



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-7787 Disclosure of Violations of the Arms Export Control Act

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-7787 Disclosure of Violations of the Arms Export Control Act*. AIA enthusiastically supports the modernization of the disclosure process at the Department of State.

Below are member comments on the proposed form. However, while we support the Department's initiative to create an electronic format for submission of a Voluntary Disclosure and other types of notices to DDTC Compliance, the proposed form, fields and functionality do not enable a company to provide a full and accurate accounting of events for DDTC Compliance's consideration. Further, though the stated purpose of the Form is to minimize the burden on industry, we believe the proposed Form, in its current state, will actually increase the burden for industry.

To achieve the Department's goals, we suggest a more simplistic form that will still allow electronic submission, enable case assignment and industry tracking. We highly recommend the Form be "smart" in that it would highlight (or hide) fields, as appropriate, depending on prior responses.

A streamlined/more simplistic Form would include only the following fields:

- Registration
- Submission Type
- Related DDTC Compliance Case No. (s), if applicable
- Involved DDTC licenses or authorizations
- Brief Description
- Whether the submission involved Hardware, Technical Data, Defense Services or Other activities
- USML Categories involved
- Indicators for involvement of 126.1 countries, Significant Military Equipment, Classified
- The licensee or non-US party involved
- The countries involved

- Corrective Actions taken
- A Point of Contact for the submission

Given the varying applications for this Form, we recommend using “submission” or “disclosure” (as appropriate) in lieu of the word “violation” throughout the Form. Further, per 127.12(a), the Department strongly encourages the disclosure of information whenever persons “believe” that they *may* have a violation (emphasis added). Use of the term “Violation” may deter disclosure where parties are not certain that the conduct at issue constitutes a violation; whereas use of “submission” or “disclosure” terminology may help incentivize more companies to disclose and/or provide notice in more instances, thus capturing more and more accurate data for DDTC.

The list of Supporting Documentation (currently at Block 6) to be uploaded to the submission would be augmented with the following:

- Voluntary Disclosure/Notification
- Shipping Documents
- Empowered Official/Senior Officer certification
 - Per §127.12(e), a Voluntary Disclosure must be accompanied by a certification of an Empowered Official (EO) or Senior Officer. However, the EO or Senior Officer is not always (or even usually) the same person that would be electronically submitting the Voluntary Disclosure on behalf of some Companies. Further, for most large companies, having a Senior Officer electronically sign the form is not practicable or realistic. Recommend the Empowered Official/Senior Officer sign a separate letter/certification that is uploaded as supporting documentation.

Further, the Form, Instructions and Notice do not discuss the manner in which the Form will be submitted to DDTC Compliance and the authentication required for submission. As noted above, for most large companies, having a Senior Officer electronically sign the form is not practicable or realistic. Therefore, it is recommended that identified Company POCs are authorized to submit the Form on behalf of the Company. It is also recommended that the electronic submission be separate/outside of DTRADE and that only company-identified personnel are authorized to submit on behalf of a company.

Finally, we recommend the ability to receive Case # immediately upon submission. This will enable tracking and allow companies to more timely reference the Case in follow on License submissions.

Below are further comments specific to the form as currently constructed:

General

AIA suggests the name of the form be updated to *Disclosure of Possible Violation of the Arms Export Control Act*. It appears DDTC’s intention is to use this form to request details from companies about their export activity (Block 2: *Response to DDTC*). However likely, not every occasion where DDTC requests such information will lead to the uncovering of a violation. Use of the current title yields an impression that any information provided on the form is a foregone conclusion that a violation has transpired.

We noted that none of the ‘Add’ buttons worked.

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. As laid out, this discrete form does

not appear to take that approach and AIA would like clarification on how the IT logic outlined in the form will function.

Block 1

The instructions for this block indicate that industry can select a case number from a drop down menu. AIA is unclear how DDTC plans to enter all case numbers into the drop down menu for industry to choose from and maintain the list on a static form.

Block 3

AIA suggests that the field *Number of Violations* be removed. It is believed that this field is highly subjective even if it is meant to capture industry's assessment and could result in differing opinions on whether an act is or is not a violation of the AECA. Industry is concerned that if they identify a certain number of violations and DDTC determines a different number, that this discrepancy would be deemed an omission of information or the provision of false information resulting in greater exposure to penalty. AIA believes the narrative portion of the form would provide ample detail to DDTC Compliance to determine the nature and volume of violation.

AIA requests the removal of the field *Discovery Date* as it is unclear and provides for inconsistent interpretation. For example, many possible issues surface within industry daily where analysis is conducted and upon receiving all the facts, a determination is made if a violation has occurred. More times than not, the investigation leads to a misunderstanding of the regulations by a non-trade compliance professional and it is deemed not a violation. In limited cases, the facts bear out to be evidence of a violation. Some would view the date the issue surfaced to compliance professionals to start looking into the matter as the discovery date while others would identify the date that all the facts were made available to determine if a violation occurred as the discovery date. If DDTC wishes to keep this field, AIA suggests updating the instructions to clearly identify that this field is meant to capture the date the analysis proved a violation occurred as that can be the only date of discovery.

The instructions for this block indicate that industry can select a subsidiary name from a drop down menu. AIA is unclear on how DDTC plans to effect such a drop down menu in a static form.

Block 5

AIA requests that the option of 'Legal Counsel' be added to the drop down list. Several AIA member companies submit disclosures through their Law Department.

The form does not have a place for signature. AIA questions whether this was intended.

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

Best Regards,

A handwritten signature in black ink, appearing to read 'Remy Nathan', with a long horizontal flourish extending to the right.

Remy Nathan
Vice President – International Affairs
Aerospace Industries Association