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Submitted Via Email

August 16, 2016

Lisa Aguirre
Managing Director
Directorate of Defense Trade Controls
U.S. Department of State

Re: 60-Day Notice of Proposed Information Collection: Disclosure of Violations of
the Arms Export Control Act (81 Fed. Reg. 39994, June 20, 2016)

Dear Ms. Aguirre:

United Technologies Corporation ("UTC") appreciates the opportunity to submit the following comments with regard to the June 20, 2016 notice of request for public comment pertaining to the adoption of Form DS-7787 to replace the current letter-based process for submitting voluntary disclosures pursuant to Part 127 of the International Traffic in Arms Regulations ("ITAR") to the Directorate of Defense Trade Controls ("DDTC").

We understand through our participation in DDTC's Information Management Systems Stakeholder Group that Form DS-7787 will be implemented via an IT interface, and that users will enter information into the interface directly, with appropriate fields becoming available depending on the user's responses. We further understand that the draft Form DS-7787 provided by DDTC for comment is a representation of the fields that will be available through the IT interface, and that users therefore will not complete the PDF form for upload or other submission to DDTC. We anticipate that this interface will allow individuals who are entering information to save their progress as they proceed. In addition, disclosure submissions tend to undergo review by several individuals within our operating units and by UTC prior to submission. We expect that the system will allow us to establish access privileges in a manner that allows such review to occur. UTC's comments are based on these understanding and assumptions.

A. Specific Feedback Requested on Information Collection

With regards to the four topics on which DDTC specifically requested feedback, UTC comments as follows.

1. Proposed Information is Necessary for the Proper Function of the Department

The proposed information collection is necessary for the proper function of DDTC and the information collected via Form DS-7787 is generally the same as that currently collected via letter-based submission for voluntary disclosures.

2. Evaluate Accuracy of Estimated Time Burden of Information Collected

UTC believes that the ten-hour time estimate proposed by DDTC is low. If this estimate is limited to the time spent to complete Form DS-7787 itself, obtain necessary review of the content of the form, and submit it to DDTC, then 10-15 hours is a fair estimate of this burden. However, significant time must be invested to undertake a comprehensive internal review to obtain the information that is necessary to complete the form and to meet the requirements of a full and complete voluntary disclosure in accordance with ITAR Section 127.12. This includes full identification of the relevant facts, parties involved, defense articles and/or services involved, the root cause(s) of the violation(s), and the corrective actions that will be taken to remediate the violation(s). While the time may vary depending on the complexity and scope of the issue, we estimate the burden from launching an internal review through to submission of a disclosure to range from 40 hours to over 100 hours.

3. Enhance the Quality, Utility and Clarity of Information Collected

A primary benefit of automating submission of disclosures via Form DS-7787 will be to enable DDTC to track receipt of submissions. Use of a standard form may also facilitate DDTC's review of the information and ensure that certain information that DDTC wants to receive are provided by all submitters. However, the standard format may constrain the submitter's ability to fully explain the facts and circumstances which, in turn, can limit DDTC's ability to understand the issues. This may lead to additional requests from DDTC and responses by the submitter to clarify the information, thereby increasing the total time needed to conclude DDTC's review.

Moreover, if DDTC seeks additional information or has questions, the fields in the form may not be conducive to providing an accurate response. We would not be able to replicate the questions and show our responses using the form, which means we would either have to bypass use of the form and submit a narrative response, or we would have to complete certain fields on the form merely to use it as a vehicle to upload a document containing the narrative response. This would undermine the intent of this initiative and increase the burden.

To the extent that the form requires a submitter to make subjective determinations on certain fields, such as the number of violations or violation type, the information has diminished reliability and utility. For example, where the underlying issue relates to potential access to technical data, individuals may differ on how to calculate the number of violations. Similarly, where one action leads to several different types of violations, individuals may differ on whether all violation types that fit should be identified or only the primary violation type. As indicated in our comments below for certain blocks and the associated instructions, DDTC should ensure that

the instructions are clear and consistent so submitters understand the input to provide and DDTC receives quality information.

Lastly, if the objective of the automation is one-directional (*i.e.*, automate submission *to* DDTC, but not back to the submitter), then UTC believes that its utility and benefit to industry is marginal. UTC would encourage DDTC to consider a more comprehensive user interface for disclosures. A fully electronic system, similar to DTrade, through which users can register and then submit and track disclosure submissions, receive communications from DDTC (*e.g.*, case numbers, supplemental inquiries, close-out letters, etc.), and provide supplemental information for specific cases – all electronically – would be of greater benefit to DDTC and industry. Such system also would be secure and eliminate delays caused by mailing paper correspondence, and could serve as a central repository of disclosure-related submissions for companies that may not have separate case management systems, thereby enhancing record retention efforts.

4. Minimize the Reporting Burden

Although use of a standard form may minimize the initial time needed to provide the required information to DDTC, as stated above, the form may constrain the submitter's ability to fully explain the facts and circumstances, which can limit DDTC's ability to understand the issues. This may lead to additional requests from DDTC and responses by the submitter to clarify the information, thereby increasing the total time needed to conclude DDTC's review.

B. Specific Comments on DS-7787 and Instructions

UTC welcomes DDTC's efforts to automate the voluntary disclosure submission process and proposes that DDTC run a pilot program or otherwise beta test Form DS-7787 with industry as the form and IT interface are further developed and implemented. UTC would welcome the opportunity to participate in such an effort.

As a general matter, it is important to note that the information provided in a disclosure contains sensitive information about the submitter's business and commercial activities that is privileged and/or confidential and not customarily released to the public. Therefore, it is exempt from the public access provisions of the Freedom of Information Act. UTC ordinarily includes statements to this effect in our disclosures, but the form does not allow us to do this. UTC recommends that DDTC provide explicit statements at the end of the form acknowledging that the information is confidential and not subject to public release and detailing steps it will take to notify the submitter should a demand for its disclosure be made.

UTC provides the following comments regarding the form and content of Form DS-7787 and the associated instructions.

1. Block 1: Identifying Information

Case Number. The instructions state that we are to select the case number from the drop-down menu, which suggests that there will be a pre-populated list of case numbers. It is unclear how

DDTC will populate this list and if all case numbers are listed, there is a potential that a submitter could select an incorrect case number. We recommend instead that there be a check box to identify a “New Case,” and for existing cases there be an open text field where we can type in the assigned case number, which will minimize error.

Applicant. UTC recommends that all references to “applicant” be replaced with “submitter” – a term that is used in the instructions – as Form DS-7787 is used for disclosure submissions and not license applications.

Address. The instructions state that this field is pre-populated with the address entered when the submitter registered with DDTC *or* created a profile to use the online submission system. Although UTC is accountable for ITAR compliance by all its subsidiaries, it has been our long-standing practice for our operating units to prepare and submit voluntary disclosures that are signed by empowered officials with authority to sign on behalf of that unit. Pre-populating the address field with UTC’s address from our registration would incorrectly identify the location of our operating unit on the form. If DDTC’s intent is for the registrant to be the submitting entity in all cases, UTC believes this causes concern with the certification that is required under ITAR Section 127.12(e) (Block 5). UTC requires that the individual making the certification must be sufficiently close to the information being disclosed and must be authorized to make the certification on behalf of the submitting operating unit. This is critical to our compliance program. Separately, we note that not all persons/entities that submit disclosures are required to be registered. Therefore, UTC requests that the address field be tied to the user profile, which provides for consistency across submitters and avoids concerns over the propriety of the certification. It also provides flexibility to companies like UTC that have operating units submit directly because those entities can set up user profiles in that manner, while registrants who determine that it is appropriate for disclosures to come only from them can set up a single user profile.

2. Block 2: Submission Information

Type of Submission. UTC proposes that “Disclosure” be revised to read “Voluntary Disclosure” and that “Directed Disclosure” be added as a specific submission type (currently the instructions specify that directed disclosures be identified as a “Response to DDTC”). UTC also recommends that DDTC create new submission types for withdrawals (when a voluntary disclosure was made but the submitting entity subsequently determines there was no violation) and other types of notifications (such as an IT intrusion), or should include explicit guidance in the instructions on how to identify these types of submissions.

Extension Request. If the submission type is an “Extension request”, the explanation should also include a proposed due date for final submission.

Other. If the submission type is “Other” and the submitter needs to identify what it is, then an explanation of why the designated categories do not apply is superfluous.

Classified. The instructions identify this as being in Block 3 but it should reference Block 2.

3. Block 3: Violation Information

Number of Violations. UTC requests that DDTC provide guidance in the instructions regarding how the number of violations should be calculated. For example, how does DDTC intend for submitters to assess the number of violations in cases involving unauthorized potential access by multiple individuals to an information technology system housing various documents containing ITAR-controlled technical data, or noncompliance over time with an administrative requirement, such as using a destination control statement that did not quote verbatim the language required by ITAR Section 123.9(b)?

UTC also notes that while the form permits the user to “disclose violations of a different type” by selecting “Add” at the end of Block 3, the instructions do not address how to handle situations involving the same type of violation over various dates or under various authorizations.

Relevant License or Authorization. Similar to our earlier comment on case numbers in Block 1, the instructions infer that there will be a pre-populated list in a drop-down menu. It is unclear how DDTC will populate this list and if all case numbers are listed, there is a potential that a submitter could select an incorrect authorization number. We recommend instead that this be an open text field where we can type in the relevant authorization number or exemption citation to minimize error. UTC also notes that this is a required field. However, not all violations may have an applicable authorization or exemption to cite. Therefore, UTC suggests that DDTC add an “N/A” checkbox.

Governmental or Non-Governmental Program or Contract. Most export transactions will involve some sort of contract, whether a services contract, purchase order, or other formal agreement. UTC recommends that this field be limited to government-sponsored programs or contracts or that DDTC clarify in the instructions what types of non-governmental programs or contracts would be implicated by this question. We believe that absent such guidance, disclosing entities are unlikely to complete this field, which, per the instructions, is “not required.”

Violation Type. UTC suggests adding “potential access to technical data” as a violation type, but notes that this and other non-enumerated types of violations could be identified via the “other” field and accompanying text box for explanation. UTC also recommends that DDTC provide additional guidance on how to identify the violation type. For example, failure to properly manage an authorization may lead to unauthorized exports, failure to report, failure to maintain records and/or improper use of exemptions. Without clarification, we anticipate that submitters will interpret this requirement differently with some checking all the applicable types but others selecting only the primary type.

ITAR Section Violated. This required field does not contemplate disclosure of violations of the terms of a license (including provisos) or the Agreement Guidelines. UTC therefore suggests that DDTC add such categories, add an “N/A” checkbox, or provide guidance in the instructions regarding how to tie such violations to a specific ITAR citation.

U.S. Munitions List Category. The options in the current drop-down fields do not include all possible U.S. Munitions List (“USML”) sub- and sub-sub-categories, including pre-Export Control Reform (“ECR”) subcategories. UTC requests that DDTC ensure that all current and pre-ECR USML categories and subcategories are available for selection.

This section also does not otherwise address ECR considerations, such as whether an item has, since the date of violation, transitioned to the Export Administration Regulations and how it is currently classified. We suggest adding a field or fields to address ECR impact and providing guidance on how to address ECR impact.

Lastly, UTC notes that not all ITAR violations involve a USML category (e.g., recordkeeping or other administrative violations); however, this is a required field. UTC therefore suggests that DDTC add an “N/A” checkbox.

Persons/Entities Involved. The instructions for this required section specify that the disclosing party must “[p]rovide the complete identities and addresses of all persons known or suspected to be involved in the activities giving rise to the violation.” UTC notes that privacy laws in many other countries prohibit disclosure of personally identifiable information about individuals. Additionally, companies may be hesitant to identify former employees who were involved in a violation, but whom the company was unable to contact while investigating the matter. UTC therefore requests that DDTC address this tension in the instructions by acknowledging that in certain situations disclosing companies may be restricted or prohibited from providing personally identifiable information about individuals, and stating that in such cases the disclosing company is only required to provide information regarding entities involved in the violation.

UTC also suggests that DDTC clarify whether entities that are already identified in Block 1 and in Block 3 as a subsidiary need to be repeated here.

Countries Involved. UTC notes that not all ITAR violations involve another country (e.g., recordkeeping or other administrative violations); however, this is a required field. UTC therefore suggests that DDTC add an “N/A” checkbox.

Exact Circumstances Surrounding the Violation. Recognizing that one of the identified types of “other supporting material” in Block 6 is a written narrative, UTC requests that DDTC provide guidance in the instructions regarding whether disclosing companies may complete this field with “See Attached” if a written narrative is being provided as an attachment.

UTC also notes that there is a typographical error in the form. We suggest the following change: “Detail the exact circumstances surrounding the violation including when, where, how, and why the violation occurred ~~discovered~~.” (The next field in the form asks how the violation was discovered.)

The instructions state that mitigating factors should be included in this field. UTC recommends that DDTC include a new field for mitigating factors because they may not necessarily relate to the circumstances surrounding the violation. Further, mitigating factors are sufficiently

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important and should be set forth separately. Issues arising out of ECR that would be viewed as mitigating can also be included here.

Root Causes. UTC recommends that this field appear before the corrective actions because it is necessary to understand the causes of the violations in order to assess the adequacy of the corrective actions.

4. Block 4: Point of Contact Information

UTC recommends removal of "Type" because providing the company/organization name should be sufficient to determine if it is the same as the submitter or a third party, such as a law firm. The information in small font under the line where the "Type" information is requested (i.e., area, exchange, number) belongs with the telephone number.

UTC also recommends that the question regarding whether the contact point is an empowered official be moved to Block 5 because certifications need to be signed by an empowered official or senior officer in accordance with Section 127.12(e) of the ITAR.

5. Block 5: Certification

UTC recommends that the certification follow the violation information in Block 3. It is unclear what information is expected to be provided following the phrase "in my capacity as" in the certification statement. It appears that DDTC is seeking information regarding the status of the individual as an empowered official or senior officer. UTC believes that the title of the certifier is relevant and should be provided. As stated above, the question regarding empowered official status belongs with the certifier (not the contact person) and should be included in this block. In addition, Form DS-7787 will be used for multiple types of submissions, and is not limited to voluntary disclosures. Therefore, UTC recommends that that the certification statement be amended, as follows: "I, [name], [title], certify that all of the representations made in connection with this submission are true and correct to the best of my knowledge and belief."

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If you have any questions regarding UTC's comments, please contact me at 202-336-7458 or christine.lee@utc.com.

Sincerely,



Christine Lee

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United Technologies Corporation