



Office of Export Controls

University of Missouri-Columbia

Standard Operating Procedure

Violations

## Violations

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Associate Vice Chancellor for Research

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#### 1.0 Purpose

To set forth guidance regarding notification to the OEC, investigation by the OEC, disclosure to the applicable government body, and/or disciplinary action taken by the University in regards to any violation—potential or actual—of any export compliance or sanctions regulation(s).

#### 2.0 Scope

The SOP applies to all export and sanctions related activities conducted at the University of Missouri.

#### 3.0 Policy/Procedure

##### General Information

Any person or entity that (1) brokers, exports, or attempts to export a controlled item without prior authorization or in violation of the terms of a license, or (2) exports goods or services, engages in financial transactions, or otherwise acts contrary to or in violation of sanctions regulations, may be subject to criminal or civil penalties, or both. Often, each unauthorized transaction results in multiple violations of export control and/or sanctions regulations. Because each violation incurs its own penalty, a series of unauthorized transactions occurring over a period of time can result in civil or criminal prosecution leading to exorbitant fines, long prison sentences, or both.

##### a. International Traffic in Arms Regulations (ITAR)

- Criminal Penalties (for willful violations): An entity may be fined up to \$1,000,000 for each violation; individuals may be subject to a fine of up to \$250,000 or up to ten years' imprisonment, or both, for each violation.
- Civil Penalties: Civil penalties may be imposed in addition to, or in place of, criminal or other penalties. An entity or an individual may be fined up to \$1,111,908 for each violation. In addition, violators may also face suspension or debarment from government contracts; seizure or forfeiture of the item(s); and/or

revocation of export privileges.

b. Export Administration Regulations (EAR)

- Criminal Penalties (for willful violations): An entity may face paying a fine of up to \$1,000,000 or five times the value of the transaction (whichever is greater) for each violation; an individual may be fined up to \$250,000 or be imprisoned for up to ten years, or both, for each violation.
- Criminal Penalties (for knowing violations): A fine of up to the greater of \$50,000 or five times the value of the exports may be imposed for each violation. An individual may also be imprisoned for up to five years in addition to, or instead of, any fine assessed for each violation.
- Civil Penalties: The maximum civil penalty for an entity or an individual is \$289,238<sup>1</sup> or twice the value of the transaction, whichever is greater.
- Additionally, for each violation, any or all of the following sanctions may be imposed:
  - The denial of export privileges; and/or
  - The exclusion from exporting practice; and/or
  - Loss of federal funds
  - Seizure/Forfeiture of goods.

c. Office of Foreign Assets Control (OFAC)

- International Emergency Economic Powers Act (IEEPA) Penalties<sup>2</sup>
  - Civil penalty: Entities and individuals face fines of up to \$284,582 per violation or twice the transactional value (whichever is greater).
  - Criminal penalty: An entity or an individual may be assessed a fine of up to \$1,000,000 per violation. In addition, an individual may be imprisoned for up to twenty years in place or, or in addition to, any fine assessed per violation.
- Trading with the Enemy Act (TWEA) Penalties (Cuba and North Korea)
  - Civil penalty: \$85,236 per violation
  - Criminal penalty: An entity may be fined up to the greater of twice the value of the transaction or \$1,000,000 per violation. An individual may be fined the greater of twice the value of the transaction or \$250,000 and may also be sentenced up to 10 years in prison.
- Additionally, for each violation, any or all of the following may be imposed:
  - Denial of export privileges; and/or
  - Exclusion from exporting practice; and/or
  - Seizure/Forfeiture of goods.

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<sup>1</sup> Regulatory agencies may occasionally adjust their civil penalties to account for inflation without changing the actual regulations. There may be occasions in which penalties are actually higher than what is published in the Code of Federal Regulations.

<sup>2</sup> The potential fines that may be assessed in the event of a violation may change across the various OFAC sanctions programs and can exceed \$1 million depending the specific program an entity or person under which a violation occurs.

### Voluntary Disclosures

Because of the complexity of export and sanctions regulations, accidental or inadvertent violations are possible. DDTC, BIS, and OFAC all have voluntary disclosure (“VSD”) procedures whereby the University can self-disclose any export or sanction violation.<sup>3</sup>

In assessing penalties, the responsible agency(ies) will consider a number of factors, both aggravating and mitigating. Mitigating factors include (1) whether the disclosure was made voluntarily; (2) whether this was a first offense; (3) whether the company had compliance procedures; (4) whether steps were taken to improve compliance after discovery of violations; and (5) whether the incident was due to inadvertence, mistake of fact, or good faith misapplication of the laws. Aggravating factors include: (1) willful or intentional violations; (2) failure to take remedial action after discovery; (3) lack of a compliance program; and (4) deliberate efforts to hide or conceal a violation. As a mitigating factor, submission of a VSD helps the cognizant agency determine whether to impose any penalties or pursue other enforcement actions. Failure to submit a VSD may be considered an aggravating factor that could increase any penalties assessed.

The University of Missouri will voluntarily self-disclose violations as required, and in a timely fashion.

### Detecting and Reporting Violations

MU encourages University employees to come forward with concerns about potential export or sanctions violations. All efforts will be made to investigate credible claims of potential violations and provide appropriate protections to those individuals filing such claims, per UM Policy HR-520. Any individual who suspects a violation has occurred must immediately notify the OEC and/or an Empowered Official. Anonymous reporting is available through the University of Missouri “Ethics and Compliance Hotline<sup>4</sup>.” The OEC will conduct an internal review of the suspected violation by gathering information about the circumstances, personnel, items, and communications involved. Once the review is complete and if warranted by the investigation, the OEC will provide the cognizant government agency a thorough narrative account, including but not limited to:

1. the project’s description and background;
2. a description of the suspected violation;
3. items and controlled categories involved;
4. dates the violations occurred;
5. countries involved;
6. names and citizenships of those involved;
7. an explanation of why the violation occurred;
8. any corrective actions taken; and
9. a reaffirmation to MU’s commitment to compliance with export controls and sanctions regulations.

Upon submission of any notification of a VSD to a government agency, the OEC will follow any instructions it receives concerning continued investigation and processing.

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<sup>3</sup> In order to be considered “voluntary,” a disclosure must be made prior to the time the Government obtains knowledge of the violation and initiates an investigation or inquiry.

<sup>4</sup> Telephone 1-866-447-9821 or see additional information on submitting an online notification to the Ethics and Compliance Hotline at <https://www.compliancehelpline.com/UM.jsp>.

Disciplinary Actions

All MU employees responsible for export controls and sanctions compliance or participating in restricted research shall be made aware of the substantial criminal and civil penalties imposed for violation of the export regulations including personal liability, monetary fines and imprisonment. Should disciplinary action be deemed necessary, appropriate action shall be taken as provided under the UM Collected Rules and Regulations and/or the UM Human Resources Policy Manual.