



USC University of
Southern California

It's Fundamental!

Managing Export Controls at USC

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Agenda

- Overview of Export Control “key concepts”
- Export Control “safe harbors”
- Export Control “red flags”
- What to do when you have restricted research
- Questions



What Are Export Control Laws?

U.S. laws that regulate :

- the distribution of technologies, equipment, hardware and software, and
- the provision of technical assistance to foreign nationals, foreign countries and listed individuals & entities

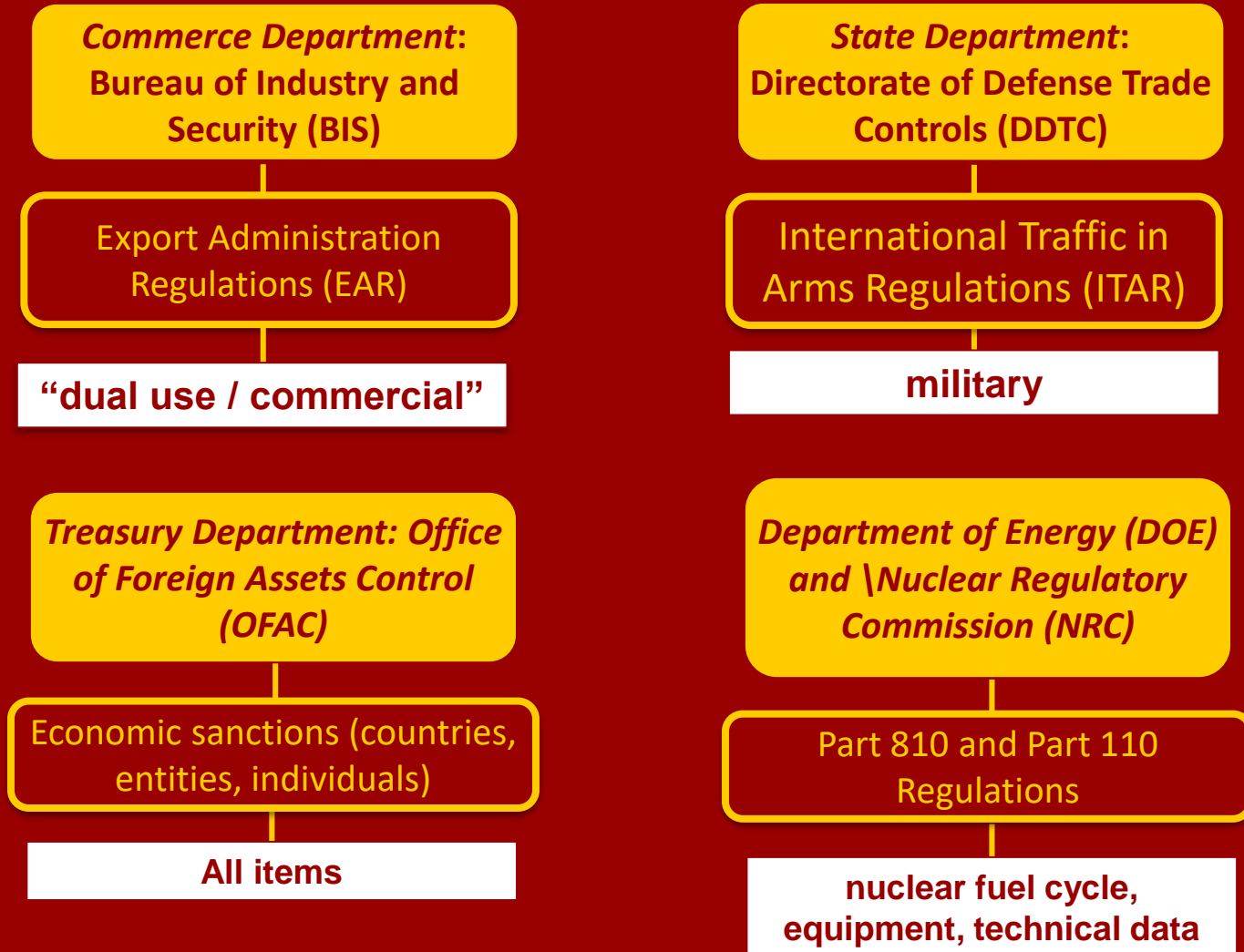
AND U.S. laws that regulate :

- payments and services to listed individuals, entities and comprehensively sanctioned countries

For reasons of foreign policy and national security.



Structure of the Regulations



Key Concepts: Export

- Physical Export: Sending, transferring or taking a tangible item outside of the U.S.
 - Sending from one foreign country to another (aka 're-export) items or technology of U.S. origin (including some foreign-made items that incorporate U.S.-origin components or technology). Also includes foreign made items that come to the U.S.
- Deemed Export: Disclosing (including oral or visual disclosure) technical data, technology, or source code to a non-U.S. Person, in the U.S. or abroad
- Defense Service: Providing technical assistance, training, or defense services to a non-U.S. Person, whether in the United States or abroad

22 CFR §120.17 and 15 CFR § 734.2

Key Concepts: U.S. Person

Persons who are permitted to access export controlled items without restrictions:

- U.S. Citizens
- Aliens who are “Lawful Permanent Residents”
 - Green Card holders*
- Other “Protected Individuals”
 - designated an asylee or refugee
 - a temporary resident under amnesty provisions
- Any entity incorporated to do business in the U.S.

Safe Harbor: The “Fundamental Research” Exclusion (FRE)

- **Information arising during or resulting from:**
 - Basic and applied research in science and engineering
 - When the resulting information is ordinarily published and shared broadly in the scientific community
- **Covers nearly all research at USC.**

FRE Generally Does NOT Apply If

- The PI intends to withhold some research results from publication for proprietary use.
- The university accepts any contract clause that
 - Forbids / restricts the participation of foreign persons
 - Gives the sponsor a right to approve/restrict publications resulting from the research, except for limited IP protection
 - Restricts access to and disclosure of research results
- If restrictions apply, an application must be submitted to the Office of Research for an exception allowing the project to proceed.

Additional Export Control “Red Flags”

- The fundamental research exclusion only applies to research done in the US.
- Will a visiting Scholar from a foreign country be working on a project with restrictions?
- Will there be shipments of items to a foreign country?
- Will there be travel to sanctioned or embargoed countries?
- Does the research subject material specifically for, or could it have application in, military use, use in space or use for weapons of mass destruction?
- Is encrypted software involved?

Red Flags continued

- Will a defense article be used in the research? Is your research covered in the US Munitions List (USML) found in Part 121 of the ITAR?
- Are you purchasing equipment specifically designed or modified for a military end use?
- Are you purchasing an item or receiving information from a third party who is imposing restrictions on how that item or information is used, and to whom it may be shared with (e.g., NDA)?
- Are you sending biological samples to a foreign collaborator?

When you engage in Restricted Research

- Before you propose, be attentive to restrictions that are called out in the RFP
- If restrictions apply, be aware that an application for exception must be submitted to the Office of Research, who then reviews with a standing committee.
<https://policy.usc.edu/international-collaborations-and-export-controls/>
- If the project is approved, the PI and research team will be required to implement practices to appropriately protect data and comply with sponsor restrictions.

When You Engage in Restricted Research: Post Award

- Adhere to any Technology Control Plan (TCP) required by the university.
- Make sure the sponsor tells you what information you're receiving that is restricted.
- If a researcher is going to present at a conference and expects to present on restricted research, be sure the materials to be presented have been cleared by the sponsor

Current Challenges: NIH Actions

A number of U.S. research institutions have received a letter from the National Institutes of Health noting foreign affiliations and funding that may not have been disclosed. We understand that many of these were identified by NIH reviewing publications and talent program websites and comparing what they found to Other Support and Progress reports for adequacy of disclosure.

Questions



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