

Companies Face New Process in Disclosures of Potential Export Violations

Article By:

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Companies opting to file voluntary disclosures of potential export violations with the State Department's Directorate of Defense Trade Controls (DDTC) will soon be required to utilize a new process for submitting their disclosures: filing new Forms DS-7787 and supporting documentation in the online Defense Export Control Compliance System (DECCS). **This new process will be a sharp departure from the way in which companies have historically approached disclosures**, in which they filed detailed, narrative submissions in hardcopy with the DDTC.

On November 28th, the Department of State published a Federal Register notice soliciting comments from the public regarding the proposed rollout of the new Form DS-7787 for the submission of voluntary disclosures of violations of the Arms Export Control Act and International Traffic in Arms Regulations. **Public comments may be submitted on or before December 28, 2016.** See 81 Federal Register 85668 (November 28, 2016).

The State Department's Directorate of Defense Trade Controls (DDTC) is responsible for administering and enforcing the Arms Export Control Act (AECA) and the International Traffic in Arms Regulations (ITAR) which apply to exports, reexports, temporary imports and brokering activities involving defense articles (including technical data) and the provision of defense services. Like other U.S. federal government agencies that regulate imports into and exports from the United States, the DDTC encourages companies to voluntarily disclose potential AECA and ITAR violations. Voluntary disclosures assist the DDTC in determining what, if any, administration action should be taken in cases of AECA and ITAR violations, and may be considered mitigating factors in ITAR enforcement actions. Despite the use of the term voluntary in connection with disclosures, there is an affirmative duty imposed on companies to notify the DDTC of potential AECA and ITAR violations involving:

- The failure to return certain firearms, ammunition, parts, components, accessories and attachments for firearms, body armor and chemical agent protective gear to the United States as required by the temporary export license exemptions in Section 123.17 of the ITAR; and,
- Unauthorized exports, reexports, temporary imports into the United States, proposals or presentations to sell, transfers or retransfers of defense articles (or the provision of services) involving proscribed countries identified in Section 126.1 of the ITAR.

The DDTC may also direct an ITAR registered company or another party to disclose details about a particular transaction based on information the DDTC may have received from partner federal agencies. Further, the failure to report a violation of the AECA or ITAR that harmed U.S. national security and foreign policy objectives may be treated as an aggravating or adverse factor in enforcement actions. Regardless of whether a voluntary disclosure is filed, the DDTC has the authority to refer cases to the Department of Justice for criminal prosecution if warranted. The DDTC will notify the Department of Justice that a voluntary disclosure has been submitted; however, the Department of Justice is not required to give that disclosure any weight. Nonetheless, the DDTC reports that, in Fiscal Year 2015, approximately 1,200 voluntary disclosures were submitted, and the vast majority of those cases were closed without the imposition of any civil penalties.

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