

**SUPPORTING STATEMENT FOR  
PAPERWORK REDUCTION ACT SUBMISSIONS**

**Disclosure of Information Related to Potential Violations**

**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).

In accordance with ITAR Part 127, DDTC maintains a robust program to ensure compliance with the AECA and ITAR. As a part of this program, DDTC encourages the voluntary disclosure of potential violations of the AECA, ITAR, and any regulation, order, or authorization issued thereunder. The information disclosed is analyzed to determine whether administrative action concerning any violation is warranted; the voluntary nature of such a disclosure may be considered

a mitigating factor in determining the administrative penalties, if any, which may be imposed. Failure to report a violation may result in circumstances detrimental to U.S. national security and foreign policy interests and will be considered as 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.

The ITAR also imposes a duty to notify DDTC of potential violations of the AECA and ITAR in certain instances. In accordance with ITAR §§ 123.17(j), 126.1(e)(2), 126.16(h)(8) and (n), and 127.17(h)(8) and (n), any person involved in or with knowledge of activities identified or prohibited by these sections must notify DDTC of the violations or produce documents and information, respectively.

In certain circumstances, DDTC may also request or direct a registrant or another party to disclose details about a particular transaction or program based on information it receives from partner federal agencies or other sources. The information required for a directed disclosure is largely the same as that requested in a voluntary disclosure and must be sufficient for DDTC to determine the precise nature of the violation, the circumstances surrounding it, and any remediation efforts that have been put in place.

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.

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)?

Disclosures of potential violations of the AECA, ITAR, and any regulation, order, or authorization issued thereunder are currently submitted in paper form, by mail

or other delivery service; however, DDTC is in the process of developing a new case management system that will automate and streamline many of DDTC's current processes. Form DS-7787 will be incorporated into this new system. Once deployed, respondents will have the option of submitting disclosures in hard copy via mail or other delivery service or by completing the Form DS-7787 electronically through the case management system accessible on DDTC's website.

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, or a third-party, 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 statute and regulation.

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 maintenance of all records for a minimum period of five years.

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* on June 20, 2016 (81 FR 39994) soliciting public comments for this collection. DDTC received nine substantial comments in response, summarized below:

Several commenters opined that the DS-7787 form should merely function as a cover sheet for disclosure submissions in order to allow submitters to use a more narrative format to notify DDTC of potential violations. DDTC notes that the intended use of the form is to utilize uniform data fields for greater search and analytics capabilities and readability in the case management system; the unlimited-character text boxes associated with each data field will allow ample room for narratives to be included in the submission and therefore this comment was not accepted. DDTC does recognize, however, that the form may not capture complex information pertaining to a specific disclosure, and will add an “Additional Relevant Information” text box and the ability to upload supporting documentation. DDTC stresses that the specific data fields required in the form serve as the primary vehicle for electronically disclosing potential violations, notwithstanding the availability of an open text box.

Other comments concerned the burden associated with the form, which DDTC reasons to be an average of 10 hours per submission. These commenters argued that a 10-hour burden is inadequate to capture the amount of effort that is required by certain complex disclosures; DDTC appreciates these comments but replies that 10 hours is an average figure, and while some disclosures are very complex, the vast majority of disclosures declared on an annual basis are discrete instances which take far less than 10 hours per response. Therefore, DDTC believes 10 hours to be an accurate representation of the total average burden per response.

Several commenters also requested that the instructions be revised to, among others, define which fields of the form are mandatory; explain how to determine the number of violations; clarify what information is required for “related disclosures,” “discovery date,” and “relevant Department of State license(s) or authorization(s)”; describe the disclosure method for companies and individuals under a consent agreement or similar reporting arrangement; and describe the method of submission of the form. DDTC appreciates all of these comments and has re-worked the instructions based on this feedback; the instructions are posted and available for review along with the revised form on DDTC’s website at [www.pmdrtc.state.gov](http://www.pmdrtc.state.gov).

Another commenter noted that the form does not discuss how to make a disclosure that involves classified information. DDTC has addressed this guidance in the revised instructions and stresses that classified information should never be included on the DS-7787. Similarly, guidance on making a disclosure related to a country proscribed by ITAR § 126.1 has also been included in the instructions.

Multiple commenters also asked that the form be updated to accept submissions from third parties such as an outside counsel. DDTC notes that the ITAR requires a Senior Officer or empowered official, as defined in ITAR Section 120, to certify the disclosure, but that outside counsel may be listed as a point-of-contact for the submission; this option has been added to the form.

In a similar vein, some commenters requested clarification on how to disclose violations that involve a sub-licensee or subcontractor, and also how non-U.S. entities (e.g. authorized end-users or foreign consignees) will submit disclosures. DDTC replies that sub-licensees and subcontractors should be included as involved parties on the form; if the violation of the sub-licensee or subcontractor related to one of the discloser's authorizations, the discloser may have responsibility for the violation and it should be reported as such. If the respondent is reporting a violation of a subcontractor or sub-licensee that is not related to any of the respondent's authorizations, the option "Third party disclosure" should be selected. Non-U.S. entities filing disclosures electronically will be required to create a unique username and password to access the case management system and file a disclosure directly.

One commenter also requested that DDTC work with its counterpart bureau in the Department of Commerce to develop a joint disclosure form. The commenter argued that since the Obama Administration's Export Control Reform (ECR) initiative has transferred oversight of dozens of commodities from the U.S. Munitions List (USML) to the Department of Commerce's Export Administration Regulations (EAR), a joint form would capture instances where a violation occurred prior to a commodity being moved from the USML to the EAR. DDTC replies that the DS-7787 will exist beyond the ECR initiative, and submitters are

required to explain the violation in detail on the form, during which time any ECR distinctions should be made.

Similarly, several commenters remarked that DDTC should include a field to allow respondents to include “mitigating information” regarding the particular matter they are disclosing. DDTC notes that the form, as written, contains all of the information required by ITAR Section 127. Additionally, as addressed above, DDTC has added a field for additional relevant information on the form, and notes that this would be the appropriate place to enter mitigating and/or aggravating information that does not more properly fit into another field. The respondent is encouraged to provide as much detail of remedial measures and mitigating factors as they are able throughout the existing fields; however, determinations of exactly what constitutes “mitigating information” are made solely by DDTC; therefore, such a separate field will not be added to the form.

One commenter also requested DDTC to address the information protection and data security elements of the case management system. Recognizing the sensitivity of the data submitted in a disclosure, the system will meet all current government standards for data security. Individual users will also be required to create a unique username and password to access the system and submit information over an encrypted connection. Similarly, DDTC will protect information from public disclosure to the extent permitted by law; DDTC encourages submitters to clearly mark proprietary information in accordance with the Department of State guidelines at 22 CFR § 171.12.

One commenter requested that the form include a question to declare whether a disclosure involves Major Defense Equipment (MDE), which DDTC appreciates and has incorporated into the form.

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.

A privacy impact assessment (PIA) was conducted for DDTC's new case management system and can be viewed at <https://www.state.gov/privacy>. The relevant System of Records Notice, STATE-42, Munitions Control Records, is in the process of being amended to include this collection. Once finalized, STATE-42 will be published in the *Federal Register* and will be available at <https://www.state.gov/privacy>.

Respondents to this collection may review ITAR § 126.10, which describes DDTC's policy regarding the disclosure of information.

11. Are any questions of a sensitive nature asked?

The Department of State is not soliciting any information regarding sexual behavior, religious attitudes, or other 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 § 122.5. An estimated 1,500

annual responses are expected from a pool of approximately 1,500 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 15,000 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 \$43.75 per hour (\$31.25 average wage x 1.4 multiplier). Therefore, the estimated annual burden hour cost to respondents is \$656,250.00.

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

Currently respondents primarily utilize mail services such as UPS and FedEx to disclose violations to DDTC. DDTC estimates the monetary cost to respondents per submission to be approximately \$35.00. Therefore, the annual monetary burden to all respondents is estimated to be \$52,500.

The monetary burden to respondents will decrease once the electronic DS-7787 is launched. Respondents who elect to submit disclosures electronically will save, on average, \$35.00 per response because there will be no costs associated with electronic submission.

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

Conducting this collection costs DDTC approximately \$143,052 per year. This figure is broken down further in the chart below.

Role	Average Hourly	Hours Spent	Average Annual
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	<b>Wage</b>	<b>Annually</b>	<b>Cost</b>
Compliance Specialist Review/Response	\$51.00 ( <i>average, GS-11 through GS-14 or equivalent in Washington, D.C.</i> )	2,625 (1.75 hours per response, on average)	\$133,875
Supervisory Review	\$70.59 ( <i>average, GS-15 or equivalent in Washington, D.C.</i> )	208 (4 hours per week, on average)	\$14,683
<b>Average Annual Cost:</b>			<b>\$148,558</b>

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

DDTC previously miscalculated the costs enumerated in questions 13 and 14. Approval of this revision will not increase the costs associated with responding to or conducting this collection. In fact, approval of this revision is likely to lower the burden by allowing respondents to respond electronically, thereby eliminating the respondent costs associated with mailing requests.

DDTC is revising this collection to allow electronic submission via Form DS-7787. Form DS-7787 was developed in order to:

- Provide respondents the opportunity to submit information to DDTC electronically, eliminating the monetary burden for those respondents who choose to utilize the electronic form, and
- Structure the data to be more easily assessed by DDTC.

There are no changes to responses sent via mail or other delivery service.

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.