THE UNIVERSITY OF
CHICAGO

July 31, 2015

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

RE: RIN 0694-AG32

Dear Sir/Madame:

The University of Chicago ("UChicago") is an Illinois not-for-profit organization that does not accept restrictions on access, publication, dissemination, or participation in research and classroom activities because of one's national origin.

UChicago appreciates the opportunity to comment and respond to the Bureau of Industry and Security ("BIS") RIN 0694-AG32, *Revisions to Definitions in the Export Administration Regulations*. UChicago, additionally, recognizes and appreciates the efforts that the Departments of State, Commerce, and Defense have put into clarifying and harmonizing the pertinent definitions. However, UChicago believes that several of the proposed changes would negatively impact institutions of higher learning; therefore, we offer the following comments:

Changes to Educational Information

Under the proposed rule, some information taught in university courses would not be defined as "educational information" and therefore would become subject to the EAR despite the preamble stating that the "proposed rule is not intended to change the scope of current §734.9."

Existing EAR §734.3(b)(3)(iii) and §734.9 define "educational information" as information "...released by instruction in catalog courses and associated teaching laboratories of academic institutions." Such information is not subject to the scope of the EAR. Despite stating the contrary, the proposed changes remove the existing definition of "educational information" and §734.9 entirely. In lieu, the proposed rule states that "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."

Although the proposed rule specifically states that scope of the current §734.9 will not change, UChicago believes that by the very nature of the proposed language, the definition of "educational Information" will change. The scope of "educational information" will be far narrower than under the current rule because proposed rule adds the caveat that only "general principles" that are "commonly taught" in schools are exempt from the EAR.

Institutions of higher learning serve the precise purpose of affording its constituents specialized skills and knowledge. Many of the subject matters and areas of concentration, that are usually taught in institutions of higher learning, go beyond what the average person may define as "general principals" that are "commonly taught" in schools. The proposed rule would potentially exclude these types of information and material from its definition of "educational information," despite the fact that these types of information and material are currently within the scope of "educational information."

Additionally, as scientific, mathematical, and engineering principles evolve, as do the courses and material that accompany the instruction of those areas. Such new courses and material would not fall within the scope of the proposed definition of "educational information." Excluding these courses and materials from the definition of "educational information" would discourage growth in these areas.

UChicago believes that such language, "general principles" and "commonly taught," are ambiguous, at best, and recommends not including "concern general scientific, mathematical, or engineering principles commonly taught in schools" in the proposed rule. Excluding this language would ensure that the definition of "educational information" remain the same as under the current EAR §734.9, as the proposed rule states that it intends to do.

Changes to Fundamental Research

Under the proposed rule, "technology" and "software that rises during or results from fundamental research and "is intended to be published" would be treated differently than under the current EAR.

Existing EAR§734.8(b) states that "publicly available technology and software... [that] arise during, or result from, fundamental research" are not subject to the scope of the EAR. Under the proposed changes, §734.3(a) states that "technology," which arises during, or results from, fundamental research and "is intended to be published" will not be subject to the scope of the EAR. Further, §734.8(a) goes on to state that "software and commodities are not 'technology'" resulting from fundamental research.

UChicago believes that the proposed changes would significantly restrict university research. For instance, if "software" and "technology" are results of university research and are published, a natural language document written as a result of the research would be "technology." However, a computer language document written as a result of the same research would not be "technology" and therefore subject to deemed export restrictions.

UChicago recommends that software arising from fundamental research not be subject to the EAR.

Effective Date of Final Rule

Implementation of RIN0694-AG32 would have a significant regulatory impact on institutions of higher learning, including UChicago. BIS proposes an effective date of 30 days after issuance of the final rule. UChicago believes that due to the significance of these changes, additional time is needed to afford proper implementation. Consequently, UChicago believes a six-month delayed effective date is appropriate.

Other Comments

UChicago works closely with the Council of Governmental Relations ("COGR"), the Association of American Universities ("AAU"), and the Association of University Export Control Officers (" AUECO") and has reviewed their comments being submitted concern the proposed EAR and ITAR changes. Where no UChicago comment is offered, we concur with the comments offered by COGR, AAU, and AUECO.

Again, UChicago appreciates the opportunity to provide these comments to BIS regarding RIN 0694-AG32.

Regards,

Michael R. Ludwig
Assoc. VP for Research Administration & Director, URA
The University of Chicago
University Research Administration
6030 South Ellis Avenue, Room 114 (ED-114)
Chicago, IL 60637
P: 773-702-8604/F: 773-702-2142
E: mrludwig@uchicago.edu