



May 7, 2019

Submitted Via E-Mail (DDTCPublicComments@state.gov)

Mr. Robert Monjay  
Office of Defense Trade Controls Policy  
U.S. Department of State  
Washington, D.C.

**ATTN: Request for Comments Regarding Disclosure of Violations of the Arms Export Control Act (Form No. DS-7787) (OMB Control Number 1405-0179)**

Lockheed Martin Corporation (Lockheed Martin) is pleased to submit the following comments in response to the March 8, 2019 notice of request for public comment regarding the disclosure of violations of the Arms Export Control Act (AECA) Form Number DS-7787. Lockheed Martin appreciates the effort by the Department to evaluate the voluntary disclosure process, “enhance the quality, utility, and clarity of the information provided,” and “minimize the reporting burden on those who are to respond.”

Title of Information Collection: Disclosure of Violations of the Arms Export Control Act  
OMB Control Number: 1405-0179  
Type of Request: Revision of a Currently Approved Collection  
Originating Office: T/PM/DDTC  
Form Number: DS-7787

**Block No. 1: Identifying Information**

**Registration Code**

Comment: Recommend allowing entry of multiple registration codes.

Rationale: The Registrant Code field appears to allow only one entry, even though any entity can maintain two registration codes (e.g. Manufacturer/Exporter and Broker.) The form instructions direct the application to “provide the registration code most relevant to the disclosure.” How should an applicant complete the field if submitting a disclosure that directly relates to violations to both ITAR exporting and brokering?

**Company or Organization**

Comment: Change to field that includes sufficient character length to accommodate relationship of business to the Company or Organization.

Rationale: All DDTC licensing requires that entities use their “legal name”. This block should be consistent with applications filed with DDTC, which mandate the listing of a subsidiary in the applicant block, including when operating under the applicant code of the parent company.

## **Address**

Comment: Recommend DDTC clarify if the “submitter’s street address” refers to the registrant address included on the AECA registration or the specific address of the business element submitting the disclosure.

Rationale: Currently, DDTC guidance for completion of DTrade forms is to include the address of the registrant as it appears on the registration in the applicant block on all DSP forms in DTrade.

## **State/Province, Zip/Postal Code, Website**

Comment: Recommend that these fields be optional vs. required.

Rationale: Not all non-U.S. addresses include a state/postal code and not all companies maintain a website.

## **Block No. 2: Point of Contact Information**

### **Point of Contact**

Comment: After “Point of Contact Information” add “of Person Certifying in Block 6”; add “Secondary Point of Contact Information,” which is not the person certifying and a field below that for selecting “Type” – e.g., “Employee” “Outside Counsel” “Other” (and if “Other” allow write-in description)

Rationale: Block 1 calls for “Point of Contact” information and does not appear to require that the Point of Contract be an empowered official or senior officer. The person certifying should provide point of contact information, be identified in Block 1, and (if applicable) be distinguished from a secondary point of contact.

### **Name**

Comment: Clarify which entity should be listed in Block 1 – the registrant or affiliate – when the violation pertains to an affiliate.

Rationale: In the DS-7787, the applicant can only provide one entity as applicant. In DTrade, applicants must provide both the registrant and, if applicable, the identification of the subsidiary. Since the creation of the DTRADE DSP forms, DDTC has added the 120.40 Affiliate definition to the ITAR; affiliates are identified in block 10/11 of the DS-2032 registration. We recommend DDTC either provide direction as to which “entity” (registrant/affiliate) to list in the applicant field or provide a second affiliate field on the DS-7787 and other DDTC forms.

## **Block 3: Disclosure Information**

### **Submission Type**

Comment: Add “Transaction Exception” as an option to submission type, or specify that DDTC has alternative plans to process Transaction Exception (TE) requests pursuant to §127.1(d)(2) in a separate form.

Rationale: The proposed DS-7787 Form covers more than VDs (e.g., mandatory 126-country notifications) and may be intended to address other DDTC Compliance needs. *Submission Type, Other* does not include a spot for 127.1(d)(2) TEs. At this time, the proposed DDTC Single Form currently under separate review does not have a section for TEs. Although this is an

infrequent occurrence, we recommend DTCC provide guidance on which applicable form type to use for TE requests outside the licensing process.

#### **Block 4. Violation Summary Information**

##### **General Comments**

Comment: Recommend DDTC tailor the required information to the minimum required to process a request based on the submission type. Also, confirm these fields are optional when filing an initial voluntary disclosure.

Rationale: For example, if an applicant submits an Extension Request, do not require the applicant to restate all the Summary Information required in block 4. The identification of the Disclosure Case Number should be sufficient for DDTC to correlate the request to the pending disclosure. Moreover, all the information requested in this block is not always known when an initial voluntary disclosure is filed. Per 22 CFR 127.12(c)(1), the person initially notifying DDTC may not have conducted a thorough review to ascertain all Block 4 information at the time of filing an initial voluntary disclosure. Optional fields would address this issue.

##### **Violation Start/End Date**

Comment: Recommend making these two fields optional or create the means to mark each field as estimated or unknown, similar to the SF 86 e-QIP form. In addition, recommend including an additional radio button "Select Add".

Rationale: At the time of submission, the applicant may not have dates or accurate dates depending on submission type (e.g. initial notification). Depending on the facts and circumstances, there may be multiple start and end dates. Unless State intends for entities to lump all circumstances into one "start" and "end" date, an entity may have, and disclose, multiple dates.

##### **Description of and Circumstances Surrounding Violation**

Comment: Recommend increasing the number of characters allowed within the box to accurately capture the circumstances surrounding the violation.

Rationale: The text box should be able to expand to accommodate a full description of the circumstances.

##### **Foreign Country/Nationality Involved**

Comment: Recommend DDTC change field titles that reference Foreign Country/Nationality to Foreign Person Nationalities.

Rationale: A Foreign Person is a defined term within the ITAR that covers both natural persons and companies or organizations. The change would also capture all nationalities of a natural person since it is plural (e.g. dual nationals).

##### **126.1 Country/National Involved**

Comment: Recommend DDTC remove the question.

Rationale: The prior question, Foreign Country/Nationality Involved, can be used by DDTC to determine if a 126.1 country/national is involved in the disclosure.

**Related to Previous Disclosure?**

**Comment:** Delete this question and related instructions.

**Rationale:** The form asks if this disclosure is related to a previous disclosure and provides the following in the instructions as a gauge to what “related” means: “Identify the case numbers, if known, of all previously submitted disclosures related to this disclosure. This may include disclosures with substantially similar circumstances such that prior corrective actions should have prevented the violation being disclosed in this submission; and disclosures with the same or related fact patterns.”

This field requires an exercise much beyond the purposes described and information required under 22 CFR 127.12. The requirement here would be costly, time consuming, and will greatly complicate the filing of a disclosure. It raises questions as to whether any person can know any/all prior or “related” disclosures, whether disclosures outside the statute of limitations should be included (they should not), whether the person certifying will consider the risk of inadvertently omitting a prior “related” disclosure (which may pre-date the person’s tenure with the organization) and having a false certification as outweighing the benefits and good will of filing a disclosure for the person’s employer, and whether the time required to research all prior related issues would discourage the filing of disclosures generally as an endeavor that is too time-consuming and impractical.

**Block No. 5. Disclosure or Relevant Documents****“Document Type”**

**Comment:** Document Types “Voluntary Disclosure Narrative,” “Empowered Official/Senior Officer Certification,” “Response to DTCC Inquiry,” “Extension Request Letter,” and “Notification Letter” should not be required attachments, but should be allowable. In general, it would be beneficial for all parties if only the fields required under 22 CFR 127.12(c)(2) be required on the form.

**Rationale:** The intent of asking for other relevant information is to provide substantiating documentation, as defined in Sec. 127.12. Many of the document types referenced here (e.g., audit reports) might be excessive and unnecessary for this purpose. A requirement to provide audit reports and compliance program manuals could result in a substantial amount of paperwork that is not necessary for understanding the nature and circumstances of the potential violation.

**Block No. 6: Submission Authorization****Submission Authorization**

**Comment:** This field must be changed from: “I am an authorized employee of the company cited in Block 1, or an authorized third party as indicated in Block 2 to submit on behalf of the company in Block 1. I certify to the accuracy and completeness of the submission, and have not knowingly omitted information.” To:

“I am a/an (check one): empowered official (see 22 CFR §120.25) or a senior officer (e.g. chief executive officer, president, vice-president, comptroller, treasurer, general counsel, or member of the board of directors) of the company cited in Block 1. I certify that all of the representations made in connection with the voluntary disclosure are true and correct to the best of my knowledge and belief.”

**Rationale:** The certification must match the language of 22 CFR 127.12(e). The ITAR does not require or define “completeness,” or “information” that is relevant or which must be included. The term “authorized employee” suggests a departure from the ITAR requirement that an empowered official or senior officer certify. Moreover, Block 1 calls for “Point of Contact” information and does not appear to require that the Point of Contract be an empowered official or senior officer.

Thank you for the opportunity to provide comments in response to the request for comment on Form Number DS-7787. If you have any questions related to these comments or would like additional information related to the issues discussed above, please contact Mark Webber, Director, International Trade & Export Policy at 703-413-5951 or [Mark.J.Webber@lmco.com](mailto:Mark.J.Webber@lmco.com).

For Lockheed Martin Corporation,



Mark Webber  
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