INDIANA UNIVERSITY

OFFICE OF THE VICE PRESIDENT
FOR RESEARCH

August 3, 2015

Regulatory Policy Division
Bureau of Industry and Security, Room 2099B
U.S. Department of Commerce
Washington, DC 20230
publiccomments@bis.doc.gov

RE: RIN 0694–AG32

To Whom It May Concern:

Indiana University (IU) is a public research institution with a mission to provide broad access to education for students throughout Indiana, the United States, and the world. As a leading research institution and member of the Association of American Universities ("AAU") and Council on Governmental Relations ("COGR"), IU writes to endorse the comments submitted by these organizations regarding the proposed revisions to the Export Administration Regulations (RIN 0694-AG32) and the proposed amendments to the International Traffic in Arms Regulations (RIN 1400-AD70).

IU is committed to complying with all legal obligations, including export control laws. We appreciate the recent efforts made in export control reform. Harmonized definitions are a very important step of export control reform because they help clarify and streamline compliance obligations for industry and academia; however, some of the proposed changes require additional clarification and modifications to reach this goal and to be consistent with the intent behind the proposals.

First, IU shares the COGR and AAU concern over the restatement of the educational exclusion (currently in §734.9 and proposed to be moved to § 734.3(b)(3). The preamble indicates that the change "is not intended to change the scope of the current § 734.9 *Revisions to Definitions in the Export Administration Regulations*, 80 Fed. Reg. 31505, 31507 (June 3, 2015); however, the new definition in §734.3(b)(3)(iii) adds qualifiers to the existing scope of the definition. The proposed rule uses "and" to join the new the phrase "that…concern general scientific, mathematical, or engineering principles commonly taught in schools" with the existing standard "released by instruction in a catalog course or associated teaching laboratory of an academic institution…" This potentially limits the exclusion. BIS should consider retaining the existing language without change or using "or" to join these phrases instead of "and."

Second, IU has concerns over the changes to § 734.3(b)(3) and §734.8. Currently § 734.3(b)(3)(ii) excludes from the EAR technology and software that arise during, or result from, fundamental research. The proposed §734.8(a) indicates that only technology that arises during, or results from, fundamental research and is intended to be published, is not subject to the EAR. The preamble to the proposed rulemaking includes a comment that software is not technology resulting from fundamental research (though the note mentioned in the preamble does not seem to be included in the proposed § 734.8). The proposed § 734.3(b)(3) still indicates that information and software arising during, or resulting from,

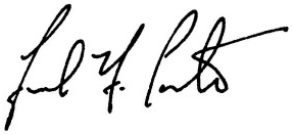
fundamental research, are excluded from the EAR, but the seemingly inconsistent language in both the proposed § 734.8 and note in the preamble will create confusion. IU recommends that BIS resolves the potential conflict in favor of the language in § 734.3(b)(3)(ii) so that software arising during, or resulting from, fundamental research, is clearly not subject to the EAR.

Similarly, IU is also concerned that the presumption that university-based research will be fundamental research, has been eliminated from the definitions. Currently § 734.8(b)(1) states research conducted at a university normally will be considered fundamental research, and the definition of "University" in parentheticals at the end of § 734.8(b)(1) clarifies that university means any accredited institution of higher education located in the United States. IU requests that BIS add the current presumption back into § 734.8 in the final rule.

Finally, BIS asked whether the questions and answers in existing Supplement No. 1 to Part 734, proposed to be removed, have criteria that should be retained in Part 734. IU believes that the supplement itself should remain in Part 734. The additional information has been very useful to IU and many other universities, and the questions and answers would not have the same weight on a standalone webpage as they do in the supplement to Part 734.

We are happy to expand on these comments or provide any additional information you might require. Thank you for the opportunity to respond to the proposed rulemaking.

Respectfully,



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