

I. Purpose

This procedure provides guidance to employees about the proper notification, escalation and corrective action for incidents that involve problems with export transactions. Smithsonian (SI) employees and Smithsonian-affiliated persons are responsible for recognizing and reporting suspected violations to the Export Compliance Officer, or one of the following other contacts: their supervisor, SI Compliance Officer, Office of General Counsel, their SI contact, or anonymously to the Office of Inspector General's employee hotline.

The export regulations places a responsibility on "exporters" and their personnel to ensure that export-controlled activities with employees, collaborators, contractors and vendors, etc. , are compliant with U. S. export regulations. When a regulation may have been violated, there is a process to investigate, assess and determine if an export violation has occurred. This policy and procedure describes the identification and escalation process.

Both the ITAR and EAR provide the option to report to the respective export control agency and this process is called "Voluntary Self Disclosure (VSD)."

II. Procedure

1. Smithsonian- Initiated - Smithsonian employees who believe that the ITAR or EAR have been violated shall report potential violations to the **ECO**, their supervisor, or through anonymous reporting described below in the [OIG website](#). Such reporting is an integral process of the compliance program and will prevent future violations.

Employees are encouraged to speak up if they are not sure if their actions or the actions of others complies with export regulations. Due diligence means accepting the actions to comply, even if it involves delays or further assurances to be obtained to have the proper approvals in place.

The **ECO** reviews the facts and the applicable regulations in effect at the time to assess whether any ITAR or EAR regulations have been violated, and makes a determination if a voluntary self – disclosure (VSD) is appropriate, to the US Department of State, DDTC Compliance Division, per §127 of the ITAR, or to the Office of Export Enforcement, BIS, per a VSD §764 of the EAR. This report must explain the "who, what, where, when and how" of what happened.

2. Collaborator or Sponsor initiated - As SI is a contractor to government sponsors , private organizations and collaborators, these parties may also be the communication source of SI's becoming informed of a potential export violation.
3. Government Initiated - If an export enforcement agency or other government agency contacts SI with respect to a potential violation, or serves a subpoena, the **ECO** contacts the **OIG**, who coordinates investigations with law enforcement agencies. **OIG** investigates the alleged action and advises the **Unit Director** and the **OGC**. **OGC** determines if legal representation is necessary. All

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employees can request to speak to an attorney before responding to an enforcement agent. **Units** need to inform **OGC** about documents requested by the enforcement agent prior to providing them. The unit needs to provide an inventory of documents provided, and a copy each documents should be made and provided to **OGC**.

In the event SI is investigated, the special agents may visit and take correspondence, files, memo whether electronic or hard copy. If the government requests information in writing, failure to provide such information or the destruction of records is a criminal offense, as obstruction of justice. Employees should ensure to make copies of any documents surrendered to authorities. If government officials visit, please alert the **ECO** and **Empowered Official** and do not answer any questions you do not understand. If you feel that questions relate to a specific transaction, you can inquire if the unit is under investigation and request that interviews be stopped until the unit consults with counsel. No further violations should be contemplated.

If it appears that a violation has occurred, the **ECO** and **Unit Director** contacts the **OGC** and/or the **OIG** who investigates to determine if there is evidence that the error was inadvertent or willful and whether civil or criminal violations exist, respectively.

4. Corrective Actions are the most critical part of the VSD process. As mentioned above, government enforcement agencies expect an earnest root-cause analysis to prevent further violations. Training and new processes must be effective. Government agents can require SI to contract an outside Export Compliance audit or a second outside compliance officer as a mandatory corrective action. Legal fees to respond to a violation can be very costly. Disciplinary actions involve
 - Follow-up training to prevent future violations;
 - Change in assigned duties or removal from export-controlled projects;
 - A letter of reprimand in the employee's personnel record;
 - Suspension without pay; or
 - Appropriate discipline, up to and including dismissal.
5. Follow-up to the Corrective Action – the corrective action should be re-audited after a few months and then during the next audit.

III. References

Smithsonian Policy:

SD 611 –Export Compliance and Trade Sanctions related to Research, Export and Museum Activities
The **Export Compliance Officer, Natascha Finnerty, located in Rm 412 at Cambridge Discover Park, Smithsonian Astrophysical Observatory**, can be reached at export@si.edu, export@cfa.harvard.edu and by telephone at 617 496-7557. The Backup is Thomas Bonnenfant, Room 401, **at Cambridge Discover Park, Smithsonian Astrophysical Observatory**, can be reached at bonnenfant@cfa.harvard.edu and by telephone at 617 495-7317.

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Ginny Gomez, Office of General Counsel, the Castle, 3rd floor, Washington, DC can be reached at gomezv@si.edu 202-633-5102

OIG Hotline 202-252-0321

Regulatory References

Definitions

Smithsonian-Affiliated Persons — This category includes contractors embedded with SI employees, research associates, interns and Fellows, volunteers, visiting researchers, scientists, and scholars.

Acronyms

EAR - Export Administration Regulations

ITAR - International Traffic in Arms Regulations

VSD - Voluntary Self Disclosure

Regulatory references

Part 127: Violations and Penalties - ITAR

Part 764: Enforcement and Protective Measures - EAR

§764.2 of the EAR provides a list of actions that are possible violations, that can be charged:

- (a) Engaging in prohibited conduct
- (b) Causing, aiding, or abetting a violation
- (c) Solicitation and attempt
- (d) Conspiracy
- (e) Acting with knowledge of a violation
- (f) Possession with intent to export illegally
- (g) Misrepresentation and concealment of facts
- (h) Evasion
- (i) Failure to comply with reporting, recordkeeping requirements
- (j) License alteration
- (k) Acting contrary to the terms of a denial order

Penalties for violations are assessed as criminal at \$250,000 per violation, if the government can prove willful intent, or civil at \$100,000 or administrative, if inadvertent.

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Export regulations are complex and include many situations that do not require a specific license. Therefore, prior to any disclosure, the **ECO** conducts a detailed investigation of the facts and the regulations that were in effect at the time. The **ECO** investigates with the “exporter” (PI, PM, etc.) and the **Unit Director**, and **Office of General Counsel (OGC)**, if necessary, to make a determination if an export regulation has been violated, or if a license exception or license exemption authorized the activity.

If implementing a corrective action appears to be appropriate, the persons listed above discuss the facts and decide the correct course of action, usually including a root cause analysis, determination if the procedure needs improving, and follow-on training.

If a violation has occurred and the Smithsonian decides to submit a VSD, the Smithsonian must follow the process detailed in the ITAR or EAR to receive “mitigation credit.” The disclosure must be: timely, prior to the knowledge of government officials, and with full knowledge of the management. The reporting must be thorough, reach back several years, and include effective corrective action, usually involving an employee training component.

Note: VSDs can provide mitigation, allowing relief of penalties by 50%. First-time disclosures, if the transfer would have been most likely approved by government officials, frequently result in the issuance of a Warning Letter by enforcement agents. However, if enforcement agents determine that the VSD did not include complete facts, it might not qualify as a mitigating factor. Violations that are reported voluntarily still risk the issuance of fines, penalties, debarment from contracting with US government projects and criminal penalties, if found to be willful.

Records

Memos of violations
Analysis of activities
Voluntary disclosure letter to DDTC
Close out letter