



September 25, 2024

*Via regulations.gov*

Hillary Hess  
Director, Regulatory Policy Division  
Bureau of Industry and Security  
U.S. Department of Commerce

*Re: Comments on Export Administration Regulations: Crime Controls and Expansion/Update of U.S. Persons Controls, 89 Fed. Reg. 60,998 (July 29, 2024)  
RIN 0694-AI35, BIS-2023-0006*

Dear Ms. Hess:

**Introduction.**

The Association of University Export Control Officers (“AUECO”) respectfully submits this letter in response to *Export Administration Regulations: Crime Controls and Expansion/Update of U.S. Persons Controls, 89 Fed. Reg. 60,998 (July 29, 2024)* (the “Proposed Rulemaking”). We are grateful for the opportunity to provide feedback on these important regulatory amendments that could have significant implications for international research collaborations. Please note that we are also submitting a comment letter on the companion rulemaking, *End-Use and End-User Based Export Controls, Including U.S. Persons Activities Controls: Military and Intelligence End Use and End Users, 89 Fed. Reg. 60,985 (July 29, 2024)*, RIN 0694-AJ43, BIS-2024-0029.

AUECO is an association of over 500 export control professionals with compliance responsibilities at over 200 institutions of higher education and related organizations within the United States. AUECO is committed to monitoring changes in the administration of export control laws and regulations that may affect the unique nature of higher education and academia, including international academic and research collaborations.

**Request for Clarity and Scope of Foreign-Security End Users (“FSEUs”).**

Certain wording in the proposed FSEU provisions may present challenges to research institutions and other regulated organizations. If not clarified, these ambiguities might compel compliance professionals to classify organizations as FSEUs out of an abundance of caution, even when they have no prominent security role or function. The results could include unnecessary license applications and delays for shipments of items on the Commerce Control List (“CCL”) (even relatively innocuous items controlled solely for Anti-Terrorism (“AT”) reasons), hindering global collaborations in furtherance of important medical or other scientific research.

The proposed definition of FSEU at section 744.25(f)(2) is unclear in two respects.

- *The definition is potentially limitless and could impact more organizations than is necessary.*

The definition indicates that an organization conducting “monitoring” (among other things) is “performing the function of a ‘foreign-security end user’” and is thus an FSEU. On a literal reading, the scope is essentially unbounded. Any number of modern organizations—retail outlets, restaurants, libraries, public schools, universities, corporate offices, manufacturers, etc.—“monitor” activities in one way or another for pragmatic health, safety, liability, or anti-theft reasons. For example, they routinely operate surveillance cameras, monitor internet traffic, scrutinize information from real-time data repositories, or screen emails. And in some respects, authorities in certain D:5 countries encourage individual citizens to “monitor” and report on one another, or foreign persons, as part of their government role or patriotic duties.

To calibrate the FSEU definition so it clearly covers only end users of genuine and material concern, AUECO respectfully urges BIS to provide clarification, perhaps with additional text in proposed Note 1 to paragraph (f), by explicitly excluding all organizations that engage in commonplace, non-governmental security practices, such as physical or electronic monitoring measures, as well as individual civilians who are directed to surveil and report activities to their government.

- *Clarity is needed to accurately define analytic and data centers (e.g., genomic data centers).*

The phrase “analytic and data centers (e.g., genomic data centers)” is similarly overbroad. Many universities, medical research centers, and other organizations operate analytic and data centers (including genomic data centers) that do not serve a specific governmental security function. Rather, such facilities are often important repositories of disseminable data that are critical to climate science, oncology, epidemiology, and pandemic response planning, among many other areas. These same facilities do not necessarily or innately relate to government security.

Again, we recommend that BIS clarify the proposed definition to exclude organizations whose data center operations are not directly related to or part of governmental security functions. This could be accomplished by removing the reference to data centers from section 744.25(f)(2), or with language in proposed Note 1 to paragraph (f) excluding organizations uninvolved in governmental security operations.

Without the clarifications requested, prudence would likely compel U.S. exporters to consider any organization that monitors and collects data in a D:5 country as an FSEU (e.g., an organization that monitors and collects data on pandemics and epidemiology). If a U.S. university needed to ship a novel 1C991.a vaccine controlled only for AT purposes to such an organization in China, for example, it would nevertheless need to pursue an export license. That could conceivably mean a delay of weeks or months—a significant potential downside—with seemingly limited benefit to U.S. national security or foreign policy interests given the vaccine’s relatively low level of classification.

[Request for Definition on Proposed Facial Recognition Controls.](#)

AUECO recommends that BIS consider defining the term “facial recognition systems.” The absence of a definition may complicate commodity classification decision-making for exporters and create unnecessary compunction and delays.

**Conclusion.**

AUECO applauds BIS for developing additional controls specifically to safeguard human rights, including the right to privacy from unjustified government surveillance. We believe the clarifications suggested above would advance this goal by helping regulators and the regulated community direct their finite resources to end uses and end users of genuine concern while excluding relatively innocuous, low-risk activities and organizations.

Thank you for this opportunity to comment on the Proposed Rulemaking.



**Scot Allen**  
Chair  
Association of University Export Control Officers (AUECO)



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*COGR endorses this AUECO comment letter:*



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