

August 19, 2016

U.S. Department of State
Directorate of Defense Trade Controls
PM / DDTC, SA-1 12th Floor
2401 E Street, NW
Washington, DC 20522

Subject: Raytheon Company Comments on DDTC's Proposed Electronic Forms for Licensing, Material Changes, and Voluntary Disclosures

Ref: 81 Fed. Reg. 39,992 (June 20, 2016)

On June 20, 2016, the Department of State requested comments from the public on proposed electronic forms for (1) applications/licenses for defense articles or services; (2) statements of material changes; and (3) disclosures of violations of the Arms Export Control Act. The Department of State indicated it would accept comments from the public on the proposed forms until August 19, 2016. Below please find comments from Raytheon on the proposed forms.

I. GENERAL COMMENTS

A. Establish an Industry Working Group for the Electronic Forms

Raytheon recommends DDTC create an industry working group for these forms. The group would meet on an ongoing basis to further explore, customize and deploy the electronic forms. The stakeholder group would provide feedback and testing as DDTC implements the modernized system.

Alternatively, rather than establishing an industry working group, Raytheon recommends DDTC at a minimum review and comment on industry's input on the forms. Raytheon recommends DDTC post updates or revisions to the forms on its website for industry to review and provide final comments.

B. Provide Industry Additional Time to Review Forms

Raytheon recommends DDTC provide industry additional time to review and test the new web-based solution and to provide comments before final implementation.

C. Provide Training on the Forms

Raytheon recommends DDTC provide training for industry on the new forms.

D. Add Note Indicating Size/Character Limit for Each Text Box

Raytheon recommends for all three forms DDTC add a note in italics above each text box indicating the size or character limit of each text box. For the voluntary disclosure form (DS-7787), specifically, Raytheon recommends removing any character limitations, if possible.

E. COMMENTS ON PROPOSED LICENSING FORM (DS-7788)

A. General Comments on Form DS-7788

1. Form Should Function As a Live Document

Raytheon recommends this form function as a live document and a record that is continuously updated (i.e., OCR in the cloud). Once initially submitted, DDTC and the applicant, respectively, could revise and update the form (e.g., add provisos, amend agreements, decrement licenses, update values). DDTC's D-Trade system currently has an option (with a pull down menu) that allows users to update filings (applications or current authorizations) for a variety of reasons. Raytheon recommends form DS-7788 function the same way and provide flexibility and options to make changes.

2. Eliminate Requirement for a Letter of Transmittal (LOT)

Raytheon recommends DDTC incorporate all of the LOT requirements into the form thereby eliminating the need for the LOT and streamlining the licensing process into one document.

A. Specific Comments on Instructions to Form DS-7788

1. Clarify Applicant Address Information

Raytheon recommends DDTC revise the fifth bullet on the instructions for Block 1, which states, in part: "Provide all company or organization name and address information . . ." to clarify whether applicant can enter name and address information for a specific business unit or whether the applicant is limited to only including their home office address.

2. Move Instructions on Transactions Involving Classified to Block 3

As described below, Raytheon recommends moving the questions related to whether the transaction involves classified items, programs, or parties to Block 3. Thus, Raytheon recommends DDTC move the instructions related to these questions to the Block 3 instructions just under the "Select all applicable Countries of Ultimate Destination" bullet (on page 3 of the instructions).

3. Add "Foreign Party" to Applicant List

Raytheon recommends DDTC add "Foreign Party" to the Block 1 list of applicant types (page 1 of the instructions).

4. Add Limited Defense Services to Application Type

Raytheon recommends DDTC add limited defense services to the list of application types in Block 3 (pages 2-3 of the instructions). Raytheon recommends the bullet read as follows:

- *Limited Defense Services* – The applicant is requesting to provide defense services for a limited purpose such as, for example, marketing discussions regarding concept of operations (CONOPS) or basic IT support for software exports.

5. Add Instructions for “Purpose of Transaction”

Raytheon recommends DDTC add to the Block 3 instructions for the “purpose of transaction” (insert just after the application type instructions on page 3). The instructions should clarify that the applicant should include in the “purpose of transaction” block the “end use” to ensure DDTC includes the end use in the license approval to ensure all parties to the approval are aware of and can comply with the scope of the authorized end use.

6. Clarify Application Type of “Advisory Marketing License”

The Block 3 instructions for application type include “Advisory Marketing License” (page 3 of the instructions). Raytheon recommends the instructions add clarifying language regarding whether the Advisory Marketing License is intended to replace the Advisory Opinion (AO) process or how it relates to the AO process.

7. Include Instructions on Voluntary Disclosure Information

As described below, Raytheon recommends adding to Block 3 the requirement to include information as to whether the application is related to a disclosure filed with DDTC. Thus, Raytheon recommends including corresponding instructions on page 3 of the Block 3 instructions just after the “related cases” instructions.

8. Define “Application Category” in Block 3 Instructions

Raytheon recommends revising the Block 3 instructions to clarify that the application category is a drop down box and to provide some examples, specifically: “Select the appropriate application category from the drop down box (e.g., brokering, disposal, foreign person employment, in furtherance of agreement).”

B. Specific Comments on Form DS-7788

1. Clarify USML Category Designation

In Block 4, wherever a USML category is referenced, the form contains three line items. Raytheon recommends clarifying on the form itself or in the instructions which information applicants should include on each respective line item (i.e., the USML category number, sub-paragraph, and sub-sub paragraph).

2. Comments on Block 1 (Applicant Information)

Raytheon recommends the following revisions to Block 1.

- i. Add a box for "Foreign Party" to the list of applicant options.
- ii. Add line item for "Transaction ID"
- iii. Add line item and a Y/N checkbox for applicant to indicate whether applicant is a subsidiary of an ITAR registrant. Include line items for subsidiary to provide address information.
- iv. Move the questions related to whether the transaction involves classified items, programs or parties to Block 3 right under the line for "Country of Destination."
 1. Revise the first sentence of the classified questions to include technical data: "Does the transaction involve classified defense articles, programs, parties, or technical data?"

3. Comments on Block 3 (Description of Transaction)

- i. Add to Block 3 a section for application types involving limited defense services. The section should include a Y/N checkbox question for limited defense services, and a drop down box for examples such as marketing discussions, basic IT support, etc.
- ii. Add to "Country of Ultimate Destination" the ability to identify several countries of ultimate destination.
- iii. Include just after the "Related Cases" questions (top of page 2 on the form) a line item stating: "Is this application related to a disclosure filed with Defense Trade Compliance?" Also add Y/N checkboxes. Include a line item to enter the Compliance Disclosure Number. Add a text box or additional line items in case the application is related to multiple disclosures.
- iv. Under the "if Application type is: Agreement" line item on page 2 of the form, revise the italicized line item "*if Amendment is: Yes*" to read "*if Amendment/Re-Baseline is: Yes.*"
- v. Revise the information requirements on page 2 of the form for transactions involving classified. Specifically, to prevent applicants from violating regulations regarding the handling and release of classified information, Raytheon recommends the form require only the classification level of the classification information (and no other details). Under the

- same rationale, Raytheon recommends removing the requirement to describe any classified information.
- vi. Revise the dual/third country national information (on page 2 of the form). Add a checkbox of "both" under "Type." Revise the line item to indicate country to read: "Dual National and/or Third Country National country(s)."
 - vii. Delete the request for "Retransfer Information" on page 3 of the form as this information is not required to be included in the agreement per the DDTC Agreement Guidelines. If DDTC agrees with this recommendation, Raytheon recommends deleting the corresponding line item on page 4 of the instructions.
 - a. Alternatively, if DDTC does not want to delete the retransfer information, Raytheon recommends moving it under the Dual National/Third Country National line items.
 - viii. Add a line item under the "UAV Information" section on page 3 of the form stating: "Is UAV a U.S. platform" and include Y/N checkboxes.
 - ix. Under the "LO/CLO Information" section on page 3 of the form, revise the first sentence to read: "Does this application involve ..." Raytheon recommends changing the word "agreement" to "application" so the applicant understands this information is required for all applications (not just agreements). Additionally, this LO/CLO section should include the inquiry as to whether the program includes Controlled Program Information (CPI).
 - x. Correct the citation to 123.14 on page 4 of the form as it does not match the questions included in that section. Additionally, provide additional explanation on the "Information" requested under this section as it is unclear to what these questions relate.
 - xi. Under the "Reconsideration" section at the bottom of page 4 on the form, add "RWA" to the drop down menu for "type of reconsideration."
 - xii. Under the "if Application type is: Export, Import, or Re-Export/Re-Transfer" section at the bottom of page 4/top of page 5 on the form, add section for foreign person employee licenses. Additional information is provided under Section 5 below.
 - xiii. Correct the typo on page 5 of the form that states: "*if Application type is: Export and Applicant is: Temporary.*" The word "Applicant" should be changed to "Application."

- xiv. Under the aircraft and vessel questions on page 5 of the form, change the question "*if article being exported is: Yes*" to "*if article being exported is: Aircraft or Vessel.*"

4. Proposed Block 3 Section on Foreign Person Employee Licenses

After "if Application type is: Export, Import, or Re-export/Re-Transfer" section, insert a section in bold font: "**if Application type is foreign person employee license.**" Add the following questions specific to foreign person employee license applications.

Line for foreign person employee (FPE) name _____

Insert checkboxes for (1) dual national; (2) third country national; (3) both

If yes, include additional nationalities _____

Any 126.1 country(ies)? Add Y/N checkboxes

If yes, pick dropdown of countries.

Will this FPE work in the United States? Add Y/N checkboxes

If No, indicate where this FPE will work _____

Add lines for work address in country of employment

Is this a foreign branch office of the U.S. employing entity? Add Y/N checkboxes

If No, insert explanation _____ (e.g., employee home office)

Add lines for home address in country of employment.

Add lines for other addresses. Include an "Add" button to account for more than one address

Add line for country of passport _____

Add line for passport number _____

Copy of passport attached? Add Y/N checkboxes

Copy of visa or work permit attached? Add Y/N checkboxes

If No, insert explanation_____.

Add line for job title _____

Job description attached? Add Y/N checkboxes

Resume attached? Add Y/N checkboxes

Will this FPE support marketing activities? Add Y/N checkboxes

If No, insert Tech Data and/or Defense Services section with:

- Quantity, Unit Type and Article Type dropdowns
- Commodity Description
- USML Category line items
- Checkboxes for SME, MDE, Classified
 - If Classified, Type and Level
- DSP 83 Attached? Add Y/N checkboxes
 - If no, explain _____
- If technical data, explain what hardware it relates to _____
- Unit Price and Line Item Total

Insert "Add" Button

Total value in USD: \$_____ (Should calculate automatically)

If Yes, insert dropdown for number of programs/pursuits supported with two picks:

Pick 1: Three or less

Pick 2: Four or more

If three or less, follow directions above.

If four or more, insert textbox for section on Marketing Programs/Pursuits Supported (MPPS):

Program/Pursuit Name	USML Category	Marketing Export Authorization Obtained or Pending? Y/N	If Yes, insert DSP No.	SME? Y/N	Classified? Y (insert TS, S, or C) or N

*Future submissions must reference this license no. in order for the FPE to participate.

DSP-83 attached? Add Y/N checkboxes

If No, explain: _____

Insert value box for Estimated Annual Salary in USD: \$_____.

Insert "Add" button to add more FPEs

Insert total license value block: \$_____. Should calculate automatically.

5. Comments on Block 4 (Commodity Information)

- i. Under the "if Application type is: Agreement" section on page 5 of the form, delete the questions on "MDE" and the "123.16(b)(1) exemption" as these identical questions are asked below under the "Hardware" section.

- ii. Under the "if Application type is: Export, Import, or Re-Export/Re-Transfer" section on page 6 of the form, include an "Add" button next to the line item for "Article Type."

6. Comments on Block 5 (Entity Information)

- i. Rename this Block to "Entities Involved in Transaction Information" so applicant understands this Block does not seek information on the applicant but rather the other entities involved in the transaction.
- ii. Under the "Entity is" section, add a checkbox for "U.S. Consignor."

7. Add a New Block 9 for Changes/Amendments Prior to and After Approval

- i. Raytheon recommends adding a new Block 9 to the end of form DS-7788 that allows industry to request "Withdraw Case" prior to the case being adjudicated by DDTC that would not count as an RWA, Denial, Approval or Approve with provisos for the applicant.
- ii. Raytheon recommends the following changes could be made to the application prior to adjudication:
 - 1. Correct typos or minor mistakes in original submission;
 - 2. Correct address of a signatory, intermediary, or integrator (in the same country);
 - 3. For the same legal entity, add or remove additional locations/addresses in the same country;
 - 4. For the same legal entity, add the phrase "and all locations in [Country X];"
 - 5. Correct the official name of a signatory, intermediary, or integrator;
 - 6. Correct the official name of a signatory, intermediary, or integrator after a name change notification is posted on the DDTC website;
 - 7. Makes minor language changes needed before parties will sign;
 - 8. Remove a signatory from the agreement; and
 - 9. Removes a foreign intermediary or integrator
- iii. Raytheon recommends the following changes could be made to the application/approval after adjudication:
 - 1. Correct typos or minor mistakes in original submission;

2. Correct address of a signatory, intermediary, or integrator (in the same country);
3. For the same legal entity, add or remove additional locations/addresses in the same country;
4. For the same legal entity, add the phrase "and all locations in [Country X];"
5. Correct the official name of a signatory, intermediary, or integrator;
6. Correct the official name of a signatory, intermediary, or integrator after a name change notification is posted on the DDTC website;
7. Make minor language changes needed before parties will sign;
8. Remove a signatory from the agreement; and
9. Removes a foreign intermediary or integrator.

F. COMMENTS ON PROPOSED MATERIAL CHANGE FORMS (DS-7789)

A. General Comments on Form DS-7789

Raytheon recommends this form function as a live document addendum to form DS-2032 rather than as a free-standing form. Thus, each material change submitted via the form would automatically update the DS-2032 registration form.

B. Specific Comments on Instructions to Form DS-7789

1. Add Page Numbers

Raytheon recommends DDTC include page numbers on the instructions.

2. Revise Instructions to Clearly Indicate Which Instructions Apply to Which Forms

Generally, one set of instructions for four distinct forms is difficult to navigate. To assist parties completing these forms, Raytheon recommends revising the instructions as outlined below to more clearly indicate when certain blocks or line items are specific to either some or all of the forms.

Under the instructions for Block 1, revise as follows:

- **Role (60 day buyer form only):** Select your role in the transaction.
- **Notification on behalf of acquiring party (60 day buyer form only):** Indicate whether the divesting party ...

Under the instructions for Block 2, revise as follows:

- **Ownership/Control: (60 day seller form only):** Answer
- **Voluntary Disclosure (5 day/60 day forms only):**
- **Asset/Stock Purchase (5 day/60 day seller forms only):**
- **Wholly Acquired (5 day/60 day forms only):**

Under the instructions for Block 3, revise as follows:

- **Block 3 (Part I): Details of Transaction (5 day/60 day forms only)**
- **Role (5 day/60 day seller forms only):**
- **Additional Party (5 day/60 day seller forms only):**
- **Registration Status (5 day/60 day seller forms only):**
- **Registration Code (5 day/60 day seller forms only):**
- **Termination of Registration Code (5 day/60 day seller forms only):**
- **Parent Entities (60 day forms only):**
- **DE-ITAR (60 day seller form only):**
- **CFIUS (60 day seller form only):**
- **Organization Chart (60 day seller form only):**

Under the second instructions for Block 3, revise as follows:

- **Block 3 (Part II): Details of Transaction (60 day buyer form ONLY)**

Under the instructions for Block 4, revise as follows:

- **Block 4: Supporting Documentation: (5 day/60 day forms only)**

Under the instructions for Block 5, revise as follows:

- **Block 5: Point of Contact Information (ALL forms)**

Under the instructions for Block 6, revise as follows:

- **Block 6: Senior Officer Application and Certification Signature (ALL forms)**

3. Recommended Revisions to Certain Instructions

- i. **General Notes Part E(c)** – Define the term “equal party” in the definition of “party to a merger.”
- ii. **Block 2 instructions on Ownership/Control** – The instructions state, in part: “Answer if the transaction involves ...” Raytheon recommends the instructions indicate where on the form the party provides this information (e.g., include this

information in the block where you summarize the essentials of the transaction?).

- iii. **Block 3 instructions on DDTC Authorizations** – If a party has an extensive list of affected DDTC authorizations, it could pose a significant administrative burden to individually upload the information for each authorization into the form. Thus, Raytheon recommends DDTC authorize parties with more than five affected authorizations to attach a matrix as a supporting document to the form. Raytheon recommends the instructions indicate a party is authorized to attach a matrix and to include the language “see attached matrix” on the line item regarding DDTC authorizations. Raytheon also recommends DDTC’s instructions provide the specific information required for each authorization to ensure consistency in the matrices parties may attach to the form.
- iv. **Block 3 instructions on Parent Entities** – Raytheon recommends DDTC define “Parent” in this section and clarify which “immediate parents” a party should include. Specifically, the instructions should identify which entities above the acquiring party/party to the merger should be listed (i.e., all entities? Only those over a certain percentage of ownership interest? Operating and holding entities?).
- v. **Block 3 instructions on Registration 30 Day Extension** - Raytheon requests DDTC clarify for which form (e.g., 5-day, 60 day buyer) this information is required. Also, Raytheon recommends DDTC indicate where on the form the party should include this information.
- vi. **Block 3 instructions on Assuming Language** - Raytheon requests DDTC clarify for which form this information is required (e.g., 5-day, 60 day buyer). Also, Raytheon recommends DDTC indicate where on the form the party should include this information.
- vii. **Block 3 instructions on Organization Chart** – Raytheon recommends DDTC revise the instructions for clarity and for consistency with Form 7789 to read as follows: “Indicate if organization chart submitted with the applicant’s DS-2032 registration form is current . . .” Additionally, Raytheon

recommends DDTC clarify whether applicant should include both current and future state organization charts.

- viii. **Block 3 instructions on Directors, Officers and Partners for 60 day buyer form** – Raytheon requests DDTC allow parties completing this form (and the DS-2032) to opt-out of the requirement to include SSN information for directors, officers, and partners due to privacy and security concerns. Or, alternatively, to provide SSN information only on an “as needed by” or “as required by” DDTC basis. If DDTC accepts this proposal, Raytheon recommends revising the language in these instructions to indicate the opt-out option.
- ix. **Block 6 instructions on Senior Officer Application and Certification Signature** – Raytheon requests DDTC clarify in the instructions whether a Senior Officer’s designee is authorized to sign on his/her behalf. Raytheon (and likely most other companies) often has designees sign on behalf of Senior Officers.

C. Specific Comments on Form DS-7789

1. Add Block to Non-MAD Related Form

Raytheon recommends adding a block to the Non-MAD Related form for adding/removing Board members or other Senior Officers. Raytheon recommends the block include all of the required information as outlined in the DS-2032 registration form, and also an “add” button in the case of multiple additions and/or deletions.

Raytheon also reiterates its recommendation (as outlined above) that DDTC allow parties completing this form (and the DS-2032) to opt-out of the requirement to include SSN information for directors, officers, and partners.

2. Revise Line Items for Voluntary Disclosure Information

Raytheon recommends DDTC revise the line item in the 5 day and 60 day seller forms requesting voluntary disclosure (VD) information to be a stand-alone line item and not a subsection to the question of whether a 60-day notice was submitted. It is unclear why the voluntary disclosure question is tied to the 60-day notice inquiry.

Additionally, Raytheon recommends DDTC add line items in the 5 day and 60 day seller forms for VD date of submission and/or VD reference number.

3. Add Designee to Signature Block

As outlined above, Raytheon recommends DDTC authorize a designee to sign the form on behalf of a Senior Officer. Thus, Raytheon recommends DDTC revise the signature block section on each form to include additional line items where the designee can provide his/her information.

G. COMMENTS ON PROPOSED VOLUNTARY DISCLOSURE FORM (DS-7787)

A. General Comments on Form DS-7787

Overall, use of a form for the voluntary disclosure (VD) process is a welcome development and would benefit parties drafting a VD by (1) identifying the elements of a VD most important to DDTC thereby forcing VD drafters to hone their focus; and (2) saving VD drafters time in preparing long narratives.

Raytheon also notes that in spite of these benefits, having a template form for all VDs may limit an applicant's ability for advocacy. Specifically, the form precludes the ability to provide information not solicited but nevertheless material to the investigation. For example, the form does not contain an exclusive field dedicated to mitigating factors.

B. Specific Comments on Instructions to Form DS-7787

1. Add Page Numbers

Raytheon recommends DDTC include page numbers on the instructions.

2. Revise Format of the Instructions Table

Raytheon recommends DDTC revise the format of the instructions table so the row at the top of the table on the first page of the instructions repeats at the top of the table on every page. This will assist the reader in identifying the subject of each column of the table on each page.

3. Provide Clarification on the "Add" Box

Raytheon recommends DDTC clarify in the instructions whether there is a limit on the quantity of items that can be added via the "add" function.

4. Provide Clarification on Timing for Companies with Unique Disclosure Requirements (e.g., Companies under a Consent Agreement)

Raytheon recommends DDTC clarify where companies that have unique requirements of information to include in a disclosure, such as timeline and related disclosures sections, should include that information.

5. Clarify “Discovery Date” in Block 3 Instructions

Raytheon recommends DDTC clarify what factors determine the discovery date required in Block 3 (Violation Information). Specifically, clarify whether this is the date on which anyone discovered the violation, including a third party. Or, whether this is the date that any employee learned of the violation. Or, whether this is the date that an export control subject matter expert learned of the violation.

6. Clarify “Violation Type” in Block 3 Instructions

Raytheon recommends DDTC clarify whether more than one violation type can be selected.

7. Clarify “Persons Involved” in Block 3 Instructions

Raytheon recommends DDTC clarify whether the persons involved in the activities giving rise to the violation should also include those involved in the subsequent investigation.

C. Specific Comments on Form DS-7787

1. Add Ability to Save Work in Progress

For all three proposed new electronic forms (DS-7787, DS-7788, and DS-7789), and in particular for the VD form that will likely include extensive text, Raytheon recommends DDTC update the form to include the functionality to save work in progress with the ability to return to the saved form.

2. Comments on Block 2 (Submission Information)

i. Type of Submission:

1. Notification of third party violation is a welcome development. Please maintain. Industry now has an opportunity to disclose a third party's violation without having to characterize the submission as a VD.
2. Clarify whether "Response to DDTC" indicates a response to a request for information (RFI). If so, please make explicit. If not, Raytheon recommends adding “Response to an RFI from DDTC” as an option.

ii. If submission type is: Disclosure

1. Raytheon recommends adding checkboxes for “Status Report” and “Directed Disclosure.”

2. Raytheon recommends an entirely different (and shorter) form for initial notifications. Alternatively, Raytheon recommends DDTC reduce the number of required fields if a party selects "initial notification."

3. Comments on Block 3 (Violation Information)

i. Number of violations:

1. Raytheon recommends eliminating this requirement as it is difficult to quantify.
2. Alternatively, DDTC should provide guidance in the instructions on how to calculate the number of violations.
 - a. For example, in a scenario of an unlicensed export to France, how many violations does this equal? Specifically, in addition to the one violation of exporting without a license, what other facts would qualify as a violation? (e.g., the erroneous information in AES/EEI? The unauthorized end use by the foreign party? Unauthorized retransfer if the foreign party returns the items to the U.S. party without authorization?)

ii. Date of violations:

1. Raytheon recommends eliminating this requirement as this is difficult to derive, particularly if a company is liable for a third party's violations under ITAR Part 127.1(c).

iii. Violation type:

1. Raytheon recommends DDTC replace "Destruction or loss" with "Unauthorized end use," as industry generally does not view unauthorized destruction or disposal as a violation.

iv. Violation involves:

1. Raytheon recommends including a separate checkbox for "Software" as software has distinct treatment under the ITAR.
2. Add a question and Y/N checkboxes as to whether the item subject to the ITAR at the time of the violation has since migrated from the ITAR to the EAR under Export Control Reform.

v. Corrective actions:

1. Raytheon recommends adding "remedial measures" to the information sought in this field. Or, alternatively, adding a separate line item to include information on remedial measures taken.
- vi. Root causes:
1. Raytheon recommends moving this field up to just after the field for "How was the violation discovered."

4. Comments on Block 6 (Supporting Documentation)

- i. Raytheon recommends adding a checkbox for "Communications" as e-mails and other types of communications are so frequently included in VD filings.
- ii. Raytheon recommends adding a checkbox for "Cited authorizations" as these are also frequently included in VD filings.
