



Voluntary Self Disclosure Best Management Practices

Understanding export controls is a challenge that can make export compliance a daunting responsibility. Even the best compliance programs can make unintentional mistakes as they navigate dynamic and complex federal export laws and regulations. The federal agencies that govern export controls strongly encourage companies to report any potential errors by making a voluntary self disclosure (VSD). A VSD is a report of an export or sanctions violation to the appropriate jurisdictional government agency and the U.S. Department of Justice (DOJ) before that violation is discovered through other means.

§764. 5 Voluntary self disclosure. *“BIS [Bureau of Industry and Security] strongly encourages disclosure to the Office of Export Enforcement (OEE) if you believe that you may have violated the EAR, or any order, license or authorization issued thereunder.”*

The appropriate jurisdictional agency is the agency that has export control responsibility for the commodity, technology, or software associated with the potential violation. The major export control government agencies are the Department of State (DOS), Department of Commerce (DOC), Department of Energy (DOE), Nuclear Regulatory Commission (NRC), and the Department of Treasury’s Office of Foreign Assets Control (OFAC).

All agencies expect export and sanctions violations to be reported in the most expedient and thorough manner possible. In almost every situation, a VSD and continued cooperation are considered significant mitigating factors in determining the respective agency’s administrative, civil, or criminal penalties for an export control violation. The appropriate agencies will then determine the proper degree of mitigation based on the VSDs and other mitigating factors.

Jurisdictional agencies have distinct nuances associated with reporting expectations and requirements. However, all disclosures need to highlight the nature of the violation(s), describe how the issue(s) will be remediated, and detail how internal procedures for export control compliance will be improved to diminish the likelihood of future violations. All VSDs must be supported by the reporting organization’s management. Otherwise, the reporting individual will be viewed as a whistleblower, and the organization will not receive credit for the disclosure.

The DOJ requires export and sanction violations to be reported concurrently to the DOJ as well as the appropriate jurisdictional agency. Below are the details associated with new VSD requirements for each jurisdictional agency and the corresponding expectations outlined by the DOJ.

U.S. Department of Justice Voluntary Disclosures

The National Security Division's Counterintelligence and Export Control Section published VSD guidance in December 2019 to facilitate DOJ's focus on VSDs for willful or potentially willful violations. When followed, the guidance is intended to facilitate a presumption that the reporting organization will receive a nonprosecution agreement and will not pay a fine, absent aggravating factors. The criteria and expectations associated with this policy update are described below.

The following actions are required for a disclosure to be considered voluntary:

- Conduct disclosed to DOJ and its National Security Division's Counterintelligence and Export Control Section "prior to an imminent threat of disclosure or government investigation"
- Conduct disclosed "within a reasonable time after becoming aware of the offense"
- Organization discloses ALL relevant facts known at the time

The following actions are required to receive credit for full cooperation:

- Disclose and update all relevant facts in a timely manner
- Provide updates related to internal investigations
- Provide proactive cooperation
- Preserve, collect, and disclose all relevant documents and information
- Deconflict witness interviews and take appropriate investigate steps
- Make all appropriate personnel available for interviews

Implementation of an effective compliance program must include the following to receive full credit for timely and appropriate remediation(s):

- A demonstrated culture of compliance throughout the organization
- Resources dedicated to compliance
- Quality, experienced compliance personnel
- Authority and independence of the compliance function
- Effective risk assessment
- Auditing of the compliance program
- Reporting structure for compliance personnel
- Demonstration of thorough root cause analysis and steps to remediate
- Retention of business records
- Appropriate discipline of employees involved
- Additional measures taken by the company

Disclosure to the jurisdictional agency only is not sufficient and may constitute an aggravating factor, or it may prohibit any VSD-related benefits in subsequent DOJ investigations.

Self disclosures should be reported to the appropriate jurisdictional agency and the DOJ. Jurisdictional agencies in this case are those government agencies with export control responsibilities and authorities for the commodity or technology in question. The five major jurisdictional agencies are listed below with the commodities in their jurisdiction.

Major Players



DOJ:

Inherently military
(U.S. Munitions List)

DOC:

Dual-use and military items of lesser concern

DOE:

Nuclear technology and software
Nuclear weapons components and technology

NRC:

Nuclear equipment and material

Treasury (OFAC):

Sanctions and embargoes

U.S. Department of State/Directorate of Defense Trade Controls Voluntary Disclosures

Self disclosure timeline

Submit the disclosure immediately after a violation is discovered and then conduct a detailed review. If the initial notification to the Directorate of Defense Trade Controls (DDTC) does not contain all the information required, then a full disclosure must be submitted within 60 calendar days of the initial notification. If the 60 day calendar deadline cannot be met, an empowered official or senior officer may request an extension in writing. A request for an extension must specify what required information (per § 127.12(c)(2)) could not be immediately provided and the reasons why. The DOS/DDTC initial report must be submitted in writing.

The initial self disclosure reports should include the following:

- A precise description of the nature and extent of the violation (e.g., an unauthorized shipment, doing business with a party denied U.S. export privileges)
- The exact circumstances surrounding the violation (a thorough explanation of why, when, where, and how the violation occurred)
- The complete identities and addresses of all persons known or suspected to be involved in the activities leading to the violation (including mailing, shipping, and email addresses; telephone and fax/facsimile numbers; and any other known identifying information)
- DOS, DOC, or other appropriate jurisdictional agency's license numbers, exemption citation, or description of any other authorization, if applicable
- If DOS (International Traffic in Arms Regulation), the U.S. Munitions List category and subcategory, product description, quantity, and characteristics or technological capability of the hardware, technical data, or defense service involved
- If DOC (Commerce Control List), the Export Control Classification Number, product description, quantity, and characteristics or technological capability of the hardware, technology controls, and other relevant information involved
- A description of corrective actions already undertaken that clearly identifies the new compliance initiatives implemented to address the causes of the violations set forth in the voluntary disclosure and any internal disciplinary action taken, and how these corrective actions are designed to deter those particular violations from occurring again
- The name and address of the person making the disclosure and a point of contact, if different, should further information be needed

A full narrative report of the incident

The following factors should be addressed after a more thorough review of all transactions (follow-on reporting within 60 days of submitting initial report):

- Was the violation intentional or inadvertent?
- How familiar was the person responsible for the violation with the laws and regulations?
- Was person responsible the subject of prior administrative or criminal action under the Arms Control Export Act?
- Were the violations systemic?
- Were any compliance measures, processes, and programs, including training, in place to prevent such violations?
- Is any required information not provided in the initial report?

Documentation

The written disclosure should be accompanied by copies of substantiating documents. Where appropriate, the documentation should include, but not be limited to, the following:

- Licensing documents (e.g., license applications, export licenses, and end user statements), exemption citations, or other authorization descriptions
- Shipping documents (e.g., electronic export information filing, including the internal transaction number, air waybills, and bills of lading, invoices, and any other associated documents)

Any other relevant documents must be retained by the person making the disclosure until the jurisdictional agency requests them or until a final decision on the disclosed information has been made.

Certification

A certification must be submitted stating that all the representations made in connection with the voluntary disclosure are true and correct to the best of that person's knowledge and belief.

Certifications should be executed by an empowered official or by a senior officer (e.g., chief executive officer, president, vice president, comptroller, treasurer, general counsel, or member of the board of directors).

If the violation is significant, reveals a systemic pattern of violations, or reflects the absence of an effective compliance program, DDTC may require that such certification is made by a senior officer of the company/organization.

U.S. Department of Commerce Voluntary Disclosures

Initial notification

For the company/organization to obtain credit for the VSD, the individual making the disclosure must do so with the full knowledge and authorization of the organization's senior management.

The initial notification date is the date the notification is received by the Office of Export Enforcement (OEE). OEE will confirm receipt of the initial notification from the disclosing party in writing (letter, fax, or email).

Reporting requirements

Initial notifications to OEE must include the following information:

- The name of the person making the disclosure
- A brief description of the suspected violations
- A description of the general nature and extent of the violations

Initial notifications must be in writing. If no violation has occurred, there is no negative effect on the reporting entity if a VSD is reported and the DOC determines that no violation occurred. Therefore, if an entity is unsure if a violation has occurred, they should still report the possible violation.

Full narrative - Timeline

A full comprehensive report must be received within 180 days of the initial notification date. Failure to meet this deadline is an additional violation of the Export Administration Regulations (EAR).



Narrative Content

OEE recommends that the review cover a period of 5 years before the date of the initial notification, describe the nature of the review conducted, and explain the measures taken to minimize the likelihood that violations will occur in the future. The narrative should include the following additional information:

- The kind of violation involved (e.g., a shipment without the required license or dealing with a party denied export privileges)
- An explanation of when and how the violations occurred
- Complete identities and addresses of all individuals and organizations (foreign or domestic) involved in the activities associated with the violations
- Export license numbers
- The description, quantity, value in U.S. dollars and Export Control Classification Number or other classification of the items involved
- A description of any mitigating circumstances

Supporting documentation

The narrative account should be accompanied by copies of documents that explain and support it.

These may include:

- Licensing documents such as licenses, license applications, import certificates and end-user statements, etc.
- Shipping documents such as shipper's export declarations, air waybills, and bills of lading
- Other documents such as letters, facsimiles, and other evidence of written or oral communications, internal memoranda, purchase orders, invoices, letters of credit, and brochures

The person making the disclosure must retain all relevant documentation until OEE requests it or until a final decision on the disclosed information has been made. All records should be kept for 5 years per the record-keeping rules in part 762 of the EAR.

Certification

A certification must be submitted stating and including the following:

- The representations made in connection with the VSD are true and correct to the best of that person's knowledge and belief
- The certification must be signed by an organizational official with the authority to do so

Oral presentations

OEE believes that oral presentations are generally not necessary to augment the written narrative account and supporting documentation. If the person making the disclosure believes otherwise, a request for a meeting should be included with the disclosure.

Action by the OEE

After OEE has been provided with the required narrative and supporting documentation, it will acknowledge the disclosure by letter, provide the person making the disclosure with a point of contact, and take whatever additional action it deems appropriate. OEE may take any of the following additional actions:

- Inform the disclosing party that they plan to take no action
- Issue a warning letter
- Issue a proposed charging letter in attempt to reach a settlement (per §766.18)
- Issue a charging letter if a settlement is not reached (per §766.3)
- Refer the matter to the DOJ for criminal prosecution

Extension requests

An extension of the original 180 days can be granted by the director of OEE. All approval and special conditions are at the discretion of the OEE director.

Extension requests should detail that the person making the request

- began the review promptly after discovery of the violation(s);
- has been conducting the review and preparing the full narrative report as expeditiously as can be expected (consistent with the need for completeness and accuracy);
- explains the reason(s) why the extension is needed despite having begun a thorough review and an expeditious preparation of the narrative promptly after discovery of the violations (consistent with the need for completeness and accuracy);
- provides evidence requestor (and organization) has considered and implemented interim compliance or other corrective measures as needed to prevent recurring or additional violations;
- proposes a new timeline for completion and submission of the full narrative that is reasonable under the applicable facts and circumstances; and
- designates a contact person regarding the extension request and provide that contact person's current business street address, email, and telephone number.

Any additional information that the requestor believes is pertinent to the request under the applicable facts and circumstances.

Requests for an extension should be made before the 180-day deadline and as soon as possible once a disclosing person/agency determines that it will be unable to meet the deadline, and possesses the information needed to prepare an extension request.

Requests for extension that are not received before the deadline for completing the narrative account has passed will not be considered. Parties requesting an extension shortly before the deadline incur a risk that the director of OEE will be unable to consider the request, determine whether or not to grant the extension, and communicate his or her decision before the deadline, and that any subsequently submitted narrative account will be considered untimely.

U.S. Department of Treasury (OFAC) Voluntary Disclosures

OFAC Initial Notification

Unless the disclosure is an initial notification that will be supplemented (within a reasonable time) with additional information, the submission should contain sufficient detail to provide a complete understanding of the violation's circumstances.

U.S. Department of Energy/National Nuclear Security Administration Voluntary Disclosures

Disclosing 10 CFR Part 810 violations or suspected violations

DOE encourages prompt self reporting of actual or potential violations of the Part 810 regulation. The timeline to report is within 30 days of becoming aware of a violation or potential violation. Self disclosures should include the following information:

- All relevant information surrounding the violation
- Corrective actions taken to remedy the situation
- Steps taken to ensure the same violation will not happen again

DOE will evaluate the information provided and respond in writing.

NAP 476.1 or R024 violations

If an export violation or deemed export violation is determined to have occurred or if there is a potential violation, a VSD must be submitted through the Office of Defense Programs (NA-10) to the Office of Nonproliferation and Arms Control (NA-24). The following information must be included:

- Describe the exact circumstances of the violation
- Proposed corrective actions taken to prevent a recurrence

The cognizant NA-10 federal program office will coordinate the evaluation of the VSD or potential violation with NA-24 and issue a response to the compliance officer or appropriate reporting party. They will specify findings, penalties, and possible future actions required.

VSDs may be referred to DOS or DOC depending on which regulatory regime covers the underlying commodity or technology.

U.S. Nuclear Regulatory Commission

No specified reporting requirements. Forward VSD notifications and details to David Furst, NRC Enforcement (david.furst@nrc.gov).



Jurisdictional Agency Contact Information for Submitting VSD Statements

U.S. Department of Justice

Deputy Chief Fraud Section,
Criminal Division Bond
Counterintelligence and
Export Control Section
Bldg. 1400, New York Ave., NW
Washington, DC 20005

Deputy Chief for Export
Control Sanctions
Counterintelligence and
Export Control Section
950 Pennsylvania Ave., NW
Washington, DC 20530
Email: NSDCES.ExportVSD@usdoj.gov

U.S. Department of State

PM/DDTC, SA-1,
12th Floor 2401 E St., NW
Washington, DC 20037
Email: DTCC-CaseStatus@state.gov
DDTC Response Team:
(202) 663-1282

U.S. Department of Commerce, BIS, Office of Export Enforcement

Send EAR violation disclosures to:

Director, Office of Export Enforcement
1401 Constitution Ave., Rm. H4514
Washington, DC 20230
Phone: (202) 482-5036
Fax: (202) 482-5889

Send EAR antiboycott violation disclosures to:

Office of Antiboycott Compliance
Bureau of Industry and Security, U.S.
Department of Commerce
14th Street and Constitution Ave., NW,
Rm. H-6099C
Washington, DC 20230
Phone: (202) 482-2381
Fax: (202) 482-0913

Office of Foreign Assets Control

Compliance and Enforcement
Division, OFAC
U.S. Department of Treasury
1500 Pennsylvania Ave., NW
Washington, DC 20220
Email: OFACDisclosures@treasury.gov
Phone: (800) 540-6322

U.S. Nuclear Regulatory Commission

David Furst
NRC Enforcement
Email: david.furst@nrc.gov

U.S. Department of Energy Part 810 Violations

Email: Part810@nnsa.doe.gov

U.S. Department of Energy / NNSA NAP 476.1 Violations

Laura Fornicola, NA-10.2
Email: laura.fornicola@nnsa.doe.gov
Phone: (202) 586-9459

U.S. Census Bureau

Chief Economic Management Division
4600 Silver Hill Rd., Rm. 6K064
Suitland, MD 20746
Phone: (800) 549-0595 (Option 3)
Email: itmd.askregs@census.gov

Export Compliance Assistance Program



833-411-ECAP (3227)



<https://ecap.doe.gov/>



ecap@ornl.gov