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DEPARTMENT OF STATE

Public Notice: 9782

30-Day Notice of Proposed Information Collection: Statement of Material Change, Merger, Acquisition, or Divestment of a Registered Party

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 30 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to **[the FR will insert date 30 days from date of publication in the *Federal Register*].**

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- **E-mail:** oira_submission@omb.eop.gov. You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- **Fax:** 202-395-5806. Attention: Desk Officer for Department of State.

You must include the DS form number, information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Steve Derscheid – Management Analyst, who may be reached at DerscheidSA@state.gov.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Statement of Material Change, Merger, Acquisition, or Divestiture of a Registered Party
- *OMB Control Number:* 1405-XXXX
- *Type of Request:* New Collection
- *Originating Office:* Directorate of Defense Trade Controls, Bureau of Political Military Affairs, Department of State (T/PM/DDTC)
- *Form Number:* DS-7789
- *Respondents:* Individuals and companies registered with DDTC and engaged in the business of manufacturing, brokering, exporting, or temporarily importing defense hardware or defense technology data.
- *Estimated Number of Respondents:* 1,700
- *Estimated Number of Responses:* 1,700
- *Average Time per Response:* 2 hours
- *Total Estimated Burden Time:* 3,400 hours
- *Frequency:* On occasion
- *Obligation to Respond:* Mandatory

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of proposed collection:

The International Traffic in Arms Regulations (ITAR) §§ 122.4 and 129.8 require registrants to notify the Directorate of Defense Trade Controls of the Department of State in the event of a change in registration information, in the event a foreign person or entity acquires a registered entity, or if the registrant is a party to a merger, acquisition, or divestiture (MAD) of an entity producing or marketing ITAR-controlled items. Based on certain conditions enunciated in the ITAR, respondents must notify DDTC of these changes at differing intervals – no less than 60 days prior to the event and/or within 5 days of its culmination. This information is necessary for DDTC to ensure registration records are accurate and to determine whether the transaction is in compliance with the regulations (e.g. with respect to ITAR § 126.1); assess the steps that need to be taken with respect to existing authorizations (e.g. transfers of licenses); and to evaluate the

implications for US national security and foreign policy. This information collection is estimated to take an average of 2 hours to execute, and DDTC expects to receive approximately 1,700 responses per year; therefore, the total burden for this collection will be 3,400 hours per year.

Summary of public comments received:

On June 20, 2016, DDTC published a *Federal Register* Notice (81 FR 39992) soliciting public comments through August 19, 2016. DDTC received nine public comments during this period. One comment was not germane to the proposed information collection. The remaining eight comments provided significant feedback on the form. These comments are summarized below:

One commenter remarked that the proposed 2-hour burden for the DS-7789 is low and should be revised. DDTC replies that the burden is an average of all submissions using the DS-7789, and while some responses will require a longer period based on the complexity of a transaction, many will be far below the declared burden for the form. Similarly, information previously provided to the Directorate via the DS-2032, Statement of Registration, will auto-populate into the DS-7789, saving respondents the burden of re-keying their basic information multiple times. DDTC therefore believes that a 2-hour burden is accurate for this form.

Another comment centered on the name of the form itself, “Statement of Material Change, Merger, Acquisition, or Divestiture of a Registered Party.” The commenter was concerned that the term “material change” is inconsistent with current business usage and the use of this form could potentially affect the market value of the submitting company. While DDTC understands these concerns, the changes that require notification, and are

therefore “material changes” for ITAR purposes, are defined in the regulations (see ITAR § 122.4). Therefore the title of the form will remain the same.

Multiple commenters opined that the form, currently formatted in four separate sheets, is difficult to follow. DDTC notes that the form as currently written serves as a “placeholder” for a new case management system that is in development, and the focus throughout the form’s creation has been to finalize discrete data fields and workflows more than format. The data fields on the form will be used to guide users through questions based on their previous responses; not all users will see all fields during each submission.

Relatedly, many commenters noted that Block 1 of the form, currently named “Applicant Information,” should be changed to “Registrant Information” to avoid confusing nomenclature. DDTC notes that the title of this block is a field designator only, as the word “Applicant” will be used throughout the case management system to collate data fields for interoperability. The title of the field has no bearing on the role of the submitter of the DS-7789 and is not intended to imply that the submitter is “applying” to declare a material change. Rather, this was done in order for the electronic system to recognize the information in this block as duplicative of information that might be contained elsewhere in the user’s system profile.

DDTC believes that many of the usability issues identified by the commenters will be resolved through the guided nature of the case management system. For instance, some comments noted that the .pdf version of the DS-7789 lacked functionality to add additional supporting documentation and that text fields did not expand to accommodate easier editing. DDTC notes that the case management system will have fully functional

“add” capability as well as unlimited-character text boxes which will allow for easy editing of responses. To this point, some commenters also noted that uploading information on each authorization (licenses and agreements) that will transfer ownership through a merger, acquisition, or divestiture (“MAD”) event is unduly burdensome and that respondents should have the ability to upload documentation in lieu of keying such information into the system. DDTC replies that the case management system will automatically populate this field from the registrant’s information; users will then have the ability to select which authorizations will transfer under the proposed merger, acquisition, or divestiture instead of keying information on each authorization.

One commenter noted that DDTC has historically provided a limited period for an acquired entity’s registration to remain current after the date of the transaction to allow for the shipment of unshipped balances on authorizations which are transferring to the new or acquiring entity, but that this practice is not reflected on the DS-7789. DDTC replies that this practice stemmed from paper-based reporting and was used to allow companies to continue exporting goods under approved licenses while the authorizations were manually updated within DDTC. Because of the automated nature of the DS-7789, authorizations will be transferred rapidly from one entity to another and therefore the “grace period” will no longer be needed nor provided in the ordinary course.

Several commenters also opined that DDTC should convene an industry working group to beta test the new form and system that is being developed. In fact, DDTC has already convened such a group, and all interested industry users are welcome to join by contacting PM_DDTCProjectTeam@state.gov.

Many respondents provided feedback on the instructions for the DS-7789. Most comments centered on requesting more detailed guidance for specific fields on the form. DDTC is pleased to provide additional guidance and revised instructions will be made available on the DDTC website (<https://www.pmdtcc.state.gov>) in conjunction with the publication of this request for public comment. For example, a commenter asked for clarification regarding DDTC's request for percent-ownership of outstanding voting securities of the foreign buyer of a registered entity. In response, DDTC revised the instructions to clarify the distinction between the 50% ownership, as referenced in 22 CFR 122.2, and the presumption of control in 22 CFR 120.37 associated with 25% ownership. The percent-ownership question in the DS-7789 facilitates DDTC's national security and foreign policy evaluation which, as part of the transactional review, includes an understanding of who has potential control of the foreign buyer.

DDTC also received several comments related to the electronic signature requirement for the DS-7789. Numerous responses noted that the signature requirement for a senior officer is unduly burdensome for their executive-level managers; DDTC notes that the requirement for a senior officer to sign a notification of a change in registration information is enunciated in ITAR § 122.4. Similarly, one commenter opined that the requirement to provide information about senior officers and board members on the 60-day submission preceding a MAD event should be dispensed with since they may not be the same once the event actually occurs; however, DDTC needs this information to evaluate the entirety of a transaction, and it will still be required.

Many commenters also remarked that the "60-day Buyer" portion of the form should be removed as only registered parties are required to submit information to

DDTC. DDTC notes that the requested information is about the buyer and not necessarily from the buyer. For this reason, DDTC is providing registrants the ability to provide this information about the buyer or to have the buyer provide the information directly. In practice, registrants already provide buyer information in many divestitures (in other words, the buyer provides the registrant with the requested information, which the registrant then submits to DDTC). Allowing the buyer to submit the information to DDTC directly allows the buyer to provide information that they may not otherwise wish to share with the registrant. The requested information is relevant to DDTC's analysis of the foreign policy and national security implications of transactions and, in many cases, is what the acquiring company will ultimately provide in a post-transaction DS-2032 (Statement of Registration) covering the acquired entity.

Two comments also centered on the protection of information submitted via the form's proposed electronic interface. DDTC's IT security team is working on a secure web-based system to accept proprietary data from industry users. Recognizing the sensitivity of the data submitted, the system will meet all current government standards for data security and the Privacy Act of 1974. 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.

Methodology:

This information will be collected by DDTC's electronic case management system and respondents will certify the data via electronic signature. Respondents will be required to enroll in DDTC's online system and will be issued an appropriate credential based on the

business the user will be transacting. Lower assurance matters (such as initial registration in the system) will require a secure username and password. Matters requiring higher assurance will require multi-factor credentials, such as a certificate based login.

Dated: October 26, 2016

Lisa Aguirre
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Department of State

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