



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

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MEMORANDUM FOR ALL EXPORT ENFORCEMENT EMPLOYEES

FROM: MATTHEW S. AXELROD 
ASSISTANT SECRETARY FOR EXPORT ENFORCEMENT

SUBJECT: FURTHER STRENGTHENING OUR ADMINISTRATIVE ENFORCEMENT
PROGRAM

As you all know, this year marks the 40th anniversary of the Office of Export Enforcement. For forty years, special agents from OEE have been on the frontlines, alongside our intelligence analysts and enforcement compliance specialists, ensuring that our most sensitive items stay out of the most dangerous hands. During those forty years, the national security threat picture has evolved from the Cold War, to terrorism, to the threats posed by nation-state actors today. And while our tools have always been important in helping to mitigate those threats, our core mission – of preventing sensitive U.S. technologies and goods from being used for malign purposes by those would do us harm – has perhaps never been a more important national security imperative than right now.

Each year, the Office of the Director of National Intelligence publishes the Intelligence Community's Annual Threat Assessment, which details the IC's view of the gravest national security threats faced by the United States. The first four sections of [this year's assessment](#) each focus on a different nation-state actor: China, Russia, Iran, and North Korea. As the assessment notes on its first page, "Beijing, Moscow, Tehran, and Pyongyang have demonstrated the capability and intent to advance their interests at the expense of the United States and its allies." One of the ways these nation-state actors seek to advance their interests is by illicitly acquiring sensitive U.S. technologies – technologies they can then use to enhance their military capabilities.

Given these dynamics, we need to make sure we're doing everything we can to maximize the potential of our administrative enforcement powers. Criminal prosecution is an important tool in our toolbox and one we use aggressively when the facts warrant. But it's not our only tool. Our administrative penalties also have bite and, therefore, important deterrent effect. It's true that our administrative enforcement authorities do not result in individuals being sentenced to prison for their misconduct – only our criminal authorities permit that. But when it comes to companies, our administrative authorities can result in nearly the same punishment that a criminal conviction would bring – they permit us to impose significant monetary penalties, to reach agreements requiring a corporate compliance overhaul, and, in cases involving significant harm to our national security, to outright deny a company the ability to export items subject to our authorities.

Because of that powerful potential, we want to make sure that we're using our administrative authorities as effectively as possible. It's why, earlier this month, we changed our regulation governing when administrative charging letters become public. Prior to the change, the exporting community and public wouldn't learn that we had brought administrative charges against someone for violating our rules until after the matter was resolved, often years later. Because charging letters were not made public until resolution, there was not always incentive for companies to try to resolve matters quickly. And because other companies remained unaware of the conduct that had landed a similarly-situated company in trouble, they sometimes didn't have the information that would have sparked urgency to upgrade their compliance program or to submit a voluntary disclosure. Now, charging letters are public when filed with the Administrative Law Judge. And after they're filed, we place them on our website for public viewing and awareness.

Going forward, in partnership with our Office of Chief Counsel, we will continue to take steps to focus our greatest attention on the most serious violations and prioritize the cases that involve the greatest harm to our national security. That way, we can ensure that we use our finite resources to maximum effect.

To help implement this vision, and working within our existing framework in the Export Administration Regulations, we are making the following four policy changes, effective immediately.

- **Imposition of Significantly Higher Penalties:** We will use all of our existing regulatory and statutory authorities to ensure that the most serious administrative violations trigger commensurately serious penalties. First, we have reviewed our application of both mitigating and aggravating factors in the existing BIS settlement guidelines found at Supplement 1 to Part 766 and have improved our process for how those factors are applied. By aggressively and uniformly applying the existing BIS settlement guidelines, we will ensure that all appropriate cases are properly deemed "egregious," which opens the door for more significant penalties under our regulations. Second, in all cases, OEE will ensure that the existing aggravating penalty factors are applied more uniformly to escalate penalty amounts where appropriate. This approach will parallel how mitigating factors are currently applied under the existing guidelines to reduce penalty amounts. By imposing appropriately stiff penalties, we aim to achieve three things: (1) reaching resolutions that adequately reflect the national security harm caused by the violations; (2) creating a strong disincentive for those considering circumvention; and (3) maintaining a level playing field for those that invest in a strong compliance program.
- **Using Non-Monetary Resolutions for Less Serious Violations:** We have a number of older pending administrative cases. For those pending cases where the violations are not egregious and have not resulted in serious national security harm, but rise above the level of cases warranting a warning letter or no-action letter, we will offer non-monetary settlement agreements. Instead of requiring monetary penalties, such agreements will require remediation through the imposition of a suspended denial order with certain conditions, such as training and compliance requirements, as appropriate, to mitigate harm from past violations and prevent future ones. Such resolutions will be contingent on the alleged violator's willingness to accept responsibility, to admit to their conduct, and to commit to enhanced compliance measures.
- **Elimination of "No Admit, No Deny" Settlements:** We are ending our use of "no admit, no deny" settlements, that is, settlements where companies or individuals resolve the allegations against them but do not admit their conduct. When we enter a settlement, the resolving party

gets significant credit in the form of a reduced penalty. But to earn that reduced penalty, there needs to be an admission that the underlying factual conduct occurred. That way, others will have a clear sense of what the company or individual did to run afoul of our rules and can modify their own behavior to prevent a similar outcome.

- **Dual-Track Processing of Voluntary Self-Disclosures:** We are changing how we process Voluntary Self-Disclosures (VSDs) and will now use a dual-track processing system. For the vast majority of VSDs – those that involve minor or technical infractions – we will resolve them on a “fast-track” with a warning letter or no-action letter within 60 days of a final VSD submission. For those VSDs that indicate potentially more serious violations, we will assign both a field agent and an OCC attorney. In the most serious cases, the Department of Justice’s Counterintelligence and Export Control Section will assign an attorney as well. The assigned agent and attorney(s) will then follow up with the VSD filer to obtain further information concerning the disclosure. By fast-tracking the many minor or technical violations while assigning specific personnel to the potentially more serious ones, we will be able to focus our finite resources on the most significant VSDs while also allowing companies that submit more minor VSDs to receive a quicker turnaround.

Most U.S. companies are committed to our national security and work hard to ensure that their sensitive technologies and goods don’t end up in places where they could cause our country harm. In addition to our obligation to enforce the law when it’s been violated, we also have an obligation to companies that are playing by the rules. If we are not vigorously enforcing against violators, then those companies that are obeying the law are unfairly disadvantaged in the marketplace. Administrative sanctions, whether in combination with criminal penalties or alone, send a powerful message: implement effective compliance programs on the front end or risk penalties on the back end that will hurt both your reputation and your bottom line, either through stiff monetary penalties, or the potential denial of export privileges, or both. I am confident that today’s policy changes, along with our regulatory change earlier this month making charging letters public when brought rather than when resolved, will allow our administrative enforcement program to deliver that message clearly and loudly.