USC University of Southern California

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

Re: RIN 0694-AG32; Proposed Rule on Revisions to Definitions in the Export Control Administration Regulations

To Whom It May Concern:

On behalf of the University of Southern California (USC), thank you for the opportunity to submit comments on the Proposed Rule on Revisions to Definitions in the Export Control Administration Regulations (15 CFR Parts 734, 740, 750, 764, and 772)22 CFR Parts 120, 123, 125, and 127).

The University of Southern California is one of the world's leading private research universities. In fact, we are among a small group of premier research institutions on which our country depends for a steady stream of new knowledge and technology. USC has nearly $700 million in annual research expenditures. In FY 2014, approximately $80 million of that amount was awarded by the Department of Defense (DOD).

In response to BIS' request for feedback on specific issues related to the Proposed Rule, we respectfully submit the following comments:

1. *Whether the revisions proposed in this rulemaking create gaps, overlaps, or contradictions between the EAR and the ITAR, or among various provisions within the EAR*

While we are grateful that the Departments of Commerce and State have made noteworthy progress in harmonizing the export control regulations, there is still a significant distinction in the proposed regulations with regard to prepublication review to assure publication does not divulge a sponsor's proprietary information. Under the EAR, Section 734.8 continues to provide that such review does not change the status of technology that arises during or results from fundamental research as still "intended to be published." However, under the ITAR, proposed Section 120.49 provides that such review makes the research ineligible for fundamental research protection. The effect of the ITAR provision is to remove any research projects involving defense articles subject to such review from fundamental research.

Given that sponsor review for the presence of proprietary information is common, such a rule will have a chilling effect on innovation and university-industry partnerships. We strongly oppose this proposed change and urge that the EAR and ITAR be aligned with the EAR interpretation and definition of fundamental research.

2. *Whether the alternative definition of fundamental research suggested in the preamble should be adopted.*

The proposed alternative definition would read: "'Fundamental research' means non-proprietary research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community."

While this appears to restate the current definition and does not represent a sharp distinction from the current definition, the term "non-proprietary" may be vague as applied to specific research projects. We believe that the definition in NSDD-189 has served the scientific and research community well, and care should be exercised before modifying it.

In addition, the EAR currently provides that publicly available technology and software that arise during or result from fundamental research are not subject to the EAR. However, under proposed Section §734.8(a), only "'technology'" that arises during, or results from, fundamental research and is 'intended to be published'" would not be subject to the EAR.

This change would significantly complicate and restrict university research. While natural-language documents written by a researcher would be "technology" that could be freely shared as arising during fundamental research, a computer-language document written by the same researcher, working on the same project (a program in source code), would be subject to deemed export restrictions. We strongly recommend that software arising during, or resulting from, fundamental research should not be subject to the EAR.

3. *Whether the alternative definition of applied research suggested in the preamble should be adopted, or whether basic and applied research definitions are needed given that they are subsumed by fundamental research.*

We prefer the DFARS definition proposed in 734.8(c)(2) to the one suggested in the preamble since it is already established in the DFARS and, to our knowledge, has not previously raised concerns.

4. *Whether the questions and answers in existing Supplement No. 1 to part 734 proposed to be removed by this rulemaking have criteria that should be retained in part 734.*

While we believe that the Q&A's are very helpful, they are unlikely to have the same weight if removed from the EAR and placed on the website as guidance and ask that they be retained.

5. *With respect to end-to-end encryption described in the proposed revision of the definition of "Activities that are Not Exports, Reexports, or Transfers," whether the illustrative standard proposed in the EAR rulemaking also should be adopted in the ITAR rulemaking; whether the safe harbor standard proposed in the ITAR rulemaking also should be adopted in the EAR rulemaking; or whether the two bodies of regulations should have different standards.*

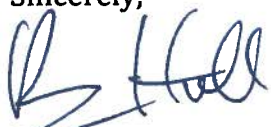
We prefer the proposed EAR definition in 734.13(a)(6), which requires knowledge that releasing information relating to encryption will cause or permit the transfer of technology to a foreign national, because in general, we believe that knowledge or intent to transfer controlled information should be required for an "export" or "deemed export" to occur.

6. *The effective date of the final rule.*

BIS proposes a 30-day delayed effective date. Previous changes to ECCN's generally have had a six-month delayed effective date and our view is that significant changes in definitions of key terms should have a similar lead time prior to implementation. Therefore, we suggest a six-month delayed effective date for the final rule.

Thank you very much for the opportunity to submit comments to the proposed rule, and for your ongoing efforts to harmonize export control regulations in a way that both supports the mission of research universities and enhances U.S. national and economic security.

Sincerely,



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