University of Pittsburgh

Office of Export Control Services

University Club B21
123 University Place
Pittsburgh, PA 15213
412-624-7400
Fax: 412-624-7409

July 31, 2015

Ms. 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

RE: Revisions to Definitions in the Export Administration Regulations (RIN 0694-AG32)

Dear Ms. Hess:

Founded in 1787, the University of Pittsburgh – Of the Commonwealth of Higher Education, is a state-related institution of higher learning located in Western Pennsylvania. With an enrollment of over 35,000 students, the University is one of the largest institutions of higher education in Pennsylvania. Supporting its needs and interests are more than 13,200 faculty, research associates, and staff. The University's annual spending exceeds 1.74 billion dollars, of which approximately 700 million dollars are from sponsored research projects making the University one of the top tier research institutions in the country. The University is a member of the Council on Governmental Relations (COGR) and the Association of American Universities (AAU), and joins those organizations in their more detailed comments offered in this docket. These more specific comments are offered to emphasize the potentially significant, negative consequences of two specific definitional changes proposed in the above referenced docket.

The University of Pittsburgh welcomes the opportunity to comment in response to the Bureau of Industry and Security (BIS) RIN 0694-AG32: Revisions to Definitions in the Export Control Regulations. We recognize and appreciate the work that the Departments of Commerce, State and Defense have placed into reforming the U.S. export control regulations, and believe that most of the proposed changes related to this revision are positive. For example, the exclusion of sending, taking, or storing software secured using end-to-end encryption from export activities is welcomed. This revision will reduce faculty burden associated with international travel and the need to monitor and conduct research using U.S. campus resources while overseas. We also note and applaude BIS's confirmation of our understanding of "fundamental research" at universities. We specifically cite the clear statement that a short pre-publication review of the results of fundamental research by sponsors to ensure that publication

does not compromise patent rights (§734.8(b)(1)) or to insure that the publication does not inadvertently divulge sponsor provided proprietary information ((§734.8(b)(2)) does not make the research subject to the Export Administration Regulations (EAR). However, as outlined in the comment letter submitted by COGR and AAU, several proposed changes would result in significant increased and new administrative burdens in the management of industry-sponsored research at universities.

Changes to Educational Information

Currently, under the EAR section §734.9, "educational information" is defined as information "released by instruction in catalog courses and associated teaching laboratories of academic institutions" while section §734.3(b)(3)(iii) excludes such information from the EAR. The proposed rule removes §734.9 and this definition, and replaces it in proposed EAR §734.3(b)(3)(iii) with 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 at an academic institution". We feel that this proposed change narrows the definition of educational information which is currently excluded from the EAR and contrary to the intent of the proposed final rule. It is quite common for universities to create new courses that include new and innovative content based on evolving technologies. It is not clear under the proposed change if this new content would be viewed as falling under general principles or commonly taught which would place it outside of EAR jurisdiction. The University of Pittsburgh's enrollment procedures are non-discriminatory and its courses are open to anyone, regardless of citizenship or national origin, who have completed proper prerequisites. A narrow interpretation of the proposed revised EAR §734.3(b)(3)(iii) would inhibit the ability of U.S. universities to develop new courses that include innovative or novel content in new areas of science and engineering. This would have a direct downstream effect on the number of professionals trained in these areas and then available to new or existing U.S. business sectors.

The University of Pittsburgh is committed to maintaining openness in the dissemination of research results, consistent with the University's non-profit mission of sharing knowledge. This commitment is codified in several University research policies, including those that address publication rights, employment opportunities, and commercialization of technology. For example, the University does not accept research awards that contain publication restrictions (beyond brief delays for intellectual property protection), or foreign national exclusion clauses. Moreover, University faculty and staff may not participate in any externally sponsored project where the results are restricted for proprietary or national security concerns.

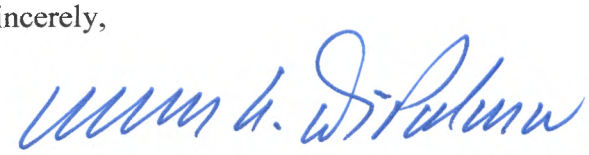
The University of Pittsburgh recommends that BIS keep the current phrase "released by instruction in catalog courses and associated teaching laboratories of academic institutions" for proposed section EAR §734.3(b)(3)(iii) and remove the proposed phrase "concern general scientific, mathematical, or engineering principles commonly taught in schools".

"Fundamental research," "technology," and "software"

Publicly available technology and software arising during, or resulting from, fundamental research are not currently subject to the EAR (§734.3(b)(3)). Under the proposed EAR §734.8(a), "technology," but not software, that arises during, or results from, fundamental research and is intended to be published, is not subject to the EAR. This is a significant change that will complicate and restrict university research. Both "software" and "technology" resulting from university research are published. Under the proposed change, a natural-language document written by a researcher could be "technology" arising during fundamental research while a computer-language document could be subject to deemed export restrictions, even though it arises during fundamental research and is intended to be published. We suggest that the language be revised to distinguish between source code, which may be published as the result of fundamental research, and other software.

On the other topics proposed in this docket, the University fully supports the positions outlined in the COGR-AAU comment letter. The University of Pittsburgh is appreciative of the opportunity to provide comments on these proposed changes.

Sincerely,



Allen A. DiPalma, MBA
Director, Office of Export Controls Services
Export Controls Official