

**SUPPORTING STATEMENT FOR
PAPERWORK REDUCTION ACT SUBMISSIONS**

**Disclosure of Violations of the Arms Export Control Act
OMB 1405-0179
Form DS-7787**

A. Justification

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

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 missions of taking final action on license applications and other requests for defense trade transactions via commercial channels, ensuring compliance with the statute and regulations, and collecting various types of reports. By statute, executive order, regulation, and delegation of authority, DDTC is charged with controlling the export and temporary import of defense articles, the provision of defense services, and the brokering thereof, which are covered by the U.S. Munitions List (USML).

ITAR §127.12 encourages the disclosure of information to DDTC by persons who believe they may have violated any export control provision of the AECA, ITAR, or any order, license, or other authorization issued under the AECA. The information is analyzed by DDTC to ultimately determine whether to take administrative action concerning any violation that may have occurred. The voluntary nature of a disclosure may be considered a mitigating factor in determining the administrative penalties, if any, that may be imposed. Failure to report a violation may result in circumstances detrimental to the U.S. national security and foreign policy interests and will be an adverse factor in determining the appropriate disposition of such violations. Also, the activity in question might merit referral to the Department of Justice for consideration of whether criminal prosecution is warranted. In such cases, DDTC will notify the Department of Justice of the voluntary nature of the disclosure, but the Department of Justice is not required to give that fact any weight.

Notification of violations will be submitted to DDTC via form DS-7787, which was developed by DDTC to allow respondents to submit disclosures directly into DDTC's new case management system (CMS).

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

DDTC uses the information to analyze industry compliance processes and procedures, and to assess whether the activity in question might merit penalties, administrative actions, sanctions, or referral to the Department of Justice for possible prosecution.

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

This information collection will be submitted electronically via DDTC's new Compliance case management system. The data elements contained in form DS-7787 will be developed into a web-based submission system that will guide users through the disclosure process.

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

The Department of State is unaware of any other U.S. Government requirements for the submission of this information.

5. Describe any impacts on small business.

Export control law and regulations are designed to safeguard U.S. Government foreign policy and national security interests and to further world peace. The law and regulations are applicable equally to large and small businesses or entities. Only persons that believe they may have violated a defense trade control provision of the AECA, ITAR, or order, license, or other authorization issued under the AECA would submit a disclosure. Burdens have been minimized as much as possible.

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

The absence of this provision for reporting possible violations of defense trade control laws, regulations, or authorizations would hinder DDTC's mission of ensuring compliance with statutes and its regulations.

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)?

Respondents only report the information on the occasion of a possible violation. Because of the need for DDTC to gather all relevant data, the submission of proprietary trade secrets may be included. Separately, ITAR Section 122.5 requires respondents to maintain all records for a minimum period of five years from the

expiration date of the license or other approval (to include exports using an exemption) or from the date of the transaction.

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

The Department published a notice in the *Federal Register* soliciting public comment on March 8, 2019 (84 FR 8558). Several comments were received and are outlined and addressed in Appendix B of this Supporting Statement.

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

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

10. Describe any assurances of privacy/confidentiality.

Other than provisions for confidentiality or nondisclosure included in the Freedom of Information Act, the ITAR, or other Federal statutes or regulations, no promises of confidentiality have been made to the respondent.

11. Are any questions of a sensitive nature asked?

The Department of State is not soliciting any information regarding matters commonly considered private.

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

The Department of State has reason to believe that the information required is already available to respondents in some form due to the nature of the disclosures and the 5-year recordkeeping requirement of ITAR Section 122.5; by definition, the submission of this form would presuppose the availability of information. An estimated 700 annual voluntary disclosures are expected from a pool of approximately 12,500 respondents. Frequency of response is on occasion. The estimated time that the respondent devotes to each submission is approximately 10 hours, making the estimated annual hour burden 7,000 hours. According to the U.S. Department of Labor Bureau of Labor Statistics website (www.bls.gov), the weighted wage rate category for a “Compliance Officer” is \$64.50¹ per hour (\$31.25 average wage x 2 multiplier). Therefore, the estimated annual burden hour cost to respondents is \$451,500.00.

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

¹ U.S. Department of Labor Bureau of Labor Statistics website (www.bls.gov)

There are no anticipated costs to respondents to complete this information collection.

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

DDTC has a full time staff of Compliance Specialists who review each disclosure in the course of their normal duties. An average Compliance Specialist GS-11 Step 10 rate is \$43.34² plus benefits 31%³ equals a fully loaded rate of \$56.78 per hour. The Compliance Specialist spends 2,080 hours a year reviewing Disclosures so the cost to the Federal Government to complete this collection is \$ 118,102.

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

This information collection has been modified to include specific data collection fields to meet the needs of a new case management system (CMS), which DDTC recently acquired and is preparing to deploy. Prior to this change request, disclosures were sent to DDTC by respondents in conformance with requirements enunciated in the ITAR. In developing its CMS, DDTC has created data fields for this information collection to avoid taking unstructured data into its system. Form changes can be found in Appendix A under DS-7787 Summary of Changes.

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

The Department will not publish the information collected.

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

DDTC will display the expiration date for OMB approval of the information collection on the form.

18. Explain any exceptions to the OMB certification statement.

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

B. Collections of Information Employing Statistical Methods

This collection of information does not employ statistical methods.

² Office of Personnel Management <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2019/general-schedule/>

³ Department of Labor Bureau of Labor Statistics <https://www.bls.gov/news.release/pdf/ecec.pdf>

Appendix A

DS-7787 Summary of Changes

#	Block #	Field	Change
1	1	Identifying Information	<ul style="list-style-type: none"> • Removed 'Case Number' field • Removed check box for 'Not registered with DDTC' • Added 'Registered with DDTC? Question; Yes, No • Removed 'Third Party Information' • Allowed for entry of two Registration Codes • Added the question, "Does the submitter own, or otherwise control, any U.S. or foreign affiliates or subsidiaries that are involved in the disclosure of information to DTCC?"
2	2	Point of Contact Information	<ul style="list-style-type: none"> • Removed drop down for 'Submitter Type' • Added Point of Contract Type; Submitter or Third Party • Added address fields
3	3	Disclosure Information	<ul style="list-style-type: none"> • Added additional submission types • Added 'Case Number' fields
4	4	Violation Summary Information	<ul style="list-style-type: none"> • Removed 'Violation Type' check boxes • Removed 'Number of Violations' field • Removed 'Governmental program or contract' question • Removed 'Subsidiary' questions • Removed 'Natural Person' questions • Removed 'Entity' questions • Removed 'Suspended, denied, debarred, or otherwise ineligible' question • Removed 'All countries' field • Removed 'How was the violation discovered' question • Reorganized the order of the remaining fields • Changed the title from "Foreign Country/Nationality Involved" to "Foreign Country/Foreign Person Nationality."
5	5	Disclosure of Relevant Document	<ul style="list-style-type: none"> • Added buttons for 'Voluntary Disclosure Narrative' • 'Empowered Official/Senior Officer Certification' • 'Response to DDTC Inquiry' • 'Extension Request Letter'

			<ul style="list-style-type: none"> • 'Notification Letter' • 'Exhibit'
6	6	Submission Authorization	<ul style="list-style-type: none"> • Removed data fields 'In accordance with ITAR...', 'title', and 'capacity' drop down • Added a check box for authorized employee • Signed certification from an empowered official or senior officer now as an attachment to submission

Appendix B

DS-7787 Public Comments Received During 60 Day Comment Period

Commenter	Reference	Public Comment	Response
Block 1. Identifying Information			
LM	Registration code	Recommend allowing entry of multiple registration codes.	DTCC accepts one commenter's recommendation to allow two registration code entries.
LM	Company or Organization	<p>Change to field that includes sufficient character length to accommodate relationship of business to the Company or Organization.</p> <p>Rationale: All DDTC licensing requires that entities use their "legal name". This block should be consistent with applications filed with DDTC, which mandate the listing of a subsidiary in the applicant block, including when operating under the applicant code of the parent company.</p>	<p>DTCC does not accept one commenter's recommendation to increase the character length of the Company or Organization field to accommodate relationship of the business to the Company or Organization. The field should not include any information except for the legal name of the Company or Organization. The submitter is the disclosing natural person or disclosing entity.</p> <p>DTCC has added the question, "Does the submitter own, or otherwise control, any U.S. or foreign affiliates or subsidiaries that are involved in the disclosure of information to DTCC?" If the answer is yes, the form will allow submitter to include affiliates or subsidiaries involved in this disclosure. Select "Add" to include multiple subsidiaries or affiliates</p>
LM	Address	<p>Recommend DDTC clarify if the "submitter's street address" refers to the registrant address included on the AECA registration or the specific address of the business element submitting the disclosure.</p> <p>Rationale: Currently, DDTC guidance for completion of DTrade forms is to include the address of the registrant as it appears on the registration in the applicant block on all DSP forms in DTrade.</p>	<p>Use the address in your registration statement.</p> <p>DTCC has revised the form to allow the submitter to identify any U.S. or foreign affiliates or subsidiaries that are involved in this disclosure of information to DTCC.</p>

LM	State/Province, Zip/Postal Code, Website	<p>Comment: Recommend that these fields be optional vs. required.</p> <p>Rationale: Not all non-U.S. addresses include a state/postal code and not all companies maintain website.</p>	DTCC agrees to revise the form so the fields State/Province, Zip/Postal Code, and Website are optional.
Block No. 2: Point of Contact Information			
LM	Point of contact	<p>After "Point of Contact Information" add "of Person Certifying in Block 6"; add "Secondary Point of Contact Information," which is not the person certifying and a field below that for selecting "Type" - e.g., "Employee" "Outside Counsel" "Other" (and if "Other" allow write-in description)</p> <p>Rationale: Block 1 calls for "Point of Contact" information and does not appear to require that the Point of Contract be an empowered official or senior officer. The person certifying should provide point of contact information, be identified in Block 1, and (if applicable) be distinguished from a secondary point of contact.</p>	DTCC does not accept one commenter's recommendation to add types of points of contact. The primary point of contact is not required to be an empowered official or senior officer.
LM	Name	<p>Clarify which entity should be listed in Block 1 - the registrant or affiliate - when the violation pertains to an affiliate.</p> <p>Rationale: In the DS-7787, the applicant can only provide one entity as applicant. In DTrade, applicants must provide both the registrant and, if applicable, the identification of the subsidiary. Since the creation of the DTRADE DSP forms; DDTC has added the 120.40 Affiliate definition to the ITAR; affiliates are identified in block 10/11 of the DS-2032 registration. We recommend DDTC either provide direction as to which "entity" (registrant/affiliate) to list in the applicant field or provide a second affiliate field on the DS-7787 and other DDTC forms.</p>	DTCC accepts one commenter's recommendation to clarify which entity should be listed in Block 1. DTCC has added the question, "Does the submitter own, or otherwise control, any U.S. or foreign affiliates or subsidiaries that are involved in the disclosure of information to DTCC?" If the submitter answers yes, the form allows the submitter to include affiliates or subsidiaries involved in this disclosure. Select "Add" to include multiple subsidiaries or affiliates
Block 3: Disclosure Information			
LM	Submission Type	Add "Transaction Exception" as an option to submission type, or specify that DDTC has alternative plans to process Transaction Exception (TE) requests pursuant to § 127.1(d)(2)	DDTC does not accept one commenter's recommendation to add transaction exception as a submission type. The form is primarily designed for

		<p>in a separate form.</p> <p>Rationale: The proposed DS-7787 Form covers more than VDs (e.g., mandatory 126-country notifications) and may be intended to address other DDTC Compliance needs. <i>Submission Type, Other</i> does not include a spot for 127.(d)(2) TEs. At this time, the proposed DDTC Single Form currently under separate review does not have a section for TEs. Although this is an infrequent occurrence, we recommend DTCC provide guidance on which applicable form type to use for TE requests outside the licensing process.</p>	<p>the submission of disclosures and related correspondence. Transaction exceptions are submitted through the licensing system.</p>
Block 4. Violation Summary Information			
LM	General Comments	<p>Recommend DDTC tailor the required information to the minimum required to process a request based on the submission type. Also, confirm these fields are optional when filing an initial voluntary disclosure.</p> <p>Rationale: For example, if an applicant submits an Extension Request, do not require the applicant to restate all the Summary Information required in block 4. The identification of the Disclosure Case Number should be sufficient for DDTC to correlate the request to the pending disclosure. Moreover, all the information requested in this block is not always known when an initial voluntary disclosure is filed. Per 22 CFR 127.12(c)(l), the person initially notifying DDTC may not have conducted a thorough review to ascertain all Block 4 information at the time of filing an initial voluntary disclosure. Optional fields would address this issue.</p>	<p>DTCC confirms the violation summary information is optional when submitting an initial voluntary disclosure.</p>
LM	Violation Start/End Date	<p>Recommend making these two fields optional or create the means to mark each field as estimated or unknown, similar to the SF 86 e-QIP form. In addition, recommend including an additional radio button "Select Add".</p>	<p>DTCC agrees with one commenter's recommendation and notes that the fields are optional. DTCC refers the commenter to the DTCC DS-7787 instructions for guidance on how to input dates that are estimated or unknown. Per the instructions, for the violation start</p>

		<p>Rationale: At the time of submission, the applicant may not have dates or accurate dates depending on submission type (e.g. initial notification). Depending on the facts and circumstances, there may be multiple start and end dates. Unless State intends for entities to lump all circumstances into one "start" and "end" date, an entity may have, and disclose, multiple dates.</p>	<p>date: "If known, enter the earliest date the violation occurred. If multiple violations are included in the disclosure, the date should be the date of the earliest violation. If the precise date is unknown, enter the first day of the month or the first day of the year and explain why the precise date is unknown in the Description of and Circumstances Surrounding the Violation field." For the violations end date: "If known, enter the latest date the violation occurred. If multiple violations are included in the disclosure, the date should be the date of the latest violation. If all violations occurred on the same day, enter the same date for both Violation Start Date and Violation End Date. If the precise date is unknown, enter the first day of the month or the first day of the year and explain why the precise date is unknown in the Description of and Circumstances Surrounding the Violation field."</p>
LM	Description of and Circumstances Surrounding Violation	<p>Recommend increasing the number of characters allowed within the box to accurately capture the circumstances surrounding the violation.</p> <p>Rationale: The text box should be able to expand to accommodate a full description of the circumstances.</p>	<p>DTCC does not accept one commenter's recommendation to increase the number of characters in the "Description of and Circumstances Surrounding Violation." This form facilitates the capture of information as required in Section 127.12 of the ITAR. If the form does not allow sufficient space, submitters may provide a narrative of the requested information by attaching a separate document. If providing a narrative, submitters should provide complete information by uploading a document in Block 5 by choosing "Voluntary Disclosure Narrative" for Document Type.</p>
Boeing	Classified Information	<p>Block 4 includes a box to indicate if classified information is involved, and the instructions direct exporters to follow DDTC guidelines for the submission of classified information. We recommend that DDTC make easily available detailed</p>	<p>Please refer to DDTC's website for guidance.</p>

		instructions for providing classified information to the Directorate, including in relation to voluntary disclosure submissions.	
LM	Foreign Country/Nationality Involved	<p>Recommend DDTC change field titles that reference Foreign country/Nationality to Foreign Person Nationalities.</p> <p>Rationale: A Foreign Person is a defined term within the ITAR that covers both natural persons and companies or organizations. The change would also capture all nationalities of a natural person since it is plural (e.g. dual nationals).</p>	DTCC accepts one commenter’s recommendation to change the title from “Foreign Country/Nationality Involved” to “Foreign Country/Foreign Person Nationality.”
LM	126.1 Country/National Involved	<p>Recommend DDTC remove the question.</p> <p>Rationale: The prior question, Foreign Country/Nationality Involved, can be used by DDTC to determine if a 126.1 country/national is involved in the disclosure.</p>	DTCC does not accept one commenter’s recommendation to remove the question about 126.1 country/national involved as this field enhances accuracy, enhances analytics capabilities, and provides more flexibility in assessing disclosures.
LM	Related to Previous Disclosure?	Delete this question and related instructions.	DTCC partly agrees with one’s commenter’s recommendation. DTCC amends the instructions as follows: “Identify the case numbers, if known, of previously submitted disclosures within the past five (5) years related to this disclosure. This may include disclosures with substantially similar circumstances such that prior corrective actions should have prevented the violation being disclosed in this submission; and disclosures with the same or related fact patterns.” DTCC does not accept one commenter’s recommendation to delete the field related to previous disclosures.
Boeing	Circumstances surrounding the violation; identity and address of persons involved;	We again recommend that the fields requesting details of the violation (the circumstances surrounding the violation; identity and address of persons involved; corrective actions taken; and root cause) be removed from the form, or that their completion is made optional, with pointers to an attached narrative. Depending on the matter, this information may be more appropriately communicated in a narrative presenting	DTCC agrees with one commenter’s recommendation to have a narrative document. Submitter may attach a narrative document in Block 5. DTCC does not accept one commenter’s recommendation to remove the fields requesting details of the violation as the intended use of the form is to facilitate the capture of information as required in Section 127.12 of the ITAR.

	corrective actions taken; and root cause	the full picture for DDTC review.	The uniform data fields in the form facilitate greater search and analytics capabilities and readability in the compliance case management system.
Block 5. Disclosure or Relevant Documents			
LM	Document Type	<p>Document Types "Voluntary Disclosure Narrative," "Empowered Official/Senior Officer Certification," "Response to DTCC Inquiry," "Extension Request Letter," and "Notification Letter" should not be required attachments, but should be allowable. In general, it would be beneficial for all parties if only the fields required under 22 CFR 127.12(c)(2) be required on the form.</p> <p>Rationale: The intent of asking for other relevant information is to provide substantiating documentation, as defined in Sec. 127.12. Many of the document types referenced here (e.g, audit reports) might be excessive and unnecessary for this purpose. A requirement to provide audit reports and compliance program manuals could result in a substantial amount of paperwork that is not necessary for understanding the nature and circumstances of the potential violation.</p>	DTCC clarifies that all attachments listed in Block 5 are optional, except when submitting a full disclosure, the document type, "Empowered Official/Senior Officer Certification" is required.
Block 6. Submission Authorization			
LM	Submission authorization	This field must be changed from: "I am an authorized employee of the company cited in Block 1, or an authorized third party as indicated in Block 2 to submit on behalf of the company in Block 1. I certify to the accuracy and completeness of the submission, and have not knowingly omitted information." To: "I am a/an (check one): empowered official (see 22 CFR §120.25) or a senior officer (e.g. chief executive officer, president, vice-president, comptroller, treasurer, general counsel, or member of the board of directors) of the company cited in Block 1. I certify that all of the representations made in connection with the voluntary	<p>DTCC explains that the DS-7787 form is used to collect other correspondences that is not a voluntary disclosure (e.g., extension request, notification, other). The Block 6 Submission Authorization applies to all submissions types collected under this form. Block 6 is mandatory for all submission types except for Notification.</p> <p>The purpose of 22 CFR 127.12(e) certification is for voluntary disclosures only. For voluntary disclosures, submitters should submit a certification in</p>

		<p>disclosure are true and correct to the best of my knowledge and belief."</p> <p>Rationale: The certification must match the language of 22 CFR 127.12(e). The ITAR does not require or define "completeness," or "information" that is relevant or which must be included. The term "authorized employee" suggests a departure from the ITAR requirement that an empowered official or senior officer certify. Moreover, Block 1 calls for "Point of Contact information and does not appear to require that the Point of Contact be an empowered official or senior officer.</p>	<p>accordance with 22 CFR 127.12(e). Under Block 5, relevant documents, submitter should upload the certification under the document type, "Empowered Official/Senior Officer Certification."</p>
Misc.			
Boeing	Mitigating factors	<p>We also reiterate our recommendation that the form include a way to indicate whether the disclosure contains mitigating factors, and a field for describing/summarizing those. Since these factors are crucial to DDTC's review of a matter, exporters should have the opportunity (though not a requirement) to provide this information on the intake form.</p>	<p>One commenter remarked that DTCC should include a field to allow respondents to include "mitigating information" regarding the particular matter they are disclosing. DTCC notes that the form, as written, contains all of the information required by ITAR §127.12. Determinations of exactly what constitutes "mitigating information" is made solely by DTCC; therefore, such a separate field will not be added to the form. The submitter is encouraged to provide detail of remedial measures and mitigating factors by uploading a document in Block 5 by choosing "Voluntary Disclosure Narrative" for Document Type.</p>