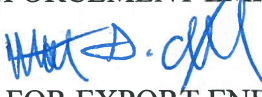




UNITED STATES DEPARTMENT OF COMMERCE
Assistant Secretary for Export Enforcement
Washington, D.C. 20230

January 16, 2024

MEMORANDUM FOR ALL EXPORT ENFORCEMENT EMPLOYEES

FROM: MATTHEW S. AXELROD 
ASSISTANT SECRETARY FOR EXPORT ENFORCEMENT

SUBJECT: FURTHER ENHANCEMENTS TO OUR VOLUNTARY SELF-DISCLOSURE
PROCESS

For the past 40 years, Export Enforcement has been at the vanguard of protecting American technology from being illicitly acquired by our adversaries. Today, advances in science and technology are poised to define the geopolitical landscape. Disruptive technologies like artificial intelligence and supercomputers may eventually be powerful enough to deliver military overmatch, with the potential to alter the balance of power in the world.

While it's American companies and universities that are at the forefront of innovating these disruptive technologies, it's all of you who are at the forefront of helping to protect such technologies from adversaries who seek to obtain them to modernize their militaries, commit human rights abuses, and advance their weapons-of-mass-destruction programs. But we can't do our jobs without the partnership of industry and academia. They know their technology, their programs, and their research best. And when the regulated community identifies a potential violation, we rely on them to come tell us about it.

Accordingly, to better support industry's and academia's compliance efforts and to further streamline our own internal processes, I am today announcing that we are making several key updates regarding our Voluntary Self-Disclosure (VSD) process. These updates, which are reflected on our [VSD webpage](#), build upon previous enhancements related to VSDs announced in policy memoranda on [June 30, 2022](#) and [April 18, 2023](#). In providing these new updates, our goal is to enhance the efficiency and effectiveness of our VSD program, while also making it easier for parties to make disclosures. We adhere to the principle that companies and universities deserve a quick resolution and due credit for coming forward voluntarily to acknowledge their mistakes, especially when violations have no aggravating factors. We want to ensure that industry and academia can learn how to promptly correct minor missteps and move forward with compliant behavior. By improving upon our programmatic processes, we can help them accomplish just that.

Manner of Submission

Starting today, we are strongly encouraging the submission of VSDs via email. Electronic submissions of initial notifications, extension requests, and narrative accounts of disclosure through the email address bis_vsd_intake@bis.doc.gov will allow us to receive, monitor, and track submissions more effectively, thus enabling a quicker and more responsive interface with those making disclosures. The submissions can also be electronically signed. As before, we will continue to accept hard-copy, written paper submissions for VSDs, but we have made a change to our VSD webpage to encourage parties to provide an email address in any hard-copy submission to allow for more expedient follow-up and response.

Abbreviated Narrative Account of Certain Disclosures

Regarding VSDs that involve only minor or technical infractions, we implemented a “fast-track” resolution policy on June 30, 2022. Under this dual-track system, VSDs falling under this category now receive a warning or no-action letter within 60 days of final submission. Today’s updates further enhance the “fast-track” resolution policy by adopting an abbreviated “narrative account” option for the overwhelming majority of VSD submissions.

Specifically, parties disclosing violations where no aggravating factors¹ are present may now submit an abbreviated narrative account as part of their disclosure. The abbreviated narrative account should briefly describe the nature of the violations as outlined in Section 764.5(c)(3)² but need not include all of the accompanying documentation outlined in Section 764.5(c)(4), unless specifically requested by the Office of Export Enforcement (OEE).³ Additionally, parties submitting such abbreviated narratives do not need to conduct the full five-year lookback recommended in Section 764.5(c)(3), unless specifically requested by OEE.⁴

If OEE suspects the presence of aggravating factors that are not disclosed, the OEE Director will request a full narrative account, including the five-year lookback, with accompanying documentation. For VSDs that involve circumstances with aggravating factors, submitting parties should continue to conduct a thorough review of all export-related transactions where possible violations are suspected. In those instances, we continue to recommend that the review of the suspected violations cover a period of up to five years prior to the date of the initial notification, consistent with Section 764.5(c)(3).

¹ Aggravating factors are addressed in Section III(A) of Supplement No. 1 to Part 766.

² Section 764.5(c)(3) of the EAR outlines the contents of the VSD narrative, which should include “(i) The kind of violation involved, for example a shipment without the required license or dealing with a party denied export privileges; (ii) An explanation of when and how the violations occurred; (iii) The complete identities and addresses of all individuals and organizations, whether foreign or domestic, involved in the activities giving rise to the violations; (iv) License numbers; (v) The description, quantity, value in U.S. dollars and ECCN or other classification of the items involved; and (vi) A description of any mitigating circumstances.”

³ Section 764.5(c)(4)(ii) reads: “Any relevant documents not attached to the narrative account must be retained by the person making the disclosure until OEE requests them, or until a final decision on the disclosed information has been made. After a final decision, the documents should be maintained in accordance with the recordkeeping rules in part 762 of the EAR.”

⁴ Parties should continue to note, however, that, as explained in Section 764.5(c)(3), “[a]ny violations not voluntarily disclosed do not receive consideration under this section.”

What Makes a Violation Significant?

Many apparent violations are minor or technical ones, the result of a good-faith misinterpretation or the checking of a wrong box on a form. If no aggravating factors are present, we will generally consider these violations minor and address them through the “fast track” for resolution. Resolutions for minor violations include either a no-action determination letter or a warning letter. In contrast, significant violations are those involving aggravating factors that may result in an administrative penalty or other action.

In our April 18, 2023 policy memorandum, we noted that parties could bundle multiple minor or technical violations – i.e., those without aggravating factors – into one overarching submission, if the violations occurred close in time. Now, our VSD webpage further clarifies that parties can bundle these disclosures for submission on a quarterly basis. This clarification will help streamline the process for minor or technical infractions and help us to more easily fast-track a response.

Treatment of Unlawfully Exported Items

By definition, a party making a voluntary self-disclosure believes that a violation may have occurred. Therefore, when dealing with an item subject to a VSD, the party making the disclosure is prohibited from engaging in the activities listed in Section 764.2(e), such as buying, disposing of, transferring, or storing the item.⁵ We recognize that the list of activities prohibited by Section 764.2(e) is an expansive one, and we also understand that parties who disclose violations often seek to take corrective actions. Accordingly, parties may request special permission from BIS to engage in activities that would otherwise be prohibited by Section 764.2(e).

While these requests must be formally submitted to BIS’s Office of Exporter Services, today’s VSD webpage updates notify the regulated community that to help expedite the requests, we suggest that courtesy copies of such requests be sent to OEE via email. We will then work with the Office of Exporter Services to help expedite its review and analysis of the request to ensure decisions to grant such requests are appropriate, thereby allowing the items to be placed back into the lawful stream of commerce.

In addition, the VSD webpage updates now make clear that *any person* (i.e., not just a party submitting a VSD) may notify the OEE Director that a violation has occurred and request permission from the Office of Exporter Services to engage in otherwise prohibited activities. OEE will consider such disclosures to have fulfilled the requirements of Section 764.5(f) even when the request does not disclose a violation by the submitter (assuming there was no violation by the submitter to disclose) but instead just seeks permission to engage in otherwise prohibited activities.

Furthermore, for parties seeking to return an unlawfully exported item back to the United States from abroad, OEE’s presumptive recommendation will be for BIS to authorize such reexports, regardless of who is seeking such permission.

Conclusion

Our approach to VSDs, and to compliance in general, is clear. We will continue to impose significant penalties against those who break the law, while at the same time incentivizing companies

⁵ See Sections 764.5(f) and 736.2(b)(10), respectively.

to play by the rules. That way, we're not only punishing export violators but also deterring those violations from occurring in the first place. As I've said previously, and as today's announcement affirms, an effective compliance program protects both the exporter by mitigating risk as well as our collective national security by keeping sensitive American technology out of the wrong hands.