



August 19, 2016

Directorate of Defense Trade Controls  
U.S. Department of State  
Attn: Managing Director  
2401 E Street, NW, Suite H-1205  
Washington, D.C. 20522

Subject: DS-7788 Application/License for Defense Articles or Services

Dear Sirs:

The Aerospace Industries Association (AIA) and our member companies welcome the opportunity to provide comment in response to the Requests for Public Comment on a new form *DS-7788 Application/License for Defense Articles or Services*. AIA enthusiastically supports the modernization and consolidation of the license submission disclosure process at the Department of State. Without seeing how the 'intuitive system' will work, it is somewhat difficult to review the approach DDTC is pursuing. However, based on what was presented in the Federal Register, below are member comments on the proposed form.

Our member companies' primary concern related to the proposed implementation of Form DS-7788 is ensuring there is sufficient time for the planning, preparation, and seamless implementation of the form. While we recognize that a transition to a single form is a critical step to full implementation of Export Control Reform and will potentially provide long term benefits, we recommend the implementation of this form be part of a phased transition plan that allows for legacy type submissions, as well as use of the new form, over a 6-12 month period. This will ensure industry has sufficient time to implement necessary modifications to government system interfaces, industry automated compliance systems and critical internal processes related thereto.

- Many companies utilize the EASE License Management System from OCR or other similar systems to interface with DTRADE. The proposed Form changes will require significant rework to these systems to ensure seamless connectivity and integration. A phased transition that allows for legacy type submissions while the necessary technical modifications to such systems occur will significantly ease transition and eliminate concerns regarding connectivity during implementation.
- Beyond connectivity and integration, companies have developed comprehensive compliance processes and procedures directly and indirectly tied to the legacy forms and automated solutions to ensure a continued robust compliance infrastructure. Inclusion of a phased transition timeline will allow for critical modifications, validation, and training on modified

industry processes and procedures, prior to full implementation

In addition to these concerns related to implementation timelines, the following comments and recommendations are related directly to Form DS-77888 and its instructions:

### **General**

The IT modernization forms were touted by DDTC as being a Turbo-tax-like approach where only the necessary blocks are displayed depending upon the selections made. AIA requests that prior to go-live, a small industry-supported group be asked to test the 'intuitive system' to ensure it meets the requirements of industry and that the back-end decision logic is functioning as intended.

It is expected that the form made available on the DDTC webpage will be the paper version of the electronic form to be used in case of system outage. We note that the form, in general, is very confusing and jumps from defense service questions to hardware questions. Additionally, questions on the classification of the item being exported is found in several places and at times duplicates the same query. Consolidation of those questions to one section will make it much easier for industry to complete the form.

The form does not have the form number DS-7788 displayed anywhere.

The Form, Instructions and Notice do not discuss the manner in which the Form will be submitted (DTRADE?) and the authentication required for submission. Such items should be communicated and Industry provided an opportunity to comment.

AIA requests that the Country fields be established with complete country listing in the drop down choices. It was noted that the fields were incomplete throughout the form.

The freeform fields do not expand to allow a reviewer of the application to read all the material supplied; essentially the fields do not have a wrap feature. To provide for easy reviewing for both the industry and government reviewer, it is requested that these fields be wrap-enabled. It was also noted that the number of characters available in the freeform fields is somewhat limited. Installing a character count feature (how many characters are available) would be quite useful.

The USML sub-paragraphs are not completely populated in the dropdown lists. Either the lists are completely blank or they only have a, b, c, d, e, and x. USML Category V for example goes a through k.

The dropdown identifiers for classified types are not consistent. Each dropdown only includes a portion of the entire listing of types. These should be updated to include all of the following: Classified, Confidential, Restricted, Secret, Top Secret, and Other. The term Unclassified should be removed as it would not be selected in response to the question being asked.

There is no place on the form to make the CPI certification for DODI 5200.39.

There does not appear to be a "Date Prepared" field on the form.

We request a clarification on if all fields are required to be filled out for each type of application. If not, the required fields should be marked accordingly depending on the "Application Type" selected.

The form does not have a section to cover amendments for non-agreement application types and should be included to address the consolidation of DSP-6, DSP-62 and DSP-74 forms.

Will this single form for agreements replace the need for a transmittal letter? The single form seems to capture the elements of the transmittal letter so to require both the form and the letter seems redundant.

While we recognize that the current form distributed as part of this Notice is not finalized, a complete validation of all “drop-down menus” and functional entries (e.g., “Add Buttons”) is required before final publication. Further, it is recommended that the Form be a “Smart” Form where:

- Only applicable fields (based on selection) appear for completion (including, but not limited to all the “if” additional statements/questions); and
- Whenever possible, appropriate fields are auto-populate based on selection (such as Applicant details once a Registration code is entered).

Information for agreements is vastly different than that for other types of authorization, so ideally there would be a separate form for agreements. However, it is understood that it defeats the purpose of the stated goal of a single licensing form that would be expanded, eventually, to include BIS and OFAC. Instead it may be useful to have the agreement specific questions in a separate section of the form.

With respect to validations, it is requested that those DTRADE validations currently in place carry forward to the new Form, in order to minimize rejection notices. For example:

- Currently, all entity information is collapsed into Block 5. Suggest a business rule in the new Form that at least one foreign end user be entered, as well as at least one source, manufacturer, etc. With respect to supporting documentation, suggest all current DTRADE rules be reproduced (i.e. requirements for USML Category 1, Part 130 inclusion, etc.)

### **Block 1**

We note that DDTC has added a field for those “Not registered with PM/DDTC”. In accordance with §123.1(a), all applicants must be registered with DDTC prior to submitting a license application. It would appear that this field is directly contradictory to the regulations.

AIA requests additional clarification of the inclusion of the “one time exemption” option for applicant type. It is unclear when this would be utilized as all the entities identified as exempt under §122.1(b) would appear to never need an export license. Those exemptions are very specific. If one of the exempt entities did require an export license, then their exempt status would be revoked as their scope of activity exceeds that which is identified as exempt and they’d revert back to being captured under §122.1(a). This option should be removed.

The field for Website should be an optional field as not all companies have websites nor do their websites provide information that is relative to the application request.

With regard to the question, “Does the transaction involve classified defense articles, programs or parties?” AIA questions whether the inclusion of ‘party’ was an oversight. When would a party be classified? Additionally, it could include a drop down menu as follows: “This transaction involves the export of classified: (insert drop down menu of choices to include technical data/software, hardware,

defense services or None)” as the Program could be classified but the specific transaction could be unclassified.

It appears that there is only room for one registration code. If an applicant is both an exporter and a broker how will this be addressed?

We suggest moving the “Subsidiary” information to Block 1 as this is part of the applicant information.

Blocks 1 and 5 request information about the Facility Security Clearance (FSC) code:

- “Facility Security Code (FSC)” should be corrected to “Facility Security Clearance (FSC) Code”
- The instructions for both blocks state “The Security Level selected must be the highest form of security that relates to the application”, however, we believe it should be changed to “Select the level of the facility’s security clearance.”
- The US and foreign security classification related to the transaction is covered in Block 3.
- Form should permit multiple FSC codes.

## **Block 2**

It should be specified if this is a required field, and if so which and how many POCs are required for each type of application.

We suggest having a field to be able to describe the role of each POC.

## **Block 3**

In its current format, it would appear that the country dropdown list only allows for the selection of one country. The form will need to be amended to allow for multiple country selection as that is quite common for technical data or defense service submissions.

Does “Original agreement number” refer to the base agreement? What about amendments? With no field to select “amendments”, it would appear that each submission would be assigned a new authorization number. This approach would significantly complicate actions such as balance tracking, both internally and within the USG, with relation to the AES System. Furthermore, without the ability to clearly identify amendment-type changes in the application, unnecessary delays as a result of excessive staffing and review is likely.

Is DDTC looking for TAA# or DSP-5 vehicle number?

In the Application Type section if “Reconsideration” is meant for “Proviso Reconsideration”, it should be changed for clarity. Should there be an “Other” for exceptional circumstances which can further be explained in the “Purpose of Transaction” field?

Currently, applicants have the ability to include proviso reconsideration requests as part of a broader amendment to an agreement. The form, as constructed, requires that the applicant submit an application as either an “amendment” or a “reconsideration” implying a single submission can no longer be used to address both requirements. We recommend instructions that provide clarification that reconsiderations are authorized as part of an amendment.

- Further, “denial” should be removed from the reconsideration drop down. If reconsidering a “denied” license, related cases will capture the prior denial number and the request should be treated as a “license” request and not a “reconsideration”.

We recommend revising the statement “Are Dual National or Third Country Nationals involved in this agreement?” to read “Are Dual National or Third Country Nationals requested as part of this agreement?” Applicants are not able to accurately answer whether or not D/TCNs are involved when/if the non-US entity chooses to implement 126.18.

The question regarding retransfer pursuant to §124.16 needs to be removed entirely as the provision will be removed from the regulations on September 1, 2016.

The form is structured to select the involvement of either dual nationals or TCNs but not both. A submission could conceivably have both and the form should be updated to allow for this type of submission.

We recommend removing “type” designator of “DUAL NATIONAL” or “THIRD COUNTRY NATIONAL” and country-by-country association applicable to each. This level of detail exceeds current requirements under §124.8(5) and is only required when specifically requesting a D/TCN from a §126.1 destination.

We recommend adding the “type” designator of “DUAL NATIONAL” or “THIRD COUNTRY NATIONAL” and further country-by-country association of each under the sub-section “If the DN/TCN Country is §126.1 as this level of detail is required for such D/TCNs.

We request clarification on how you would list multiple countries/individuals as the form does not currently support this.

With Sublicensing information required, the field should open up to allow information on sublicensing to be added here. It is currently limited to only “yes” or “no” answers regarding sublicensee participation.

The “123.14” citation appears to be incorrect. It should read “124.14 Information”

With recent changes that have removed the requirement to lodge export authorizations with Customs, the fields for identifying probable ports and date of exit from the U.S. should be eliminated. These are only probable ports and are always subject to change so not sure what purpose this field has.

When the form says “Describe changes from previous agreement”, should it say “amendment” rather than “agreement”?

If license is for “unshipped balance”, it appears that multiple licenses can be added. Can DDTC confirm that industry can do one unshipped balance license for multiple prior licenses?

The Related Case dropdown is too narrow to read the full description and should be expanded.

The field for entering related U.S. Government Contract Numbers needs to allow for identifying multiple contracts.

We noted a potential duplication on the form as the section for §123.14 requests information on the U.S. Government Contracts and security classification already addressed previously on the form and in particular in Block 3.

The field that reads “if Application type is: Export and Applicant is: Temporary” needs to be swapped to replace “Applicant” with “Application”.

We recommend combining Application types “Export” and “Import” into a single category of “License” since the particulars (temporary or permanent, data or hardware, etc.) are already asked later.

We recommend changing “Advisory Marketing License” to “Advisory Opinion”. The current designation is misleading. If seeking a license, the Form should be completed as such. If meant to address an Advisory Opinion (AO), an AO is not a license and calling it such might mislead.

In regards FMS/FMF, under the related cases drop downs the options FMF, FMS and Grant Aid should be deleted. None relate to DDTC authorization and FMF/FMS is already asked elsewhere. We also recommend deleting the requirement to provide the “Total value of defense articles on the original authorization.” Since the majority of Direct Commercial Sales applications associated with FMS/FMF sales are supporting in nature (e.g, sustainment, training, etc.), an applicant is not privy to any of the specific financial information associated with the original FMS Sale, as the sale of defense articles pursuant to FMS/FMF occurs under a direct contract between governments.

We recommend revising the entire “**UAV Information**” portion of the Form as follows:

- Change “UAV Information” to read “Missile Technology Control Regime Information”
- Change “Does this agreement involve Unmanned Aerial Vehicles (UAVs)?” to read “Does this agreement involve defense articles or technical data subject to “MT Controls?”
- Change: “If UAV is: Yes: Max payload:\_\_\_\_\_; Max Distance:\_\_\_\_\_” to read “If MT controlled, is the related defense article capable of carrying payload of 500kg or greater a distance of 300km or greater?” since the actual range and payload capabilities are only applicable in relation to MTCR CAT 1 and CAT 2 platform determination.

If not established as a Smart Form, we recommend the **Category XIX information** section include a selection of Not Applicable (N/A) as the vast majority of applications submitted are not related to USML Cat XIX.

#### **Block 4**

For the questions that relate to the permanent export of hardware, the applicant is asked for the USML category and SME status for §123.16(b)(1) and kits and components incorporated into manufactured items. First, those items identified and allowable under §123.16(b)(1) cannot be SME as outlined in §123.16(a); the SME question should be removed. Second, AIA cannot identify why DDTC would distinguish kits and components from other hardware and requests clarification. AIA suggests that these fields be removed.

The tabulation of hardware and manufactured abroad values in Block 4 is formatted in a way that would suggest it is only part of the Hardware field. As the value requested in this section relates to

Agreements, Defense Services, and Hardware, it is suggested that DDTC revisit the IT logic flow of this section in Block 4 as it does not appear to capture the intent adequately or completely. The valuation of the submission might be best served as a stand-alone, auto-populated field.

AIA requests DDTC to review the section for Export, Import, or Re-Export/Re-Transfer to determine whether requesting SME classification, USML Category and the other items are duplicative of previously requested items in Block 4. Additionally, DDTC should utilize the spelling of reexport and retransfer as defined in the ITAR rather than the hyphenated form identified on the DS-7788.

It is noted that there is no explicit question on whether a DSP-83 is required for the submission. The questions move directly as to whether one is attached or not. If a DSP-83 is not required as the USML Category is not SME, then the answer to the question would always be no and the applicant would then have to include an explanation. We find this to be an unnecessary step that can be easily resolved by including the question on whether a DSP-83 is required.

Where does a company put down the value of exports via the Canadian exemption?

#### **Block 5**

The field meant to collect the name/address of each Entity needs to be clearly identified and labeled as in its current state it was not readily recognized and could be misinterpreted as the address for the DSS Security Office relating to the question right above it and not the Entity.

See previous comment regarding the optional inclusion of Website information.

We noted the use of the Automated Export System (AES) Identification Code as a data point for collection. First, industry in general is not familiar with the Code DDTC is requesting for this field and requires explanation. Second, AES is now superseded by the Automated Commercial Environment (ACE). And lastly, foreign entities will not have such a Code requiring this field be an optional field. This field is not currently required for any submissions to DDTC and AIA questions its inclusion.

#### **Block 6**

§124.12 and 124.14 Certifications should be an automatic inclusion for all Application Types of Agreement or WDA and not be a checkbox listing. These are always required. By including checkboxes, it generates the misunderstanding that these sections of the regulations are optional.

A potential back-end programming issue may exist in the §124.14 Certification because when it prints to hard paper, the term 'Applicant' turns into "Armageddon".

§126.13 Certification should apply to all application types. It should be removed as an attachment to **Block 8** and included in its entirety within the DS-7788 form for ease of submission.

#### **Block 8**

If transmittal letter will still be required for agreements, this option should be added to the list of "Supporting Documentation."

Can a choice for "Supporting Documentation" be "Agreement" or "Amendment" as "Contracts" can be confusing and refer to an actual business contract?

**Conditions of Issuance Section**

There is a typo in paragraph 1C. It reads, "or any acting on their behalf" rather than "or anyone acting on their behalf".

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In conclusion, based upon the volume of recommended modifications and validations associated with this Form, to include development of the Form as a Smart Form and update of all Drop Down Selections, we recommend DDTC allow for a second publication for comment of the next revision prior to proceeding towards final publication and implementation.

AIA appreciates the opportunity to provide comments and looks forward to continuing to work with DDTC as it addresses changes to its IT structure.

Best Regards,



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