



Defense Trade Controls

Case Study 12/23/11

Voluntary Disclosures

When is submitting a Voluntary Disclosure (VD) to the Department of State's Directorate of Defense Trade Controls (DDTC) mandatory? Many organizations new to The ITAR do not understand when are they required to submit a VD. For all of those organizations contemplating what to do about a "possible escape", understanding the ramifications of a decision is important.

The DDTC encourages the disclosure of information by persons that believe they may have a violation.

SCB Training Center encourages its clients to comply with the regulations and where needed, seek expert and/or legal counsel. Now with that said, there is only one circumstance in which the ITAR mandates disclosure of violations and that is:

"§ 126.1 Prohibited Exports, Imports, and Sales to Certain Countries (e) Proposed Sales ...Any person who knows or has reason to know of such a proposed or actual sale, or transfer, of such articles, services or data must immediately inform the Directorate of Defense Trade Controls."

The DDTC does not offer any guarantees but the submission of a VD is recognized as a mitigating factor, which often results in the DDTC not taking any enforcement action. It can be generally said that being open and honest in correcting issues is looked upon favorably by the DDTC.

In reviewing the outcomes of recent DDTC civil cases, it would appear that properly submitting a VD and being proactive saves on the civil penalties.

Of course the best option is to comply with the regulation. Earlier it was mentioned that understanding the ramifications of a decision is important, so here is a little food for thought to those "decision makers" who don't want to comply: The ITAR defines the term "party to the export" § 126.7 (e) as:

"The chief executive officer, president, vice-president, other senior officers and officials and any member of the board of directors of the applicant:..."