

DS-7789 STATEMENT OF MATERIAL CHANGE INSTRUCTIONS

The DS-7789 facilitates four reporting paths:

(1) Ownership or control of registrant (related to merger, acquisition, or divestiture), (2) Other registration information (not related to merger, acquisition, or divestiture), (3) 60-Day Notice (Seller), and (4) 60-Day Notice (Buyer))

General Notes:

- These instructions will be paired with an online submission. Some questions on the DS-7789, and the corresponding instructions (below), will not appear/apply depending on the information provided by the applicant (e.g. 60-day notice information will not need to be submitted by someone providing a five-day notice). As a result, it is recommended that applicants review the instructions with the relevant form in hand.
- “ITAR” refers to the International Traffic in Arms Regulations (22 CFR Parts 120-130).
- The changes that require notification, and are therefore “material changes” for ITAR purposes, are defined in § 122.4 of the regulations.
- Five-Day Notice:
 - A registrant must notify DDTC regarding material changes in the information provided on its Statement of Registration (DS-2032) within **five days** of the effective date, including changes to the registrant’s name, address, and legal structure.
 - All merger, acquisition, or divestiture (MAD)-related material changes to your Statement of Registration (DS-2032) must also be notified within **five days** of the effective date. If a notification comes prior to the effective date, the applicant must submit an additional notification within five days of the effective date. MAD transactions involving foreign buyers require 60-day advance notification (see below).
- 60-Day Pre-Transaction Notification:

- Registrants must notify DDTC at least **60 days** in advance of the effective date of any intended sale or transfer to a foreign person of ownership or control of the registrant or any entity (e.g., subsidiary or affiliate) thereof.
- Internal reorganizations may trigger a 60-day pre-transaction notification if a foreign party (e.g., foreign subsidiary or foreign affiliate) will be placed between the ultimate parent and registrant, that is, with ownership or control of the registrant (or an entity thereof).
- Failure to adhere to the above notification requirements is a violation of the ITAR and may result in compliance action against the relevant party or parties.
 - Should an acquiring party determine that the company it acquired/intends to acquire was not properly registered with DDTC, the appropriate first step is to submit an initial notice of voluntary disclosure pursuant to 22 CFR § 127.12 and a DS-2032 registration application. Generally, if the transaction has not closed, the DS-2032 and voluntary disclosure should be submitted by the company being acquired (e.g. the company that committed the violation).
- For purposes of completing the DS-7789:
 - “Entity” means a corporation, business association, partnership, society, trust, organization, group, governmental organization, or any other entity which is not a living human being.
 - “Natural Person” means a living human being.
 - “Merger” is a combination of two or more companies. On the DS-7789, the term is used to refer to a consolidation of two (or more) existing companies into a single new company, where none of the combining companies survive. Order of operations is critical when assessing whether a reported material change is an acquisition, divestiture, or a merger. If, for example, two companies are merging

(consolidating) into a new company, but a subsidiary of one will be sold to a third party prior to the transaction, that would be reported as two separate material changes: a divestiture and a merger.

- o “Party to Merger” means an entity that is a party to a merger (consolidation) as defined above.

 - o “Parent entity” means an “entity” (as defined above) that controls one or more legally distinct subsidiaries. For example, a company that holds more than 50% of the outstanding voting stock of a subsidiary company and controls its management through the board of directors is a “parent entity.” Please note that parent status can be achieved with less than 50% ownership.
- For assistance in completing this form, contact the DDTC Response Team at 202-663-1282 or by e-mail at DDTCResponseTeam@state.gov.

Block 1: Applicant Information

- **Role:** Select your role in the transaction. *(This question appears when the applicant is preparing a 60-day buyer submission.)*
- **Registration Code:** Enter your registration code(s), as applicable.
- **Applicant Type:** Select “natural person” or “entity,” as applicable.
- **Name/Address:** Complete all applicable name and address fields.
- **Notification on behalf of acquiring party:** Indicate whether the divesting party is completing this notification on behalf of an acquiring party or party to merger, and provide the name of the relevant acquiring party or party to merger. *(This question appears when the applicant is preparing a 60-day buyer submission.)*

Block 2: Description of Material Change:

- **Material Change Type:** Identify the type of material change being reported. Changes related to mergers, acquisitions, and divestitures should be reported

separately from changes to other registration information. Non-material changes may be voluntarily reported via an update to the registrant's DS-2032.

o Ownership or control of registrant (related to merger, acquisition, or divestiture)

- Merger – a consolidation of two (or more) existing companies, including at least one DDTC registrant, into a single new company where none of the combining companies survive (see 22 CFR § 122.4(a)(2)).
- Acquisition – acquisition of a company registered with DDTC, or a registered subsidiary or affiliate thereof (see 22 CFR § 122.4(a)(2)).
- Divestiture – disposal of company registered with DDTC, or a registered subsidiary or affiliate thereof (see 22 CFR § 122.4(a)(2)).

o Other registration information (not related to merger, acquisition, or divestiture)

- Criminal charge – indictment or other criminal charge of one or more persons identified in 22 CFR § 122.2(b) (see 22 CFR § 122.4(a)(1)).
- Eligibility – change in the eligibility of one or more persons identified in 22 CFR § 122.2(b) for U.S. Government contracting and/or export/temporary import authorization (see 22 CFR § 122.4(a)(1)).
- Name – name of registrant, to include “doing business as” alias (see 22 CFR § 122.4(a)(2)).
- Address – change in physical or mailing address of registrant (see 22 CFR § 122.4(a)(2)).
- Legal organization structure – change in the corporate structure of the registrant (see 22 CFR § 122.4(a)(2)).

- Directors, senior officers, partners, and/or owners – change in the identifying information provided on the registrant’s DS-2032 (see 22 CFR § 122.4(a)(2)).
 - Establishment of subsidiary/controlled affiliate – creation of a new subsidiary or affiliate that is engaged in ITAR-regulated activities, such as manufacturing defense articles or exporting defense articles and/or services (see 22 CFR § 122.4(a)(2)).
- **Date:** For a five-day notice, enter the date the event occurred (e.g. the date the registrant moved to a new address). For a 60-day pre-transfer notification, enter the date, or intended date, of the material change that is triggering notification (e.g. the anticipated date ownership of the registrant will transfer to a foreign person).
- **Ownership/Control:** Indicate whether the transaction involves the transfer of ownership or control (see 22 CFR § 120.37). The following reporting obligations relate to changes in ownership or control.
 - Change of owner/ownership: notice is required within five days when the change is in U.S. ownership (including parent companies). A 60-day pre-notification is required if the transfer is to foreign ownership, which 22 CFR § 120.37 defines as “more than 50% of the outstanding voting securities are owned by one or more foreign persons as defined in [22 CFR § 120.16].”
 - Change of control (to a foreign person): requires pre-notification at least 60 days in advance of the transaction. Foreign control means one or more foreign persons have the authority or ability to establish or direct the general policies or day-to-day operations of the company. Foreign control is presumed to exist where foreign persons own 25% or more of the outstanding voting securities unless one U.S. person controls an equal or larger percentage. Foreign control may exist at lower ownership percentages and changes related to that control would still need to be reported. For example, if a foreign person owns 5% of the outstanding voting securities of a company and 95 U.S. persons each own 1%, no one U.S. person would own a larger percentage and foreign control would be presumed. Please note that internal reorganizations trigger the 60-day pre-notification requirement

if an ownership or control change occurs through the establishment of a foreign intermediate parent. See 22 CFR § 120.37.

- Change of control (to a U.S. person): requires five-day notification. U.S. control means one or more U.S. person has the ultimate authority or ability to establish or direct the general policies or day-to-day operations of the firm. See 22 CFR § 120.37.
- **Notice Type:** Select the applicable notice type (five- or 60-day notice).
- **Voluntary Disclosure:** If applicable, indicate whether a related voluntary disclosure was submitted.
- **Asset/Stock Purchase:** Indicate how the transaction will be accomplished.
- **Wholly Acquired:** Indicate if the divesting party will be/has been wholly acquired (the entire corporate entity is being acquired). If the divesting party is not being wholly acquired (for example, a company is selling a registered subsidiary only) identify each subsidiary/affiliate that will be/has been acquired.
- **Summary:** Provide a summary of the material change reported, with the rationale and the actions to be taken, including any internal reorganization. The summary should be brief but complete.

Block 3: Details of Transaction:

- **Role:** Select your role in the transaction.
- **Additional Party:** Identify by name and role each additional party to the transaction, as applicable.
- **Registration Status:** If known, indicate whether each party to the transaction is registered with DDTC.
- **Registration Code:** Provide, if known, the DDTC registration code of the identified party.
- **DDTC Authorizations:** Indicate if any existing DDTC authorization(s) will transfer and, if known, identify the authorization(s). In the online

submission, the seller will have the ability to select from a pre-populated list of current authorizations, or use a “Select All” function. Selected authorizations will then be available for the buyer to view and accept in the system as part of their transaction.

- **Termination of Registration Code:** Indicate if applicant intends to terminate/cancel its registration.
- **Parent Entities:** Provide complete Parent(s) information for acquiring party or for each party to merger, indicate if they are registered, and provide registration code(s), if known. If the reported transaction involves multiple acquiring parties/parties to merger, a separate DS-7789 must be completed for each acquiring party. If there are no parent entities add “None” in Entity Name block. *(This question appears when the applicant is preparing a 60-day buyer submission.)*
- **Assuming Language:** If authorizations are transferring to the acquiring party, the acquiring party must indicate whether it accepts the rights, responsibilities, liabilities, and obligations that exist relevant to the transferred authorizations. Authorizations will not transfer if the acquiring party does not acknowledge acceptance.
- **De-ITAR:** Indicate if divesting party will cease to perform ITAR-controlled activities and divest all ITAR-controlled items (to include technical data) prior to the transaction.
- **CFIUS:** Indicate if the transaction has been, or will be, filed with the Committee on Foreign Investment in the United States (CFIUS).
- **Organization Chart:** Indicate if the organizational chart submitted with the applicant’s most recent DS-2032 form is current. If not, provide an updated organizational chart reflecting the company’s organization at the time of the submission (e.g. before the notified transaction occurs).

Block 3: Details of Transaction (60-day buyer)

- **Parent Entities:** Indicate if the acquiring party/party to merger has any parent entities, and if so provide the requested information for each. Note that “parent entities” includes both intermediate parents and ultimate parent. Each parent entity must be identified.
- **Subsidiaries/Affiliates:** Indicate if the acquiring party/party to merger has any DDTC-registered subsidiaries/affiliates. If so provide name and address and other requested information.
- **Directors, Officers and Partners:** Identify members of the board of directors, senior officers, and partners of the acquiring party/party to merger.
- **Foreign Person 126.1:** With respect to the acquiring party/party to merger and parent(s), indicate “YES” or “NO” for each of the four questions regarding the status of foreign persons (including foreign governments) from countries **specified in 22 CFR § 126.1**.
- **Foreign Person Non-126.1:** With respect to the acquiring party/party to merger and parent(s), Indicate “Yes” or “No” for each of the four questions regarding the status of foreign persons (including foreign governments) from countries **not specified in 22 CFR § 126.1**.
- **Foreign Person Explanation:** For any “Yes” answer regarding foreign person and/or government, provide each relevant name and country, with an explanation regarding the circumstances resulting in the “Yes” answer.
- **Representation:** Describe any representation the acquiring party/party to merger will have in the acquired party’s management. This helps DDTC assess potential licensing issues related to an acquisition.
- **Management/Oversight:** Indicate whether foreign persons will have management or oversight of, or access to, defense articles held, or technology transfers undertaken, by the acquired entity as a result of the merger or acquisition. If so, describe the intended management, oversight, and/or access.
- **Certification:** Answer the DS-7789 certification questions and provide any information as required.

- **Indicted or Otherwise Charged:** Provide the requested information regarding the criminal, contracting, and licensing status of the acquiring party or party to merger and its employees. In the event that one or more persons is subject to an identified criminal action (see 22 CFR § 120.27) or is ineligible to contract with the U.S. government, or to receive licenses from the U.S. government, include an explanation of the relevant circumstances and attach copies of all relevant documents. These may include, but are not limited to: an indictment, a DDTC reinstatement letters, and/or a U.S. government agency ineligibility notice.

Block 4: Supporting Documentation:

- **Scan:** Attach each supporting document as a separate file (do not compile multiple, specifically requested documents into a single attachment).
- **Attach Documents:** Check the applicable blocks to indicate you are submitting the associated support documentation with your notice.

Block 5: Point of Contact Information.

- **Contact:** By completing this section, you authorize DDTC to contact the identified individual if we have questions regarding the reported material change. Such contact may include the sharing of registration and material change-related information provided by the registrant.

Block 6: Senior Officer Application and Certification Signature.

- **Signature:** A Senior Officer empowered by the applicant (e.g., chief executive officer, president, comptroller, treasurer, general counsel) must **electronically** sign the form and be a U.S. person unless the material change involves a foreign broker.