A. Reed
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Computational Science and Bioinformatics Chair
Professor of Computer Science, Electrical and Computer Engineering, and Medicine