BROWN

DAVID A. SAVITZ, PhD
Vice President for Research

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Ms. Hillary Hess, Director
Regulatory Policy Division
Bureau of Industry and Security
Room 2099B
U.S. Department of Commerce
Washington, DC 20230

By email to: publiccomments@bis.doc.gov

Subject: RIN 0694-AG32, Revisions to Definitions in the Export Administration Regulations

Dear Ms. Hess:

On behalf of Brown University (Brown), I appreciate the opportunity to comment in response to the Bureau of Industry and Security (BIS) RIN 0694-AG32, *Revisions to Definitions in the Export Administration Regulations*. We appreciate the efforts of the Departments of Commerce, Defense, and State to reform, clarify, and harmonize U.S. export control regulations.

Brown fully endorses the comprehensive response to these proposed reforms that have been submitted by the Council on Governmental Relations (COGR) and the Association of American Universities (AAU). Brown University has been in contact with our colleagues at COGR and AAU and we offer our support for the analysis, comments and recommendations made by these associations. We limit our own specific comments to a few matters that are of great importance to Brown in support of our mission.

Alternate definition of "fundamental research" (§734.8(c))

Brown supports BIS' efforts to provide an alternate definition of "fundamental research" and appreciates that the proposed definition offers some clarity for universities and remains consistent with NSDD-189. We offer the following suggestions related to the proposed definition:

1. We are concerned that the new definition includes the undefined term "non-proprietary" to qualify the type of research that meets this definition. Brown interprets "non-proprietary" to mean research for which the institution or its researchers *have not accepted restrictions for proprietary or national security reasons*. Therefore, Brown proposes alternative wording which we believe is consistent with the intent of the proposed revision: "'Fundamental research' means

research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community, *and for which the institution and its researchers have not accepted restrictions for proprietary or national security reasons*."

2. While we appreciate that the proposed definition of "fundamental research" clarifies its broad applicability regardless of organization type or location, U.S. universities, like Brown, have found the specific criteria for "University based research" (current at §734.8(b) and specifically ¶ 2 – 6) invaluable in evaluating whether proposed research meets the definition of "fundamental research". We recommend that the specific language of §734.8(b) be retained in the EAR to enable universities to continue to make reliable self-assessments.

3. Finally, we raise a general concern that this proposed alternate definition of a term that is critical to Brown – "fundamental research" – in the EAR creates a unique definition of a term that is shared across the EAR and the International Traffic in Arms Regulations (ITAR) without implementing this same revision in the ITAR. Brown proposes that the changes to this and other common definitions be implemented simultaneously in both sets of regulations to adhere to the stated goals of harmonizing terms to minimize confusion and ease the burden of compliance.

Questions and Answers - Technology and Software Subject to the EAR

Brown University urges BIS to retain the questions and answers found in Supplement No. 1 to part §734 in the regulations. While we agree that the questions and answers are illustrative, inclusion of them in the EAR removes uncertainty created by the subtle nuances of fundamental research and is extremely helpful in clarifying and understanding the EAR. We are concerned that removal of the questions and answers, which we use to guide export control decisions at universities, would create increased uncertainty in our application of key concepts including fundamental research, publication, attendance at conferences and educational instruction.

Sincerely,

David A. Savitz, PhD
Vice President for Research