

ALERT MEMORANDUM

DOJ National Security Division Issues Second Declination Under Corporate Enforcement Policy

May 2, 2025

On April 30, 2025, the Department of Justice’s (“DOJ”) National Security Division (“NSD”), alongside the U.S. Attorney’s Office for the Northern District of California, announced a declination to prosecute Universities Space Research Association (“USRA”) for criminal export control violations committed by a former employee.¹ This marks only the second declination issued by NSD under its Enforcement Policy for Business Organizations (the “Policy”), following voluntary self-disclosure.

This latest decision, factually analogous to the first NSD declination involving MilliporeSigma in May 2024,² underscores the potentially significant benefits available to companies that promptly self-report potential export control or sanctions violations, fully cooperate with government investigations, and implement timely remediation. It reinforces that self-disclosure remains a critical factor in NSD resolutions and offers important guidance for companies navigating national security enforcement matters.

NSD’s Enforcement Policy for Business Organizations

NSD’s Policy explains that export control and sanctions violations “harm our national security ... and this threat to national security informs how NSD arrives at an appropriate resolution with a business organization that

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¹ USRA Declination Letter (Apr. 30, 2025), available at <https://www.justice.gov/opa/media/1398471/dl?inline>.

² Department of Justice, Press Release (May 22, 2024), available at <https://www.justice.gov/archives/opa/pr/ringleader-and-company-insider-plead-guilty-defrauding-biochemical-company-and-diverting>.

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violates such laws and distinguishes these cases from other types of corporate wrongdoing.”³

The Policy also outlines the framework for resolving potential criminal export control and sanctions violations voluntarily disclosed by companies. Absent aggravating factors,⁴ the Policy creates a presumption that companies meeting the requirements—(1) timely voluntary self-disclosure, (2) full cooperation, and (3) timely and appropriate remediation—will receive a non-prosecution agreement and no fine.⁵ NSD retains the discretion to issue a declination in appropriate cases. Companies must still pay applicable disgorgement, forfeiture, and restitution, and the Policy does not shield culpable individuals from prosecution.

The USRA Declination

USRA, a non-profit research corporation, contracted with NASA to sell flight control software. Between 2017 and 2020, a USRA program administrator responsible for export control due diligence is alleged to have knowingly facilitated the unlicensed export of controlled aeronautics software to Beijing University of Aeronautics and Astronautics, an entity on the U.S. Department of Commerce’s Entity List, using an intermediary to avoid detection. The employee also embezzled over \$150,000 from software license sales.

After a NASA inquiry prompted an internal investigation by USRA, the employee initially misrepresented his actions and provided falsified documents to USRA’s counsel. When confronted with contradictory evidence, he admitted his wrongdoing. USRA promptly self-disclosed the matter to NSD—less than three months after engaging outside counsel and within days of the employee’s admission.

Following the disclosure, USRA fully cooperated with NSD’s investigation, including providing documents from overseas and translations, and undertook significant remediation. This included terminating the employee, disciplining his supervisor, enhancing internal controls and compliance programs, and compensating NASA and the U.S. Treasury as related to the embezzled funds. DOJ credited USRA’s cooperation with materially assisting the successful prosecution of the former employee, who pled guilty and was sentenced to incarceration.

NSD declined prosecution for numerous potential violations and determined USRA realized no unlawful gains, thus requiring no disgorgement, forfeiture, or restitution.

Key Considerations in the NSD Declinations

The USRA and MilliporeSigma declinations highlight common factors NSD considered in the resolutions:

- Timely voluntary self-disclosure: Both companies disclosed promptly after retaining counsel and before internal investigations concluded. The Policy requires disclosure “within a reasonably prompt time after becoming aware of the potential violation” and “prior to an imminent threat of disclosure or government investigation.”⁶ As NSD noted in its press release, what USRA did after discovering the conduct “made all the difference in the Government’s decision not to prosecute it.”⁷ The declination letter also highlighted that USRA voluntarily self-disclosed less than three months after outside counsel had been retained, within days of the former employee’s admission of wrongdoing to outside

³ Department of Justice, National Security Division, *Enforcement Policy for Business Organizations*, available at <https://www.justice.gov/nsd/media/1285121/dl?inline=>.

⁴ Aggravating factors include “conduct that involves a grave threat to national security; exports of items that are particularly sensitive or to end users that are of heightened concern; repeated violations; involvement of senior management; and significant profit.” *Id.* The Policy explains in more detail what credit a company can get if a different

criminal resolution (deferred prosecution agreement or guilty plea) is warranted due to aggravating factors. *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Department of Justice, Press Release (Apr. 30, 2025) available at <https://www.justice.gov/opa/pr/justice-department-declines-prosecution-company-self-disclosed-export-control-offenses>.

counsel, and well before the internal investigation's completion.⁸

- **Exceptional Cooperation:** NSD requires proactive cooperation, including disclosing all relevant facts about misconduct and involved individuals. USRA's cooperation was described as "exceptional" and crucial to the individual prosecution. As NSD said in announcing the USRA declination, "[a] criminal who compromised our national security was brought to justice because his employer caught him and immediately turned him in."⁹
- **Effective Remediation:** Timely and appropriate remediation was present in both cases. This included terminating wrongdoers, disciplining involved supervisors, and demonstrably improving compliance programs and internal controls. USRA also compensated the government agencies affected by the employee's embezzlement.
- **Nature of the Offense:** In both declinations, NSD took the nature and seriousness of the offenses into account, including that the USRA matter involved limited exports of software based on public information and that the MilliporeSigma matter involved limited quantities and concentrations of biochemical exports.
- **Lack of Corporate Benefit or Involvement:** NSD considered that neither company obtained unlawful gains from the scheme and that the employees responsible for the conduct acted alone. MilliporeSigma was even positioned as a victim of its employee's conduct.

Conclusion

Despite DOJ's recent broader shifts in enforcement priorities and internal reorganizations, the USRA declination confirms that NSD's voluntary self-disclosure Policy remains highly relevant. The recent resolution demonstrates tangible benefits for

companies that quickly self-report potential national security violations, cooperate fully (including assisting in individual prosecutions), and remediate effectively. The similarity between the USRA and MilliporeSigma declinations underscores the importance of these factors. However, given that both cases involved rogue employees acting without corporate benefit or involvement, the path to a declination for companies with more systemic issues or where the company itself benefited remains less clear. Companies should continue to prioritize robust internal controls and compliance programs to detect and address potential export control and sanctions issues promptly, and to conduct internal investigations of such conduct as appropriate.

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⁸ USRA Declination Letter (Apr. 30, 2025), *available at* <https://www.justice.gov/opa/media/1398471/dl?inline>.

⁹ Department of Justice, Press Release (Apr. 30, 2025) *available at* <https://www.justice.gov/opa/pr/justice->

[department-declines-prosecution-company-self-disclosed-export-control-offenses](https://www.justice.gov/opa/pr/justice-department-declines-prosecution-company-self-disclosed-export-control-offenses).