

# Federal Agencies Publish Tri-Seal Official Guidance on Voluntary Self-Disclosure of Violations

Wyatt Mince

August 1, 2023

On July 26, 2023, the U.S. Department of Justice (“DOJ”), the U.S. Department of Commerce’s Bureau of Industry and Security (“BIS”), and the U.S. Department of Treasury’s Office of Foreign Asset Control (“OFAC”) released a [joint compliance note](#) summarizing the current Voluntary Self-Disclosure (“VSD”) policies of the respective agencies. The guidance outlines recent updates to agency policy that encourage the private sector to promptly self-report any violations, highlighting considerations that might significantly mitigate or aggravate potential for civil or criminal liability. Overall, this note showcases the importance of complying with U.S. sanctions, export controls, and other national security laws.

## DOJ’s VSD Policy

Per a [March 1, 2023 update](#), the DOJ’s National Security Division VSD policy encourages disclosure where companies identify or otherwise become aware of potential criminal violations of U.S. sanctions and export control laws. The DOJ will generally not seek a guilty plea against companies that submit a VSD; there will be a presumption that the company will receive a non-prosecution agreement and will not pay a fine. These incentives only apply in situations where there are not aggravating factors, such as egregious criminal misconduct within the company, repeated violations of national security laws, and the export of items that are particularly sensitive or to end users of heightened concern. However, the updated policy provides DOJ with the discretion to use other enforcement methods (e.g., guilty pleas or deferred prosecution agreements) to reach resolutions in instances where aggravating factors do exist.

Importantly, in order to have access to DOJ’s policy, a company must submit its disclosure within a reasonably prompt time frame after becoming aware of the potential violation(s). Disclosures made only to regulatory agencies such as OFAC or BIS do not qualify for DOJ’s VSD policy even if OFAC or BIS refer one of their cases to DOJ.

## BIS’s VSD Policy

The Tri-Seal Guidance highlights BIS’s implementation of a dual-track process for handling VSDs and BIS’s policy on VSDs and third party disclosures. Namely, a June 30, 2022 policy update saw BIS’s [introduction of the dual-track process](#) for handling VSDs. VSDs involving minor or technical violations are now resolved on a fast-track basis, with the issuance of a warning or no-action letter within 60 days of final submission. If a VSD indicates a potentially more serious violation(s), BIS will do a

deeper dive to determine whether enforcement action may be warranted. Expedited review of minor violations has allowed a greater commitment of BIS resources to VSDs that warrant a more intensive review. An [April 18, 2023 update](#) addresses the risk calculus that companies face when confronted with a potential violation: companies that submit timely and comprehensive VSDs, and that fully cooperate with BIS's investigation, will be eligible for substantial reduction of the applicable civil penalties; deliberately overlooking or otherwise failing to disclose potential violation(s), however, may be cited as an aggravating factor, resulting in larger penalties. In a situation where a company discovers that a third party (such as an intermediate consignee) is potentially violating the Export Administration Regulations and submits a tip to BIS, the agency will consider that to be mitigating factor under the penalty guidelines if the information leads to an enforcement action.

## OFAC's VSD Policy

As with DOJ and BIS, OFAC's [Enforcement Guidelines](#) allow for the evaluation of mitigating factors when determining enforcement actions. In cases where a civil monetary penalty is warranted, a qualifying VSD can result in a 50 percent reduction in the base amount of a proposed civil penalty. Such mitigation is contingent upon "the existence, nature, and adequacy of the subject's compliance program at the time of the apparent violation and the corrective actions taken in response to an apparent violation." OFAC considers a complete VSD to include "a sufficiently detailed report that provides a complete understanding of the circumstances of the apparent violation(s)."

## Next Steps for Companies Under U.S. Jurisdiction

With this joint notice, the U.S. government is signaling to U.S. companies that the current global trade landscape is growing more complex, especially with the frequent issuance of new sanctions and export controls that U.S. companies must comply with. The advent of more trade controls and economic sanctions increases the prospects for a company to commit a potential violation of the rules, even if inadvertently, especially because U.S. export control and sanctions laws are extraterritorial in nature.

The incentives offered by DOJ, BIS, and OFAC recognize that accidents happen, but still need to be reported in a timely manner nonetheless. Companies involved with international trade supply chains, particularly with products considered sensitive to U.S. national security, should review and update their own policies in light of the above to emphasize the benefit of VSDs.

Tags: [OFAC](#), [Voluntary Self-Disclosure.](#), [VSD](#)