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Federation of American Societies for Experimental Biology

----*Quality Life Through Research*----

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United States Department of Commerce
Bureau of Industry and Security
Regulatory Policy Division
14th and Pennsylvania Avenue NW – Room 2705
Washington, DC 20230

ATTN: RIN 0694-AD29

The Federation of American Societies for Experimental Biology (FASEB) appreciates the opportunity to comment on the Advance Notice of Proposed Rulemaking (ANPR) on Revision and Clarification of Deemed Export Related Regulatory Requirements [70 FR 15607]. FASEB is a coalition organization made up of 22 scientific societies, whose members number more than 65,000 biomedical researchers in a diverse range of biological disciplines. The mission of FASEB is to enhance the ability of biomedical and life scientists to improve, through their research, the health, well-being and productivity of all people.

FASEB strongly concurs with our colleagues at the American Society for Microbiology (ASM), the Association of American Medical Colleges (AAMC) and the Council on Government Relations (COGR) that the adoption of such rules will be severely detrimental to the U.S. scientific enterprise, particularly in regard to our nation's academic research centers. Although we would like to emphasize several issues of concern (below) we would strongly endorse the comments submitted by these organizations, and would urge the Inspector General (IG) to carefully consider their recommendations.

The innovations and technologies that safeguard our health and our nation are made possible only through establishment of a foundation of basic (used interchangeably with “fundamental”) research. We support the reaffirmation of National Security Decision Directive 189, which states that classification should be the mechanism of control for sensitive research areas. Moreover, FASEB wholeheartedly agrees with the statement cited in the Office of the Inspector General (OIG) report that “The key to maintaining U.S. technological preeminence is to encourage open and collaborative basic research. The linkage between the free exchange of ideas and scientific innovation,

prosperity, and U.S. national security is undeniable.” Clearly, the fundamental research exemption currently outlined in the Export Administration Regulations (EAR) is in recognition of this very principle.

We believe that the interpretation, used by academic research universities and centers for years, that equipment used in the course of fundamental research is exempt from control is appropriate, and join AAMC in disagreeing with the IG’s conclusion that “technology relating to controlled equipment – regardless of how that use is defined – is subject to the deemed export provisions (and the requirement to license foreign nationals having access to that equipment) even if research conducted with that equipment is fundamental.” Such a statement displays a lack of understanding of the essential nature of basic research, whose pathway of discovery is often unpredictable, and which requires an open and accessible academic environment. There is no evidence to show that restricting the ability of foreign scientist working in the U.S. to pursue the scientific question at hand by placing burdensome licensing requirements on common laboratory equipment does anything to improve the security of our nation. However, there is little doubt that imposing such restrictions would be immensely disruptive to the highly successful U.S. scientific enterprise.

1. Foreign Nationals Contribute to U.S. Scientific Progress

The American scientific enterprise benefits enormously from the contributions of international scientists who travel here to study and exchange knowledge. It is here that they meet future collaborators; it is here that their mentors guide them in the ethical conduct of research; and it is here that they contribute to U.S. innovation. We maintain our edge as the world leader in science and technology because we welcome the international scientific community to share their skills and ideas through our research institutions.

FASEB is seriously concerned that adoption of the recommendations in the OIG report would negatively impact foreign nationals conducting research or studying in U.S. laboratories. Not only would such a burdensome control regime discourage institutions from attracting and retaining foreign scientists, but it sends a clear message of distrust and unwelcome to the international scientific community that is in direct contradiction to our nation’s long tradition of fostering international scientific talent and collaboration. Such a perception could have not only a detrimental effect on our scientific progress, but also on the security of our homeland. As Maura Harty, Assistant Secretary for Consular Affairs at the Department of State stated in September, 2004 letter to FASEB (attached), “[S]cientific and academic exchanges underpin U.S. national security as surely as border protection against overt threats to the U.S...”

In addition, FASEB has grave misgivings about the IG’s recommendation that deemed export controls consider a foreign national’s place of birth regardless of the person’s current citizenship or residency status. We support AAMC’s assertion that “the legal implications of such a regulatory move should be analyzed carefully.” Academic institutions do not currently collect such information nor does the SEVIS system require it. Requiring that research institutions retroactively determine the nation of birth of all current foreign students and visitors and then cross-reference that information with the geographical location of all equipment whose use might be controlled is an almost ludicrous proposal and would constitute an enormous undertaking. The cost and time associated with such an endeavor is staggering, and could seriously harm the academic research community.

2. Proposed Regulations are Infeasible in Academic Environment

The success of U.S. science and technology is due in large part to the robust research enterprise contained on university campuses. Fundamental research thrives in an environment of free exchange of ideas, spontaneous changes of research direction, and open collaboration among colleagues in different laboratories or disciplines. Scientists frequently share equipment and information in their pursuit to understand the underlying principles that lead to expanded knowledge and technological advancements. Inhibiting foreign scientists' ability to participate in the commonplace exchanges of academic science will have a crippling effect on U.S. research.

Furthermore, we would again direct you to the concerns of AAMC and COGR, who outline the tremendous burden that would be placed on universities in trying to comply with deemed export control regulations as proposed in the OIG report. The broad and ambiguous definition of "use", the reclassification of foreign nationals based on country of origin, and the requirement to track thousands of individual pieces of equipment that might be subject to EAR as the bare minimum of the work that would need to be done present a staggering challenge that may be infeasible. At the very least, such an endeavor would require a large investment in resources by academic institutions that would come at the expense of ongoing research and educational programs, causing irreparable harm to our scientific enterprise.

3. Licensing Requirements are Redundant with Visa Screening Process

While FASEB agrees the U.S. government has every right, and perhaps a mandate, to assess foreign nationals in order to protect our nation and its citizens, we believe this is already accomplished by the rigorous screening process involved in visa processing. If the federal government allows a foreign visitor to enter the country, following the review process in which the State Department, Department of Homeland Security, and other federal agencies are involved, that individual should be allowed to become a fully functional member of the scientific community, without appurtenant obstacles. Extensive background checks, including the Visas Mantis process, are typically conducted on applicants seeking to study science or conduct research at U.S. institutions; these checks already incorporate concerns about access to sensitive technologies.

Using the deemed export regulations as a secondary screening process for foreign nationals is both redundant and unnecessary. We stand with our colleagues at COGR and AAMC in stating that if the Department of Commerce feels that there is something lacking in the visa security assessment process, such concerns should be addressed in a manner consistent with our national security interests and efficiency in processing visas. Solving any such problems via deemed export licensing will have destructive, unintended consequences to the academic research community.

In conclusion, FASEB respectfully asks that the Bureau of Industry and Security (BIS) not proceed with the rulemaking process and reassess the need to revise existing regulations and / or procedures. Should BIS determine some sort of revision is necessary, it should consider the impact of such revisions on the vitality of the U.S. scientific enterprise.

As discussed previously, the proposed changes would pose an impossible regulatory burden on the academic research institutions that are the nexus of our global leadership in science and technology. While there appears to be little evidence to justify the necessity of the OIG's recommendations, by contrast history has shown that national security is best served when academic freedom and open dissemination of fundamental scientific knowledge is permitted, unhindered by needless regulatory barriers.

Sincerely,

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