



## EXPORT CONTROLS PROCEDURES

<b>Title: Handling Export Violations and Taking Corrective Actions</b>		
<b>Procedure #:</b> EC007	<b>Effective Date:</b> 11/29/2021	<b>Author:</b> Todd Wakeland
<p><b>Purpose/Definitions:</b> Due to export control laws and regulations, it may sometimes be necessary to restrict certain individuals’ ability to conduct, access the results of, or otherwise participate in certain research projects and other University activities. Because violations of export controls, including inadvertent failures to comply, may result in severe criminal and civil penalties both for individual faculty, staff, and students, as well as for Southern Illinois University as an institution, export compliance is the shared responsibility of all members of the University community.</p> <p>Suspected violations should be reported to the Director of Export Controls, other Export Controls staff, SIU Office of General Counsel (OGC), or the SIU Export Control compliance hotline (618-650-2476). In consultation with OGC, the Director of Export Controls will initiate an investigation in conjunction with the affected administrative or academic units to determine if a violation has occurred and if subsequent self-disclosure to a government agency will be made.</p> <p>Violations can result not only in significant civil or criminal liabilities for SIU and the individuals involved, up to and including termination of employment, but also in damage to national security and to the University’s standing as an institution of research and learning. Early detection, investigation, and resolution, along with voluntary self-disclosure, can aid in lessening penalties and the impact of violations.</p> <p><b>Procedure:</b></p> <p><b>1. <u>Reporting Violations</u></b></p> <p>Early detection and fast responses to resolve noncompliance issues are key to minimizing the University’s exposure. Suspected violations should be reported to the Director of Export Controls, other Export Controls staff, SIU Office of General Counsel (OGC), or the SIU Export Control compliance hotline (618-650-2476).</p>		

## **2. Investigating Violations and Taking Corrective Actions**

Any suspected violation that is reported will be analyzed by the Director of Export Controls. If the allegation merits further fact finding and investigation, the Director of Export Controls, in consultation with the OGC, will work with all appropriate University personnel to determine the scope of the investigation and who will need to be involved in the investigation.

The Director of Export Controls, in consultation with the OGC, will determine the appropriate actions to be taken, which may include a voluntary self-disclosure to the government, and make recommendations regarding same to the campus Chancellor or SIU-Medical School Dean who will make the final decision of the action to be taken which said decision will be implemented by the Director of Export controls. In the event the Chancellor or Dean has a conflict of interest in making the decision regarding the appropriate actions to be taken, the Director of Export Controls will refer the matter to the SIU President.

Voluntary self-disclosure may mitigate the seriousness of penalties. In order to be considered “voluntary,” disclosures must be made prior to the time the U.S. Government obtains knowledge of either the same or substantially similar information from another source and initiates an investigation or inquiry of its own. If time will be needed to do a comprehensive assessment to identify any other noncompliance, the Director of Export Controls may make an initial voluntary self-disclosure, if approved by the campus Chancellor or SIU School of Medicine Dean or the SIU President and then submit the complete disclosure once the internal review has been completed.

In determining the appropriate course of action to take, the Director of Export Controls, in consultation with the OGC, will consider the relevant guidance from the Bureau of Industry and Security (BIS) for Export Administration Regulations (EAR) violations and the Directorate of Defense Trade Controls (DDTC) for International Traffic in Arms Regulations (ITAR) violations, the content of which is located in the Appendixes of these procedures:

- **Appendix A:** BIS Voluntary Self-Disclosure Guidance
- **Appendix B:** Code of Federal Regulations: EAR violations (*15 CFR 764.4/764.5*)
- **Appendix C:** DDTC “Report a Violation” Guidance
- **Appendix D:** Code of Federal Regulations: ITAR violations (*22 CFR 127.12*)

The Director of Export Controls, in consultation with OGC, will conduct an internal review of the suspected violation by gathering information about the circumstances, personnel, items, and communications involved. The Director of Export Controls may need to inspect documents relevant to the investigation, including lab notebooks, security records, and internal communications. During the course of an investigation,

the Director of Export Controls may also instruct personnel to cease any University activities related to the suspected violation.

The investigation process should ensure the root cause of the noncompliant activity is identified and corrective actions are developed to ensure the noncompliance does not recur. The corrective actions should be implemented as quickly as possible and monitored to make sure they are working properly.

Based on the situation, the Director of Export Controls will notify the appropriate levels of management of the results of the investigation and the corrective action taken.

If voluntary self-disclosure is deemed as the best course of action, the Director of Export Controls may provide the government agency with a supplementary letter with a thorough narrative account of:

1. The project's description and background
2. A description of the suspected violation
3. The items and controlled categories involved
4. The dates the violations occurred
5. Countries involved
6. Individuals involved and their citizenship
7. Explanation of why the alleged violation occurred
8. Corrective actions taken
9. SIU's commitment to export controls compliance

Once the initial notification and supplementary letter have been reviewed, the University will follow the relevant government agency's instructions. The Director of Export Controls should retain documentation of the investigation, its results, and any corrective action taken in accordance with all University policies and federal laws and regulations.

### **3. Handling Government Subpoenas**

In the event any subpoena or other request for documents is received from any Federal agency, or if a Federal agency representative arrives on campus, immediately contact the OGC for appropriate and timely response and verify the identity of the federal agent if possible. Do not interfere with or obstruct any Federal agent or law enforcement officer in the performance of their duties.

## Appendix A: BIS Voluntary Self-Disclosure Guidance

*Per the U.S. Department of Commerce Bureau of Industry and Security website*  
[https://www.bis.doc.gov/index.php/enforcement/oe/voluntary-self-disclosure:](https://www.bis.doc.gov/index.php/enforcement/oe/voluntary-self-disclosure)

### Voluntary Self-Disclosure

BIS encourages the submission of Voluntary Self Disclosures (VSDs) by parties who believe they may have violated the Export Administration Regulations (EAR). VSDs are an excellent indicator of a party's intent to comply with U.S. export control requirements and may provide BIS important information on other ongoing violations. BIS carefully reviews VSDs received from disclosing parties to determine if violations of the EAR have occurred and to determine the appropriate corrective action when violations have taken place. Additional information regarding VSDs can be found in Part 764.5 of the EAR, or the enforcement section of our website [www.bis.doc.gov](http://www.bis.doc.gov).

Pursuant to Part 764.5 of the EAR, one copy of the information constituting a VSD or any other correspondence pertaining to a VSD may be submitted to:

Director, Office of Export Enforcement  
1401 Constitution Ave.  
Room H4514  
Washington, DC 20230  
Tel: (202) 482-5036  
Facsimile: (202) 482-5889

Due to the current COVID-19 response measures, BIS is now accepting VSDs electronically. Voluntary Self Disclosures, exhibits, and requests for filing deadline extensions may be submitted to [BIS\\_VSD\\_INTAKE@bis.doc.gov](mailto:BIS_VSD_INTAKE@bis.doc.gov). Hard copy filing is not required in addition to electronic filing, and please be aware that receipt and processing delays may occur in instances where only a hard copy VSD is submitted.

## Appendix B: Code of Federal Regulations related to EAR violations

15 CFR 764.4 and 764.5

### § 764.4 Reporting of violations.

(a) **Where to report.** If a person learns that an export control violation of the EAR has occurred or may occur, that person may notify:

Office of Export Enforcement, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room H-4520, Washington, D.C. 20230, Tel: (202) 482-1208, Facsimile: (202) 482-0964 or, for violations of part 760 of the EAR: Office of Antiboycott Compliance, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room H-6099C, Washington, D.C. 20230, Tel: (202) 482-2381, Facsimile: (202) 482-0913.

(b) **Failure to report violations.** Failure to report potential violations may result in the unwarranted issuance of licenses or exports without the required licenses to the detriment of the interests of the United States.

(c) **Reporting requirement distinguished.** The reporting provisions in paragraph (a) of this section are not “reporting requirements” within the meaning of § 764.2(i) of this part.

(d) **Formerly embargoed destinations.** Reporting requirements for activities within the scope of § 764.2(e) that involve items subject to the EAR which may have been illegally exported or reexported to Libya prior to the lifting of the comprehensive embargo on Libya are found in § 764.7 of the EAR.

[61 FR 12902, Mar. 25, 1996, as amended at 70 FR 14391, Mar. 22, 2005]

### § 764.5 Voluntary self-disclosure.

(a) **General policy.** BIS strongly encourages disclosure to OEE if you believe that you may have violated the EAR, or any order, license or authorization issued thereunder. Voluntary self-disclosure is a mitigating factor in determining what administrative sanctions, if any, will be sought by OEE.

(b) **Limitations.**

(1) The provisions of this section do not apply to disclosures of violations relating to part 760 of the EAR.

(2) The provisions of this section apply only when information is provided to OEE for its review in determining whether to take administrative action under part 766 of the EAR for violations of the export control provisions of the EAR.

(3) The provisions of this section apply only when information is received by OEE for review prior to the time that OEE, or any other agency of the United States Government, has learned the same or substantially similar information from another source and has commenced an investigation or inquiry in connection with that information.

(4) While voluntary self-disclosure is a mitigating factor in determining what administrative sanctions, if any, will be sought by OEE, it is a factor that is considered together with all other factors in a case. The weight given to voluntary self-disclosure is solely within the discretion of OEE, and the mitigating effect of voluntary self-disclosure may be outweighed by aggravating factors. Voluntary self-disclosure does not prevent transactions from being referred to the Department of Justice for criminal prosecution. In such a case, OEE would notify the Department of Justice of the voluntary self-disclosure, but the consideration of that factor is within the discretion of the Department of Justice.

(5) A firm will not be deemed to have made a disclosure under this section unless the individual making the disclosure did so with the full knowledge and authorization of the firm's senior management.

(6) The provisions of this section do not, nor should they be relied on to, create, confer, or grant any rights, benefits, privileges, or protection enforceable at law or in equity by any person, business, or entity in any civil, criminal, administrative, or other matter.

**(c) *Information to be provided* -**

(1) ***General.*** Any person wanting to disclose information that constitutes a voluntary self-disclosure should, in the manner outlined below, initially notify OEE as soon as possible after violations are discovered, and then conduct a thorough review of all export-related transactions where violations are suspected.

**(2) *Initial notification* -**

(i) ***Manner and content of initial notification.*** The initial notification should be in writing and be sent to the address in [paragraph \(c\)\(7\)](#) of this section. The notification should include the name of the person making the disclosure and a brief description of the suspected violations, and should designate a contact person regarding the initial notification and provide that contact person's current business street address, email address, and telephone number. The notification should describe the general nature and extent of the violations. OEE recognizes that there may be situations where it will not be practical to make an initial notification in writing. For example, written notification may not be practical if a shipment leaves the United States without the required license, yet

there is still an opportunity to prevent acquisition of the items by unauthorized persons. In such situations, OEE should be contacted promptly at the office listed in [paragraph \(c\)\(7\)](#) of this section.

(ii) **Initial notification date.** For purposes of calculating when a complete narrative account must be submitted under [paragraph \(c\)\(2\)\(iii\)](#) of this section, the initial notification date is the date the notification is received by OEE. OEE will notify the disclosing party in writing of the date that it receives the initial notification. At OEE's discretion, such writing from OEE may be on paper, or in an email message or facsimile transmission from OEE, or by any other method for the transmission of written communications. Where it is not practical to make an initial notification in writing, the person making the notification should confirm the oral notification in writing as soon as possible.

(iii) **Timely completion of narrative accounts.** The narrative account required by [paragraph \(c\)\(3\)](#) of this section must be received by OEE within 180 days of the initial notification date for purposes of [paragraph \(b\)\(3\)](#) of this section, absent an extension from the Director of OEE. If the person making the initial notification subsequently completes and submits to OEE the narrative account required by [paragraph \(c\)\(3\)](#) of this section such that OEE receives it within 180 days of the initial notification date, or within the additional time, if any, granted by the Director of OEE pursuant to [paragraph \(c\)\(2\)\(iv\)](#) of this section, the disclosure, including violations disclosed in the narrative account that were not expressly mentioned in the initial notification, will be deemed to have been made on the initial notification date for purposes of [paragraph \(b\)\(3\)](#) of this section if the initial notification was made in compliance with [paragraphs \(c\)\(1\)](#) and [\(2\)](#) of this section. Failure to meet the deadline (either the initial 180-day deadline or an extended deadline granted by the Director of OEE) would not be an additional violation of the EAR, but such failure may reduce or eliminate the mitigating impact of the voluntary disclosure under supplement no. 1 to this part. For purposes of determining whether the deadline has been met under this paragraph, a complete narrative account must contain all of the pertinent information called for in [paragraphs \(c\)\(3\)](#), [\(c\)\(4\)](#), and [\(c\)\(5\)](#) of this section, and the voluntary self-disclosure must otherwise meet the requirements of this section.

(iv) **Deadline extensions.** The Director of OEE may extend the 180-day deadline upon a determination in his or her discretion that U.S. Government interests would be served by an extension or that the person making the initial notification has shown that more than 180 days is reasonably needed to complete the narrative account.

(A) **Conditions for extension.** The Director of OEE in his or her discretion may place conditions on the approval of an extension. For example, the Director of OEE may require that the disclosing person agree to toll the statute of limitations with respect to violations disclosed in the initial notification or discovered during the review for or preparation of the narrative account, and/or require the disclosing person to undertake specified interim remedial compliance measures.

**(B) Contents of Request.**

(1) In most instances 180 days should be adequate to complete the narrative account. Requests to extend the 180-day deadline set forth in [paragraph \(c\)\(2\)\(iii\)](#) of this section will be determined by the Director of OEE pursuant to his or her authority under this [paragraph \(c\)\(2\)\(iv\)](#) based upon his consideration and evaluation of U.S. Government interests and the facts and circumstances surrounding the request and any related investigations. Such requests should show specifically that the person making the request:

(i) Began its review promptly after discovery of the violations;

(ii) Has been conducting its review and preparation of the narrative account as expeditiously as can be expected, consistent with the need for completeness and accuracy;

(iii) Reasonably needs the requested extension despite having begun its review promptly after discovery of the violations and having conducted its review and preparation of the narrative account as expeditiously as can be expected consistent with the need for completeness and accuracy; and

(iv) Has considered whether interim compliance or other corrective measures may be needed and has undertaken such measures as appropriate to prevent recurring or additional violations.

(2) Such requests also should set out a proposed timeline for completion and submission of the narrative account that is reasonable under the applicable facts and circumstances, and should also designate a contact person regarding the request and provide that contact person's current business street address, email address, and telephone number. Requests may also include additional information that the person making the request reasonably believes is pertinent to the request under the applicable facts and circumstances.

**(C) Timing of requests.** Requests for an extension should be made before the 180-day deadline and as soon as possible once a disclosing person determines that it will be unable to meet the deadline or the extended deadline where an extension previously has been granted, and possesses the information needed to prepare an extension request in accordance with [paragraph \(c\)\(2\)\(iv\)\(B\)](#) of this section. Requests for extension that are not received before the deadline for completing the narrative account has passed will not be considered. Parties who request an extension shortly before the deadline incur the 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 under [paragraph \(c\)\(2\)\(iii\)](#) of this section.



(3) **Narrative account.** After the initial notification, a thorough review should be conducted of all export-related transactions where possible violations are suspected. OEE recommends that the review cover a period of five years prior to the date of the initial notification. If your review goes back less than five years, you risk failing to discover violations that may later become the subject of an investigation. Any violations not voluntarily disclosed do not receive consideration under this section. However, the failure to make such disclosures will not be treated as a separate violation unless some other section of the EAR or other provision of law requires disclosure. Upon completion of the review, OEE should be furnished with a narrative account that sufficiently describes the suspected violations so that their nature and gravity can be assessed. The narrative account should also describe the nature of the review conducted and measures that may have been taken to minimize the likelihood that violations will occur in the future. The narrative account 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.

(4) **Supporting documentation.**

- (i) The narrative account should be accompanied by copies of documents that explain and support it, including:
  - (A) Licensing documents such as licenses, license applications, import certificates and end-user statements;
  - (B) Shipping documents such as Shipper's Export Declarations, air waybills and bills of lading; and
  - (C) Other documents such as letters, facsimiles, telexes and other evidence of written or oral communications, internal memoranda, purchase orders, invoices, letters of credit and brochures.

(ii) 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.

(5) **Certification.** A certification must be submitted stating that all of the representations made in connection with the voluntary self-disclosure are true and correct to the best of that person's knowledge and belief. Certifications made by a corporation or other organization should be signed by an official of the corporation or other organization with the authority to do so. [Section 764.2\(g\) of this part](#), relating to false or misleading representations, applies in connection with the disclosure of information under this section.

(6) **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.

(7) **Where to make voluntary self-disclosures.** The information constituting a voluntary self-disclosure or any other correspondence pertaining to a voluntary self-disclosure may be submitted to: Director, Office of Export Enforcement, 1401 Constitution Ave., Room H4514, Washington, DC 20230, Tel: (202) 482-5036, Facsimile: (202) 482-5889.

(d) **Action by the Office of Export Enforcement.** 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, including further investigation, it deems appropriate. As quickly as the facts and circumstances of a given case permit, OEE may take any of the following actions:

(1) Inform the person making the disclosure that, based on the facts disclosed, it plans to take no action;

(2) Issue a warning letter;

(3) Issue a proposed charging letter pursuant to § 766.18 of the EAR and attempt to settle the matter;

(4) Issue a charging letter pursuant to § 766.3 of the EAR if a settlement is not reached; and/or

(5) Refer the matter to the Department of Justice for criminal prosecution.

(e) **Criteria.** Supplement no. 1 to part 766 describes how BIS typically exercises its discretion regarding whether to pursue an administrative enforcement case under part 766 and what administrative sanctions to seek in settling such a case.

**(f) *Treatment of unlawfully exported items after voluntary self-disclosure.***

(1) Any person taking certain actions with knowledge that a violation of the EAA or the EAR has occurred has violated [§ 764.2\(e\) of this part](#). Any person who has made a voluntary self-disclosure knows that a violation may have occurred. Therefore, at the time that a voluntary self-disclosure is made, the person making the disclosure may request permission from BIS to engage in the activities described in [§ 764.2\(e\) of this part](#) that would otherwise be prohibited. If the request is granted by the Office of Exporter Services in consultation with OEE, future activities with respect to those items that would otherwise violate [§ 764.2\(e\) of this part](#) will not constitute violations. However, even if permission is granted, the person making the voluntary self-disclosure is not absolved from liability for any violations disclosed nor relieved of the obligation to obtain any required reexport authorizations.

(2) A license to reexport items that are the subject of a voluntary self-disclosure, and that have been exported contrary to the provisions of the EAA or the EAR, may be requested from BIS in accordance with the provisions of part 748 of the EAR. If the applicant for reexport authorization knows that the items are the subject of a voluntary self-disclosure, the request should state that a voluntary self-disclosure was made in connection with the export of the commodities for which reexport authorization is sought.

[[61 FR 12902](#), Mar. 25, 1996, as amended at [62 FR 25469](#), May 9, 1997; [69 FR 7870](#), Feb. 20, 2004; [70 FR 22250](#), Apr. 29, 2005; [78 FR 48605](#), Aug. 9, 2013]

## Appendix C: DDTC “Report a Violation” Guidance

Per the U.S. Department of State Directorate of Defense Trade Controls website

[https://www.pmddtc.state.gov/?id=ddtc\\_kb\\_article\\_page&sys\\_id=87ab2d67db4ddb00d0a370131f961997](https://www.pmddtc.state.gov/?id=ddtc_kb_article_page&sys_id=87ab2d67db4ddb00d0a370131f961997):

### Report a Violation

International Traffic in Arms Regulations (ITAR) violations should be disclosed promptly to the Office of Defense Trade Controls Compliance (DTCC). The proper disclosure of a violation, or potential violation, pursuant to [22 CFR §127.12](#) can be a significant mitigating factor in DDTC's analysis of such violations and is strongly recommended.

**Failure to report a violation is considered by DTCC when assessing penalties.**

### Examples of Common Violations:

- Export without authorization
- Unauthorized access to technical data
- Failure to comply with license provisos
- Failure to maintain required records
- Failure to register or maintain registration
- Misuse of ITAR exemptions

### How to Voluntarily Disclose Violations

#### *Initial Notification then Full Disclosure*

- Provide initial notification immediately to DTCC after a violation is discovered, then a full disclosure after a thorough review
- 60-day period to submit, per [22 CFR §127.12\(c\)\(1\)\(i\)](#)

#### *Full Disclosure*

- Provide full disclosure after a thorough review of the violation

### What to Include in a Voluntary Disclosure:

- ITAR [§127.12\(c\)](#) identifies required information, including who, what, when, where, why, and how
- Identify prior related disclosures
- Describe circumstances clearly; provide a matrix or timeline for complex issues
- Fully describe any corrective actions taken; including how they address the reported violation and how they will prevent recurrence
- Clear and specific answers to key questions: who, what, when, where, why, and how

### How to Submit a Voluntary Disclosure:

The Office of Defense Trade Controls Compliance (DDTC) now accepts disclosures and related information via email as well as mail or overnight delivery. Persons are encouraged to utilize the electronic submission option by emailing disclosures and related information to: [DTCC-CaseStatus@state.gov](mailto:DTCC-CaseStatus@state.gov). In the event that a disclosure cannot be submitted via email, please send a hardcopy to DTCC via mail or overnight delivery to the following addresses:

DDTC Postal Mail	DDTC Express Mail & Courier Delivery
PM/DDTC, SA-1, 12th Floor Office of Defense Trade Controls Compliance Directorate of Defense Trade Controls Bureau of Political-Military Affairs U.S. Department of State Washington, D.C. 20522-0112	U.S. Department of State PM/DDTC, SA-1, 12th Floor 2401 E Street, NW Washington, D.C. 20037

## Appendix D: Code of Federal Regulations related to ITAR violations

22 CFR 127.12

### § 127.12 Voluntary disclosures.

(a) **General policy.** The Department strongly encourages the disclosure of information to the Directorate of Defense Trade Controls by persons (see [§ 120.14 of this subchapter](#)) that believe they may have violated any export control provision of the Arms Export Control Act, or any regulation, order, license, or other authorization issued under the authority of the Arms Export Control Act. The Department may consider a voluntary disclosure as a mitigating factor in determining the administrative penalties, if any, that should be imposed. Failure to report a violation may result in circumstances detrimental to U.S. national security and foreign policy interests, and will be an adverse factor in determining the appropriate disposition of such violations.

#### (b) **Limitations.**

(1) The provisions of this section apply only when information is provided to the Directorate of Defense Trade Controls for its review in determining whether to take administrative action under [part 128 of this subchapter](#) concerning a violation of the export control provisions of the Arms Export Control Act and these regulations.

(2) The provisions of this section apply only when information is received by the Directorate of Defense Trade Controls for review prior to such time that either the Department of State or any other agency, bureau, or department of the United States Government obtains knowledge of either the same or substantially similar information from another source and commences an investigation or inquiry that involves that information, and that is intended to determine whether the Arms Export Control Act or these regulations, or any other license, order, or other authorization issued under the Arms Export Control Act has been violated.

(3) The violation(s) in question, despite the voluntary nature of the disclosure, may merit penalties, administrative actions, sanctions, or referrals to the Department of Justice to consider criminal prosecution. In the latter case, the Directorate of Defense Trade Controls will notify the Department of Justice of the voluntary nature of the disclosure, although the Department of Justice is not required to give that fact any weight. The Directorate of Defense Trade Controls has the sole discretion to consider whether “voluntary disclosure,” in context with other relevant information in a particular case, should be a mitigating factor in determining what, if any, administrative action will be imposed. Some of the mitigating factors the Directorate of Defense Trade Controls may consider are:

(i) Whether the transaction would have been authorized, and under what conditions, had a proper license request been made;

(ii) Why the violation occurred;

(iii) The degree of cooperation with the ensuing investigation;

(iv) Whether the person has instituted or improved an internal compliance program to reduce the likelihood of future violation;

(v) Whether the person making the disclosure did so with the full knowledge and authorization of the person's senior management. (If not, then the Directorate will not deem the disclosure voluntary as covered in this section.)

(4) The provisions of this section do not, nor should they be relied on to, create, confer, or grant any rights, benefits, privileges, or protection enforceable at law or in equity by any person in any civil, criminal, administrative, or other matter.

(5) Nothing in this section shall be interpreted to negate or lessen the affirmative duty pursuant to [§§ 126.1\(e\), 126.16\(h\)\(5\), and 126.17\(h\)\(5\) of this subchapter](#) upon persons to inform the Directorate of Defense Trade Controls of the actual or final sale, export, transfer, reexport, or retransfer of a defense article, technical data, or defense service to any country referred to in [§ 126.1 of this subchapter](#), any citizen of such country, or any person acting on its behalf.

**(c) Notification.**

(1) Any person wanting to disclose information that constitutes a voluntary disclosure should, in the manner outlined below, initially notify the Directorate of Defense Trade Controls immediately after a violation is discovered and then conduct a thorough review of all defense trade transactions where a violation is suspected.

(i) If the notification does not contain all the information required by [127.12\(c\)\(2\)](#) of this section, a full disclosure must be submitted within 60 calendar days of the notification, or the Directorate of Defense Trade Controls will not deem the notification to qualify as a voluntary disclosure.

(ii) If the person is unable to provide a full disclosure within the 60 calendar day deadline, an empowered official (see [§ 120.25 of this subchapter](#)) or a senior officer may request an extension of time in writing. A request for an extension must specify what information required by [§ 127.12\(c\)\(2\)](#) of this section could not be immediately provided and the reasons why.

(iii) Before approving an extension of time to provide the full disclosure, the Directorate of Defense Trade Controls may require the requester to certify in writing that they will provide the full disclosure within a specific time period.

(iv) Failure to provide a full disclosure within a reasonable time may result in a decision by the Directorate of Defense Trade Controls not to consider the notification as a mitigating factor in determining the appropriate disposition of the violation. In addition, the Directorate of Defense Trade Controls may direct the requester to furnish all relevant information surrounding the violation.

(2) Notification of a violation must be in writing and should include the following information:

(i) 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, etc.);

(ii) The exact circumstances surrounding the violation (a thorough explanation of why, when, where, and how the violation occurred);

(iii) The complete identities and addresses of all persons known or suspected to be involved in the activities giving rise to the violation (including mailing, shipping, and e-mail addresses; telephone and fax/facsimile numbers; and any other known identifying information);

(iv) Department of State license numbers, exemption citation, or description of any other authorization, if applicable;

(v) U.S. Munitions List category and subcategory, product description, quantity, and characteristics or technological capability of the hardware, technical data or defense service involved;

(vi) 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;

(vii) The name and address of the person making the disclosure and a point of contact, if different, should further information be needed.

(3) Factors to be addressed in the voluntary disclosure include, for example, whether the violation was intentional or inadvertent; the degree to which the person responsible for the violation was familiar with the laws and regulations, and whether the person was the subject of prior administrative or criminal action under the AECA; whether the violations are systemic; and the details of compliance measures, processes and programs, including training, that were in place to prevent such violations, if any. In addition to immediately providing written notification, persons are strongly urged to conduct a thorough review of all export-related transactions where a possible violation is suspected.



(d) **Documentation.** The written disclosure should be accompanied by copies of substantiating documents. Where appropriate, the documentation should include, but not be limited to:

(1) Licensing documents (e.g., license applications, export licenses, and end-user statements), exemption citation, or other authorization description, if any;

(2) 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); and

(3) Any other relevant documents must be retained by the person making the disclosure until the Directorate of Defense Trade Controls requests them or until a final decision on the disclosed information has been made.

(e) **Certification.** A certification must be submitted stating that all of 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 (See [§ 120.25 of this subchapter](#)), 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 a major violation, reveals a systemic pattern of violations, or reflects the absence of an effective compliance program, the Directorate of Defense Trade Controls may require that such certification be made by a senior officer of the company.

(f) **Oral presentations.** Oral presentation is generally not necessary to augment the written presentation. However, if the person making the disclosure believes a meeting is desirable, a request should be included with the written presentation.

(g) Send voluntary disclosures to the Office of Defense Trade Controls Compliance, Directorate of Defense Trade Controls. Consult the Directorate of Defense Trade Controls Web site at <http://www.pmdtcc.state.gov> for the appropriate street address.

[[58 FR 39316](#), July 22, 1993, as amended at [70 FR 34655](#), June 15, 2005; [71 FR 20550](#), Apr. 21, 2006; [72 FR 70778](#), Dec. 13, 2007; [77 FR 16642](#), Mar. 21, 2012]