

DISCLOSURES

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1.0 PURPOSE

Many export control regimes encourage the voluntary disclosure of export control violations to government officials. An organization should therefore have written procedures to manage situations where it has violated, or might have violated, the export control laws or regulations of one or more countries. While an organization should always address violations of its internal policies,¹ it should not make a disclosure to government agencies absent a reasonable belief that the organization violated a law or regulation.²

2.0 PROCEDURES FOR MANAGING DISCLOSURES

Procedures should include at least the following:

- 2.1 Accessible channels for employees to report suspected violations to the organization's internal management or to its legal department. These channels should include such resources as anonymous hotlines, sanitized email addresses, dedicated reporting websites, and outreach efforts by compliance personnel.

¹ Policy violations are outside the scope of this standard.

² Even without a violation of law or regulation, an organization might choose to voluntarily share information with the government, e.g., when a laptop with sensitive information is stolen.

- 2.2 Assurance that internal reporting by an employee of a suspected violation will not result in retaliation.
- 2.3 Procedures for stopping ongoing suspected violations and determining whether any urgent mitigating actions are necessary (e.g., recalling an export shipment that is in transit to prevent it from reaching a restricted party or destination, or removing export controlled technical data from a generally accessible server).
- 2.4 Procedures for conducting a thorough investigation of the suspected violations.³ If the organization has general procedures for compliance investigations, follow those procedures. The scope of the investigation should be broad enough to reveal related or similar violations, since the same or similar suspected violation may have occurred with other shipments, product lines, business units, or geographic areas.
- 2.5 Clearly established organizational responsibility for making a decision whether to make a voluntary disclosure to government authorities. Include legal counsel and compliance managers in the review and decision, as appropriate.
- 2.6 Guidance as to where to submit the disclosure. A decision whether to disclose must be made for: (1) each country where, based on the organization's reasonable belief, a violation occurred; and (2) each agency in those countries whose regulations may have been violated.
- 2.7 Procedures for examining and understanding the applicable government export authority's policy and procedures for submitting disclosures before disclosing. Legal requirements and practical implementation of disclosure

³ See CEEC's Standard on Investigations.

procedures vary considerably from country to country. This review should include at least the following:

- Existence of any regulatory basis for voluntary disclosures.
- Mitigation of penalties, if any, that may be afforded to parties making voluntary disclosures.
- Time of submission, content, and historical period of time to be covered by disclosure.
- Where to file the disclosure, how to deliver, number and distribution of copies, filing, storage, etc.
- Whether regulations permit “two-step” disclosures, with a preliminary notice of basic information, followed by a later thorough report containing corrective actions taken or planned.
- Whether disclosures are made public or kept confidential.
- With respect to publicly traded companies, whether submission of a disclosure should be reported in securities filings.
- Whether legal notice is required to other government authorities.

2.8 Criteria that the organization should consider when determining whether to submit a voluntary disclosure. These criteria should include:

- National security implications.
- A legal obligation to disclose to government authorities. In some cases multiple disclosures to different government agencies may be required for a single incident.
- A contractual obligation to disclose to business partners.
- Anticipated activities that may be related to prior violations (e.g., future licenses for same party, ongoing service obligations).
- Whether violations were systemic or a less significant “one time” mistake.
- Whether violations were egregious or non-egregious.
- Potential reputational damage, especially if the disclosure will or could be made public.

- Potential fines with or without disclosure.
- Risk of nonmonetary penalties, *e.g.*, loss of export licenses or export privileges, debarment from government contracting, placing on watch lists, etc.
- Risk of detection by government if not disclosed, including as a result of whistleblowers.
- Period of time when illegal activities occurred.
- How recent the activity was, and whether there is an applicable statute of limitations.
- Previous disclosures or enforcement activity.
- Relationship with government regulators.

2.9 Clearly established organizational responsibility and management authority for preparing, reviewing, and approving any voluntary disclosure to government authorities. Legal counsel should review disclosures before submission, although this might not be justified in every situation. The organization must consider whether the submission will be made by outside counsel or by the organization directly, and who should sign the disclosure. Senior management should be made aware of the circumstances described in the disclosure and should approve the disclosure before submission to the government.

2.10 Procedures for providing notice to other government authorities that are not directly responsible for export controls when required or appropriate, (*e.g.*, contractual obligations that require the organization to report incidents of export non-compliance to the contracting agency).

3.0 REMEDIAL COMPLIANCE MEASURES

Any time an organization has violated, or might have violated, the export control laws or regulations of one or more countries, it should identify and implement

appropriate remedial compliance measures. As part of this process, the organization should:

3.1 Identify the law or regulation violated.

3.2 Determine what caused the violation.

3.3 Develop an appropriate corrective action plan identifying what remedial actions, if any, should be implemented to strengthen its export compliance program. Assign responsibility and due dates.

3.4 Consistent with the organization's policies, take appropriate disciplinary actions against responsible persons, or those who failed to detect or report the violations to responsible persons within the organization.

3.5 Periodically assess remedial actions to confirm they were implemented and will prevent repeat violations (e.g. internal audits of compliance can focus on remediation of past issues).

3.6 The remedial compliance measures should be described in the voluntary disclosure submission.