THE UNIVERSITY OF ALABAMA AT BIRMINGHAM

Office of the Vice President for Research and Economic Development

Ms. Hillary Hess, Director
Regulatory Policy Division
Office of Exporter Services
Bureau of Industry and Security (BIS)
U.S. Department of Commerce (DOC), Room 2099B
14th Street and Pennsylvania Ave. NW.
Washington, DC 20230

Submitted Electronically

RE: EAR Amendment – Revisions to Definitions (RIN 0694-AG32 and 15 CFR Part 734)

Dated: August 3, 2015

Dear Ms. Hess:

The University of Alabama at Birmingham (UAB) joins and incorporates by reference, the official positions expressed by the Council of Govermental Relations (COGR), the Association of American Universities (AAU), and the Association of University Export Control Officers (AUECO). In addition to our associated positions, UAB takes this opportunity to comment on the proposed amendment as it specifically relates to our mission-critical sponsored research.

UAB appreciates the joint efforts of the Department of State's Directorate of Defense Trade Controls (DDTC) and the Department of Commerce's Bureau of Industry and Security (BIS) to make export regulations more consistent. We believe that the proposed rules were drafted in good faith to harmonize definitions in ITAR and EAR, with the intent to "facilitate enhanced export compliance and reduce regulatory burdens." Unfortunately, if implemented as proposed, UAB is certain to experience substantial direct academic, research, and financial losses. These unintended consequences would hinder our ability to conduct fundamental research in a teaching and learning environment designed to promote the free exchange of resulting ideas. We discuss below those specific proposals that would impact our organization.

- **Definition of *Fundamental Research*:** Current §734.8(b) *University based research,* states the criteria to be used by UAB and other accredited U. S. Universities to determine whether research qualifies as *fundamental research*. UAB recommends that this criteria and underlying definition of *fundamental research* be retained in EAR, because it provides a reasonable framework for evaluating proposed research activities, provided all criteria outlined in §734.8(b) are met. Alternatively, we agree with AUECO's suggestion that BIS develop a decision tree tool for determining fundamental research for U.S. Universities that incorporate the current criteria for university based fundamental research.

- ***Technology* and *Software:*** Currently §734.3(b) (3) specifically exempts Publicly available technology and software, except software classified under ECCN 5D002 on the Commerce Control List, that: (a) are already published or will be published ;(b) arise during, or result from, fundamental research; (c) are educational in nature; and (d) are included in certain patent applications, as described in§ 734.10.

  UAB recommends that research involving technology and software as described above, continue to be exempt from the EAR. The proposed changes would inconsistently classify

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natural-language documents written by a researcher as *technology,* which could be freely shared as arising from fundamental research. Conversely, a related *computer-language* document (i.e., a program in source code), written by the same researcher for the same underlying purpose as the natural language document, would be subject to deemed export restrictions. Such restrictions would require UAB to obtain an increased number of export licenses, while receiving no additional funding to support licensing activities.

- **Supplement No. 1 to Part 734 – Questions and Answers – Technology and Software Subject to the EAR:** UAB recommends that this supplement be retained by the BIS because it serves to clarify and interpret the details changes made in the EAR, which may otherwise be difficult to implement.

- **End to End Encryption Standard §734.18, *Activities that are Not Exports, Reexports, or Transfers:*** UAB agrees with the proposed standard of the Federal Information Processing Standard (FIPS) Publication 140-2 (FIPS PUB 140-2) in accordance with NIST guidance or "similarly effective cryptographic means." This proposed addition is beneficial in that Universities flexibility to use various cryptographic technologies, even while traveling abroad, as long as they sufficiently secure the encrypted technology and software.

Effective Date of the Final Rule: The regulatory changes, as proposed, would require extensive modifications to our review, negotiation, and assurance functions related to sponsored research agreements. If adopted as proposed, UAB would be required to substantially expand export access controls and obtain export licenses for every foreign national working on any project where the sponsor requests a review prior to publication involving defense related research. UAB would require additional financial resources to continue providing effective export compliance program administration. Based on this potential for increased regulatory burden, we recommend that the effective date be delayed by at least six months.

UAB appreciates this opportunity to provide comments, specific to our organization, on the proposed regulatory changes.

Sincerely,

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