



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-7789 Statement of Material Changes

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-7789 Statement of Material Changes*. AIA enthusiastically supports the modernization of the registration amendment process at the Department of State. Below are member comments on the proposed forms.

General

The approach of developing four different forms all assigned the same number, to be used in four different ways, is confusing. Ideally, DDTC should establish an electronic system to submit registration information real-time much like user accounts are established for online businesses. Entering a company's Registration Code and password would bring forth all of the company's information and industry would be able to make changes and hit save.

The 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, these forms do not appear to take that approach and AIA would like clarification on how the IT logic outlined in the forms will function. Whenever possible we recommend that the fields are auto-populated based on selection (such as Applicant details once a Registration code is entered). Additionally, AIA requests clarification of the submission method of the forms and whether it is intended to follow the methodology of the DS-2032; submit the form unsigned and attached a .pdf signed version. The instruction reference to signing the form **electronically** is unclear.

The title of the forms, *Statement of Material Changes*, characterizes changes that are of a more significant nature than all the changes required by 22 CFR 122.4. A 'material change' is attributed to a change in a company that affects market value. There are many changes to the registration required by 22 CFR 122.4 that are not of a 'material' nature to the registrant. For instance, updating the address of a Board Director is unlikely to meet the threshold of materiality. It should be noted that section 22 CFR 122.4 reads as

Notification of Changes in Information Furnished by Registrants; it makes no reference to material changes. AIA suggests DDTC reconsider the title of DS-7789 to more closely reflect the purpose of the forms. AIA submits for consideration *DS-7789 Notification of Registration Change*.

There are several references throughout the forms to *Applicant*. These forms are meant for use only by those that are already registered with DDTC, we suggest changing all references to *Registrant*.

For all of the Block 1 fields, AIA suggests that this block be identical to the DS-2032 Block 4 information. Reasons behind altering the field to Natural Person or Entity were not readily apparent.

AIA requests that the Country and State fields be established with drop down choices.

The Instructions were confusing as they attempted to address four different forms at the same time. It is recommended to have one instruction sheet per DS-7789 form.

The federal law references identified in Block 6 on all forms are inconsistent with and much broader than the references provided in company registration letters issued by DDTC. Suggest replacing with '*federal law (22 CFR 127.2; 22 USC 2778; 18 USC 1001)*'. Additionally, AIA requests that DDTC consider allowing Empowered Officials to sign off on updates for administrative changes on the Non-MAD Related DS-7789.

The Form, Instructions and Notice do not discuss the manner in which the Form will be submitted and the authentication or system required for submission, other than to say via "DDTC's electronic case management system and respondents will certify the data via electronic signature".

- It is unclear whether the certification via electronic signature is a submitting POC or the "Senior Officer" (as referenced in Block 6). For most large companies, having a Senior Officer electronically sign the form is neither practical nor realistic.
- We recommend the Senior Officer sign a separate letter/certification that is uploaded as supporting documentation and the company POC (identified in Block 5) be authorized to file/submit with their electronic signature.

Nether the Form DS-7789 or the Form instructions identify which entries are "mandatory" for application submission. We recommend that the Form itself or the associated instructions be updated to clearly identify when an entry is required for submission.

Finally, while we recognize that a transition to an electronic form is a critical step and will potentially provide long term benefits to both DDTC and industry, we request and recommend that at least six months pass between final form publication and implementation date. A six-month implementation window will allow industry sufficient time to implement necessary modifications to government system interfaces, industry automated compliance systems and critical internal processes to support the new form.

Below are specific comments addressing certain aspects of the individual DS-7789's.

Non-MAD Related DS-7789

In general, this form is still organized to address Mergers, Acquisitions or Divestitures (MAD) activity and not general administrative updates to a company's registration. It should be assumed that the use of this form is for all *Other* changes to the registration. Having questions in Block 2 asking about MAD and

60 day notices is unnecessary. AIA suggests that Block 2 be completely rewritten to only address those items DDTC deems to fall into the *Other* category. Additionally, radio buttons (or a drop down instead) should be added to Block 2 for changes in Officers, USML Categories, US Subsidiaries, Non-US Subsidiaries, etc.

AIA suggests that the form include a large free form field to accommodate *Other* changes or that the following descriptions for changes be used instead:

- Addition of new person to Block 7
- Removal of person from Block 7
- Update address of a person listed in Block 7
- Name change of a person listed in Block 7
- Addition of new subsidiary or affiliate to Block 9
- Removal of subsidiary or affiliate from Block 9
- Update address of a subsidiary or affiliate listed in Block 9
- Name change of a subsidiary or affiliate listed in Block 9
- Addition of new foreign subsidiary or affiliate to Block 10
- Removal of foreign subsidiary or affiliate from Block 10
- Update address of a foreign subsidiary or affiliate listed in Block 10
- Name change of a foreign subsidiary or affiliate listed in Block 10

DDTC may also wish to add a checkbox option for notification of indictment or other charges.

In addition to these new fields, AIA requests the form be able to accommodate multiple selections at one time. For instance, if a member of the Board is replaced with a new person, the update would require access to more than one selection (Addition of new person to Block 7 and Removal of person from Block 7). Also, when companies restructure and names of entities are changed multiple updates may be required to Blocks 9 and 10. Currently the form appears to be a one-update-at-a-time submission. Not only would completing multiple forms be time consuming for industry, it will unduly burdensome to DDTC to process the multiple forms.

If DDTC chooses to avoid the free form field for *Other*, below are suggested field additions:

If change type is Addition of new person to Block 7, complete the following fields:

- Last Name
- First Name
- Middle Name
- Date of Birth
- Place of Birth: City, Country, State/Province
- Citizenship(s)
- Social Security Number or Equivalent
- Position/Title
- Permanent Resident Card
- Home Address: Street Address, Apt, City, Country, State/Province, Zip/Postal Code

If change type is Removal of person from Block 7, complete the following fields:

Provide name of person to be removed

- Last Name
- First Name

- Middle Name

If change type is Update address of a person listed in Block 7, complete the following fields:

- Last Name
- First Name
- Middle Name
- New Home Address: Street Address, Apt, City, Country, State/Province, Zip/Postal Code

If change type is Name change of a person listed in Block 7, complete the following fields:

Provide currently listed name of person to be changed

- Last Name
- First Name
- Middle Name

Provide new name

- Last Name
- First Name
- Middle Name

If change type is Addition of new subsidiary or affiliate to Block 9, complete the following fields:

Manufacturer Exporter Broker

- Legal Business Name
- Doing Business As Name
- Street Address (No PO Boxes)
- City
- State
- Zip/Postal Code
- Telephone

If change type is Removal of subsidiary or affiliate from Block 9, complete the following fields:

Provide the Legal Business Name of the subsidiary or affiliate removed

- Legal Business Name
- Doing Business As Name

If change type is Update address of subsidiary or affiliate listed in Block 9, complete the following fields:

- Legal Business Name
- Doing Business As Name
- New Street Address (No PO Boxes)
- City
- State
- Zip/Postal Code
- Telephone

If change type is Name change of subsidiary or affiliate listed in Block 9, complete the following fields:

Provide currently listed name of subsidiary or affiliate to be changed

- Legal Business Name
- Doing Business As Name

Provide new name

- Legal Business Name
- Doing Business As Name

If change type is Addition of new foreign subsidiary or affiliate to Block 10, complete the following fields:

Manufacturer Exporter Broker

- Legal Business Name
- Doing Business As Name
- Street Address (No PO Boxes)
- City
- Country
- Province
- Zip/Postal Code
- Telephone

If change type is Removal of foreign subsidiary or affiliate from Block 10, complete the following fields:

Provide Legal Business Name of foreign subsidiary or affiliate removed

- Legal Business Name
- Doing Business As Name

If change type is Update address of foreign subsidiary or affiliate listed in Block 10, complete the following fields:

- Legal Business Name
- Doing Business As Name
- New Street Address (No PO Boxes)
- City
- Country
- Province
- Zip/Postal Code
- Telephone

If change type is Name change of foreign subsidiary or affiliate listed in Block 10, complete the following fields:

Provide currently listed name of foreign subsidiary or affiliate to be changed

- Legal Business Name
- Doing Business As Name

Provide new name

- Legal Business Name
- Doing Business As Name

If change type is Other, complete the following field:

Provide a general description of the change required

Additional comments on Non-MAD related blocks:

Block 3 and 4 do not appear to exist in this version of the form.

Block 5 should be the same as the filer/submitter

As stated in the General comments, for most large companies, having a Senior Officer electronically sign the form is not practical or realistic. Recommend the Senior Officer sign a separate letter/certification that is uploaded as supporting documentation. Email request should be removed and the POC in Block should be contacted with any questions.

MAD Related: 5-day Buyer and Seller DS-7789 and MAD Related: 60-day DS-7789

As these forms are to be used for all MAD activity reported in either a 5- or 60-day period, several questions and references in Block 2 can be removed. For instance, the *Other* choice is not required as all *Other* registration changes will be handled on the Non-MAD Related DS-7789 form. Additionally, there is no need to identify 5 or 60 day notifications; the use of either form already addresses this.

Adding authorizations one by one with an “Add” button is unrealistic when there may be hundreds of authorizations involved. Request there be an “upload” button to attach a list of authorizations that will transfer. We noted that none of the ‘Add’ buttons worked.

Block 5 should again the same as the filer/submitter.

We again emphasize our comments previously that having a Senior Officer electronically sign the form is not practical or realistic and we recommend the Senior Officer sign a separate letter/certification that is uploaded as supporting documentation. The POC in Block 5 should be contacted with any questions.

MAD Related: 60-day Buyer DS-7789

In general, we believe this entire form/part should be removed, as ITAR 122.4(b) only requires the Seller to provide a 60-day advance notice. If form/part remains, see below for recommended changes:

In Block 1 we request the removal of “Divesting party” since the title of this form is “Buyer”.

In Block 2 we request the removal of “Divesture” and “Other”. Title of this form is “Buyer” and, as such, these are not applicable. Also the “5 day” notice should be removed. Title of this is “60-day notice”. The form should also allow for “intended” date.

Comments previously on Blocks 5 & 6 still apply to this section.

AIA requests the removal from Block 4 Support Documentation a *Copy of ITAR compliance material (to include export compliance policies and procedures) in effect immediately after the transaction closes.* There is no requirement in the regulations to provide copies of these procedures and nor do they have any bearing on the MAD event.

MAD Related: 60-day Seller

In Block 2 we request the removal of "Acquisition" and "Other" and related questions. Title of this form is "Seller" and, as such, these are not applicable. "5 day" notice and related questions should also be removed. Title of this is "60-day notice" and thus, not applicable. Allow for "intended" date.

In Block 3 we request the removal of "Acquiring party" and related questions. Title of this form "Seller" and, as such, those are not applicable. Authorizations to Transfer: Adding authorization numbers one by one with an "Add" button is unrealistic when there may be hundreds of authorizations involved. Request there be an "upload" button to attach a list of authorizations that will transfer.

Comments on Blocks 5 & 6 previously still apply.

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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,



Remy Nathan
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Aerospace Industries Association