

**SUPPORTING STATEMENT FOR
PAPERWORK REDUCTION ACT SUBMISSIONS**

**Statement of Material Change, Merger, Acquisition, or Divestiture of a
Registered Party
OMB 1405-XXXX
Form Number DS-7789**

A. Justification

1. Why is this collection necessary and what are the legal statutes that allow this?

By statute, Executive Order, regulation, and delegation of authority, the Directorate of Defense Trade Controls (DDTC), Bureau of Political-Military Affairs, U.S. Department of State, in accordance with the Arms Export Control Act (AECA), 22 U.S.C. 2751 *et seq.*, and the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120-130, has the principal mission of controlling the export and temporary import of defense articles and services. This mission is primarily accomplished through the review and issuance of export and temporary import authorization requests, maintenance of the U.S. Munitions List, the registration of manufacturers, exporters, and brokers of defense articles and services, and enforcement of ITAR requirements. The collection and storage of various types of data are integral to DDTC's mission and responsibilities.

ITAR §§ 122.4 and 129.8 (22 CFR 122.4, 129.8) require registrants to notify DDTC in the event of a change in certain registration information or if the registrant is a party to a merger, acquisition, or divestiture of an entity producing, marketing, or brokering ITAR-controlled items (collectively "material changes"). This information is necessary for DDTC to ensure registration records are accurate, to ensure the material change is in compliance with the regulations (e.g. verify that a debarred entity is not in control of a registrant), to ensure export authorizations

remain current (e.g. if a transfer occurs), and to evaluate the implications on national security and foreign policy.

2. What business purpose is the information gathered going to be used for?

DDTC will use the requested information to fulfill its statutorily-mandated function of ensuring that ITAR-controlled articles and technical data are not transported or transmitted to unauthorized individuals, companies, or nations and transactions involving such items are in furtherance of the foreign policy and national security interests of the United States.

3. Is this collection able to be completed electronically (e.g. through a website or application)?

Respondents to this collection are instructed to submit a written notification pursuant to ITAR §§ 122.4 and 129.8. This collection does not currently have an active form associated with it. Respondents currently transmit all documents in hard copy, often via overnight mail, as recommended by DDTC.

DDTC is in the process of developing a new case management system that will allow respondents to submit information sufficient to satisfy their ITAR §§ 122.4 and 129.8 obligations electronically. Once deployed, industry users will have the option to make electronic submissions using the new system or via hard copy. Respondents who choose to submit electronically will access Form DS-7789 through DDTC's website (<https://www.pmdtdc.state.gov>). Form DS-7789 will prompt the respondent to provide specific information depending on his or her role in the transaction and the responses provided. Note that the forms currently uploaded with this collection do not represent what Form DS-7789 will look like

electronically. Rather, the included forms are meant to demonstrate Form DS-7789's required and conditional fields.

Respondents who wish to submit information in hard copy should fill out and submit the .pdf form associated with this collection.

4. Does this collection duplicate any other collection of information?

DDTC is unaware of any information collections which duplicate this information.

5. Describe any impacts on small business.

This information collection applies to all entities and individuals engaged in manufacturing, brokering, and exporting of defense articles and defense services; therefore, this reporting requirement applies to large and small businesses equally.

6. What are consequences if this collection is not done?

Absent this information collection, it would be extremely difficult for DDTC to meet its legally mandated responsibilities to ensure oversight of defense manufacturing and exports in furtherance of foreign policy objectives, national security interests, and world peace.

7. Are there any special collection circumstances (e.g. responding in less than 30 days, excessive record retention, or requiring submission of proprietary trade secrets)?

ITAR § 122.5 (OMB Control #1405-0111) requires that companies or individuals registered with DDTC maintain records for a minimum period of five years from the expiration of a license or written approval. In addition, to comply with the

requirements of ITAR §§ 122.4 and 129.8, companies and individuals may be required to submit proprietary or business-sensitive materials for DDTC to understand the foreign policy and national security implications of a proposed transaction or change in registration.

8. Document the publication (or intent to publish) a request for public comments in the Federal Register.

The Department published a *Federal Register* notification on July 20, 2016 requesting public comment on this information collection (81 FR 39992). Nine comments were received, one of which was not germane to the information collection. The remaining eight comments provided significant feedback on the proposed form and instructions, summarized below:

One commenter remarked that the proposed 2-hour burden for the DS-7789 is low and should be revised. DDTC replies that the burden is an average of all submissions using the DS-7789, and while some responses will require a longer period based on the complexity of a transaction, many will be far below the declared burden for the form. Additionally, where the applicant is already a registrant some fields will pre-populate based on prior submissions. DDTC therefore believes that a 2-hour burden is accurate for this form.

Another comment centered on the name of the form itself, “Statement of Material Change, Merger, Acquisition, or Divestiture of a Registered Party.” The commenter was concerned that the term “material change” is inconsistent with current business usage and the use of this form could potentially affect the market value of the submitting company. While DDTC understands these concerns, the

changes that require notification, and are therefore “material changes” for ITAR purposes, are defined in the regulations (see ITAR § 122.4). Therefore the title of the form will remain the same.

Multiple commenters opined that the form, currently formatted in four separate sheets, is difficult to follow. DDTC notes that the form as currently written serves as a “placeholder” for a new case management system that is in development, and the focus throughout the form’s creation has been to finalize discrete data fields and workflows more than format. The data fields on the form will be used as the basis for workflows which will guide users through questions based on their previous responses; not all users will see all fields during each submission. Similarly, information previously provided to the Directorate via the DS-2032, Statement of Registration, will auto-populate into the DS-7789, saving respondents the burden of re-keying their basic information multiple times.

Relatedly, many commenters noted that Block 1 of the form, currently named “Applicant Information,” should be changed to “Registrant Information” to avoid confusing nomenclature. DDTC notes that the title of this block is a field designator only, as the word “Applicant” will be used throughout the case management system to collate data fields for interoperability. The title of the field has no bearing on the role of the submitter of the DS-7789 and is not intended to imply that the submitter is “applying” to declare a material change. Rather, this was done in order for the electronic system to recognize the information in this block as duplicative of information that might be contained elsewhere in the user’s system profile.

DDTC believes that many of the usability issues identified by the commenters will be resolved through the guided nature of the case management system. For instance, some comments noted that the .pdf version of the DS-7789 lacked functionality to add additional supporting documentation and that text fields did not expand to accommodate easier editing. DDTC notes that the case management system will have fully functional “add” capability as well as unlimited-character text boxes which will allow for easy editing of responses. To this point, some commenters also noted that uploading information on each authorization (licenses and agreements) that will transfer ownership through a merger, acquisition, or divestiture (“MAD”) event is unduly burdensome and that respondents should have the ability to upload documentation in lieu of keying such information into the system. DDTC replies that the case management system will automatically populate this field from the registrant’s information; users will then have the ability to select which authorizations will transfer under the proposed merger, acquisition, or divestiture instead of keying information on each authorization.

One commenter noted that DDTC has historically provided a limited period for an acquired entity’s registration to remain current after the date of the transaction to allow for the shipment of unshipped balances on authorizations which are transferring to the new or acquiring entity, but that this practice is not reflected on the DS-7789. DDTC replies that this practice stemmed from paper-based reporting and was used to allow companies to continue exporting goods under approved licenses while the authorizations were manually updated within DDTC. Because of the automated nature of the DS-7789, authorizations will be rapidly transferred from one entity to another and therefore the “grace period” will no longer be needed nor provided in the ordinary course.

Several commenters also opined that DDTC should convene an industry working group to beta test the new form and system that is being developed. In fact, DDTC has already convened such a group, and all interested industry users are welcome to join by contacting PM_DDTCProjectTeam@state.gov.

Many respondents provided feedback on the instructions for the DS-7789. Most comments centered on requesting more detailed guidance for specific fields on the form. DDTC is pleased to provide additional guidance and revised instructions will be made available on the DDTC website (<https://www.pmdtc.state.gov>) in conjunction with the publication of 30-day *Federal Register* notice. For example, a commenter asked for clarification regarding DDTC's request for information regarding percent-ownership of outstanding voting securities of the foreign buyer of a registered entity. In response, DDTC revised the instructions to clarify the distinction between the 50% ownership, as referenced in 22 CFR 122.2, and the presumption of control in 22 CFR 120.37 associated with 25% ownership. The percent-ownership question in the DS-7789 facilitates DDTC's national security and foreign policy evaluation which, as part of the transactional review, includes an understanding of who has potential control of the foreign buyer.

DDTC also received several comments related to the electronic signature requirement for the DS-7789. Numerous responses noted that the signature requirement for a senior officer is unduly burdensome for their executive-level managers; DDTC notes that the requirement for a senior officer to sign a notification of a change in registration information is enunciated in ITAR § 122.4. Similarly, one commenter opined that the requirement to provide information about senior officers and board members on the 60-day submission preceding a MAD event should be dispensed with since they may not be the same once the

event actually occurs; however, DDTC needs this information to evaluate the entirety of a transaction, and it will still be required.

Many commenters also remarked that the “60-day Buyer” portion of the form should be removed as only registered parties are required to submit information to DDTC. DDTC notes that the requested information is **about** the buyer and not necessarily **from** the buyer. For this reason, DDTC is providing registrants the ability to provide this information about the buyer or to have the buyer provide the information directly. In practice, registrants already provide buyer information in many divestitures (in other words, the buyer provides the registrant with the requested information, which the registrant then submits to DDTC). Allowing the buyer to submit the information to DDTC directly allows the buyer to provide information that they may not otherwise wish to share with the registrant. The requested information is relevant to DDTC’s analysis of the foreign policy and national security implications of transactions and, in many cases, is what the acquiring company will ultimately provide in a post-transaction DS-2032 (Statement of Registration) covering the acquired entity.

Two comments also centered on the protection of information submitted via the form’s proposed electronic interface. DDTC notes there are two parts to this question – the security of information and information disclosure practices. DDTC’s IT security team is working on a secure web-based system to accept proprietary data from industry users. Recognizing the sensitivity of the data submitted, the system will meet all current government standards for data security and the Privacy Act of 1974. Similarly, DDTC will protect information from public disclosure to the extent permitted by law. DDTC encourages submitters to

clearly mark proprietary information in accordance with the Department of State guidelines at 22 CFR § 171.12.

9. Are any payments or gifts given to the respondents?

No payment or gift has been or will be provided to any respondent.

10. Describe any assurances of privacy/confidentiality.

A privacy impact assessment (PIA) was conducted in 2016 and can be viewed at <https://www.state.gov/privacy>. This collection of information is covered under STATE-42, Munitions Control Records, which is also published on <https://www.state.gov/privacy>.

Respondents to this collection may review ITAR § 126.10, which describes DDTC's policy regarding the disclosure of information.

11. Are any questions of a sensitive nature asked?

The Department of State is not soliciting any information regarding sexual behaviors, religious practices or attitudes, or other matters commonly considered private.

12. Describe the hour time burden and the hour cost burden on the respondent needed to complete this collection.

This information collection is estimated to take an average of 2 hours to execute, and DDTC expects to receive approximately 1,700 submissions per year; therefore, the total burden for this collection will be 3,400 hours per year.

According to the US Department of Labor Bureau of Labor Statistics, the weighted median hourly wage for “Compliance Officers” in the United States is \$43.75 per hour (\$31.25 hourly wage x 1.4 multiplier = \$43.75). Multiplied by the average annual hourly burden of 3,400 hours, the hour-cost burden for this information collection is \$148,750.00 per year.

13. Describe any monetary burden on the respondent needed to complete this collection.

Respondents primarily utilize mail services such as UPS and FedEx to submit documents to DDTC. DDTC estimates the average monetary cost to respondents (the cost of shipping) per submission to be approximately \$35.00. Therefore, the annual monetary burden to respondents is estimated to be \$59,500, based on 1,700 submissions per year.

The monetary burden to respondents will decrease once the electronic DS-7789 is launched. Respondents who elect to submit electronically will save, on average, \$35.00 per response because there will be no costs associated with electronic submission other than what is usual and customary for their business practices.

14. Describe the cost to the Federal Government to complete this collection.

Two employees (GS-13 or equivalent) spend all of their time reviewing and processing material change, merger, acquisition, and divestiture responses. At an average annual cost of \$109,015 per employee, DDTC estimates the total cost to the Federal Government to be \$218,030.

DDTC expects this cost to decrease as respondents choose to submit documents electronically. Electronic submission will prompt respondents to provide all of the

information necessary for DDTC review, significantly reducing the amount of unintentional omissions and errors made by respondents. This, in turn, will minimize the amount of time spent by analysts conducting follow-up requests and reviewing incomplete submissions. As a result, DDTC anticipates the cost to the Federal Government could decrease by as much as 25% with the advent of electronic submission.

15. Explain any changes/adjustments to this collection since the previous submission.

This is a new information collection request; however, this collection has been in place without a valid OMB control number. Approval of this collection will not impose new burden on the public nor will costs to the Federal government increase as a result of this “new” collection.

16. Specify if the data gathered by this collection will be published.

DDTC will publish name and address changes to the DDTC website (https://www.pmdtdc.state.gov/licensing/name_change.html) if it is determined that an exception pursuant to ITAR § 126.3 is applied to waive the requirement to amend all current authorizations. Section 126.3 exceptions are very common in this context. DDTC publishes these notices as they are the current mechanism for letting industry know when an entity appearing on a license or other authorization changes its name. These notices serve a critical purpose with respect to notifying industry that otherwise prohibited conduct is acceptable (e.g. an exporter shipping under a new name that is not otherwise reflected on the license). No information will be published except what is necessary to announce the name or address change. DDTC is actively exploring more effective automated ways to update this information.

17. Explain the reasons for seeking approval to not display the OMB expiration date.

The Department of State will display the OMB expiration date.

18. Explain any exceptions to the OMB certification statement.

The Department of State does not seek any exceptions to the certification statement.

B. Collections of Information Employing Statistical Methods

This collection of information does not employ statistical methods.