

Department of Justice

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Department of Justice Revises and Re-Issues Export Control and Sanctions Enforcement Policy for Business Organizations

The Department of Justice today announced the release of a revised policy for business organizations regarding voluntary disclosures of export control and sanctions violations (Voluntary Self-Disclosure Policy or VSD Policy). The Voluntary Self-Disclosure Policy builds on the guidance NSD issued in October 2016, and will be formally incorporated into the Justice Manual. This revised VSD Policy signals the Department's continued emphasis on corporate voluntary self-disclosure, rewarding cooperating companies with a presumption in favor of a non-prosecution agreement and significant reductions in penalties.

"Protecting our nation's sensitive technologies and preventing transactions with sanctioned entities are DOJ priorities, but we cannot succeed alone," said Assistant Attorney General for National Security John C. Demers. "We need the private sector to come forward and work with DOJ. The revised VSD Policy should reassure companies that, when they do report violations directly to DOJ, the benefits of their cooperation will be concrete and significant."

The Department encourages companies to voluntarily self-disclose all potentially willful violations of the statutes implementing the U.S. government's primary export control and sanctions regimes—the Arms Export Control Act (AECA), 22 U.S.C. § 2778, the Export Control Reform Act (ECRA), 50 U.S.C. § 4801 et seq., and the International Emergency Economic Powers Act (IEEPA), 50 U.S.C. § 1705—directly to NSD. The VSD Policy includes three key changes from the predecessor guidance, all of which provide further incentives for corporations to voluntarily self-disclose violations to the DOJ.

1. The VSD Policy clarifies the benefits that are available to companies that voluntarily disclose a violation, fully cooperate with NSD, and timely and appropriately remediate. Specifically, absent aggravating factors, there is a presumption that the company will receive a non-prosecution agreement and will not be assessed a fine. If aggravating circumstances warrant an enforcement action other than a non-prosecution agreement, but the company satisfies all other criteria, the VSD Policy states that DOJ will recommend a fine that is at least 50 percent lower than what would otherwise be available under the alternative fine provision and will not require the imposition of a monitor. The prior guidance did not provide a presumption of any kind, and did not assign any concrete benefits to companies that met certain criteria.
2. The VSD Policy clarifies that disclosures of potentially willful conduct made to regulatory agencies, and not to DOJ, will not qualify for the benefits provided in the VSD Policy.
3. Finally, the VSD Policy was drafted to more closely resemble existing and analogous guidance from other DOJ components in an effort to standardize, to the extent possible, DOJ voluntary disclosure policies. Specifically, the definitions of "Voluntary Self-Disclosure," "Full Cooperation," and "Timely and Appropriate Remediation" closely mirror those provided in the FCPA Corporate Enforcement Policy.

The VSD Policy is effective today, December 13, 2019. It applies only to export control and sanctions matters brought by the National Security Division's Counterintelligence and Export Control Section. It does not apply to any other section in the National Security Division, any other part of the Department of Justice, or any other agency. The precise terms of the VSD Policy, and additional information about the Justice Department's National Security Division, Counterintelligence and Export Control Section and its enforcement efforts, can be found at this [link](#).

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