

**SUPPORTING STATEMENT FOR
PAPERWORK REDUCTION ACT SUBMISSION**

**Export Declaration of Defense Technical Data or Services
OMB Number 1405 – 0157
DS-4071**

A. Justification

1. The Directorate of Defense Trade Controls (DDTC), Bureau of Political-Military Affairs, U.S. Department of State, in accordance with §§38-40 of the Arms Export Control Act (AECA) (22 U.S.C. 2778-2780) and the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120-130), has the principal mission of taking final action on license applications and agreement requests for defense trade exports and handling matters related to defense trade compliance, enforcement, and reporting. By statute, executive orders, regulation, and delegation of authority, DDTC is charged with controlling the export and temporary import of defense articles and defense services covered by the U.S. Munitions List (USML).

Under the AECA, the President is charged with the review of munitions license applications and technical assistance and manufacturing license agreement requests to determine, *inter alia*:

- Whether the transactions further U.S. foreign policy objectives, national security interests, and world peace;
- Eligibility of parties (*e.g.*, applicants, consignees, end-users) to participate in U.S. defense trade;
- Appropriate end-use of commodities subject to U. S. Government approval of munitions exports and transfers;
- Whether law enforcement concerns have been adequately addressed; and
- Whether appropriate offers or payment of political contributions, gifts, commissions, and fees, have been adequately addressed.

The statutory authority of the President to promulgate regulations with respect to exports of defense articles and defense services was delegated to the Secretary of State by Executive Order 11958, as amended. These regulations are primarily administered by the Deputy Assistant Secretary for Defense Trade Controls and the Directorate of Defense Trade Controls, Bureau of Political-Military Affairs.

Under the provisions of §§123.22(a) and 123.22(b)(3) of the ITAR, any person who exports technical data or furnishes a defense service must report that actual export to DDTC. Reporting of exports of technical data and services on the USML to the Department must occur prior to the export when using an Application/License for Permanent Export of Unclassified Defense Articles and Related Unclassified Technical Data (Form DSP-5), Application/License for Permanent/Temporary Export or Temporary Import of Classified Defense Articles and Classified Technical Data (Form DSP-85), and Manufacturing License and Technical Assistance Agreements. According to the ITAR, when the export of technical data or a defense service is made using an exemption and using a U.S. port, the exporter is not required to declare the export using the Department of Commerce's Automated Export System, but is required to electronically report that actual export to DDTC. Form DS-4071 will allow the exporter to submit this information electronically.

2. DDTC uses the information provided by applicants to meet the mandate described in item 1 above. The information is also used to monitor and control transfer of sensitive U.S. technology. Without such information, effective control of the proliferation of destabilizing defense technology would not be possible.

3. DDTC's Web site, www.pmdtdc.state.gov, instructs the public about the requirement to report actual exports of defense technical data and defense services and contains a link to Form DS-4071. The respondent will electronically submit the collection of information on the DS-4071 to DDTC. A facsimile of the form, which is still under review and not yet in use, is attached.

4. The Department of State is unaware of any other U.S. Government requirements for the submission of this information. Department of Commerce's Automated Export System does not collect information on exports of defense technical data and defense services controlled by the ITAR.

5. 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 in the business of defense trade are required to submit information regarding actual exports of technical data and defense services. Burdens have been minimized through development of a clear, concise electronic form that seeks only information actually needed by DDTC.

6. The AECA and the ITAR require the declaration of the actual export of technical data and defense services to a foreign person that has been authorized by the Department of State. The monitoring and control of the actual export of technical data and furnishing of defense services to foreign persons could not occur adequately without the exporter declaring such export. Monitoring actual technical data and defense services ensures these transactions are consistent with U.S. foreign policy, national security, and international arms embargoes. Without monitoring authority, DDTC would be unable to meet its legally mandated responsibilities.

7. Respondents may have to report information to the Department more often than quarterly. Regulations require the exporter to report prior to the actual export when the authorization is a Form DSP-5, manufacturing license agreement or technical assistance agreement and to report at the time of export when using an exemption. The ITAR requires maintenance of records for a minimum period of five years.

8. The Department has published a notice in the *Federal Register* soliciting public comments on this collection and notifying the public that this collection has been submitted to OMB for review and approval. Those comments received that pertain to the clarity and content of the form and/or instructions will inform the form review process. As the date for implementation of the collection nears, updated and more detailed guidance will be made available on DDTC's Web site, and should answer the technical/logistical questions posed by the public. The AECA mandates the timely collection of such export data, and not the collection of annual reports of exports, or export plans, as suggested by public respondents. The estimated hour burden has been increased from 15 minutes to 30 minutes.

9. Not applicable. No payment or gift has been or will be provided to any respondent.

10. Respondents are engaged in the business of exporting defense articles/services and use the ITAR regularly in the course of their work. Thus,

respondents would be familiar with §126.10 of the ITAR, which describes protection of confidentiality given to respondents' information:

- Subchapter R of 22 CFR contains regulations on the availability to the public of information and records of the Department of State. The provisions of subchapter R apply to such disclosures by DDTC.
- Certain information of a proprietary nature required by the Department of State in connection with the licensing process may generally not be disclosed to the public unless certain determinations relating to the national interest are made in accordance with §38(e) of the AECA (22 U.S.C. 2778) and, by reference, certain procedures in the Export Administration Act.
- Information required under Part 130 of the ITAR (i.e., political contributions, gifts, commissions, and fees) is protected from general public disclosure.
- Information may be disclosed to foreign governments for law enforcement purposes or in the context of multilateral export regimes.

11. Not applicable. Form DS-4071 does not solicit any information regarding questions of a sensitive nature or matters commonly considered private.

12. The Department of State has reason to believe that the information that is required for reporting the actual export of technical data or defense services is already available to respondents because they arrange the shipment of the technical data or defense service. Therefore, the burden to collect the information is considered a customary and usual business practice, and the cost to industry in terms of money, time and other resources is minimal. The respondent would need approximately 30 minutes to complete this form. The annual number of respondents is estimated to be 2,000 and the frequency of response is on occasion. DDTC estimates there will be 10,000 declarations submitted annually. Estimated aggregate annual hour burden is 5,000 hours.

13. There are no anticipated additional costs to respondents.

14. The estimated 10,000 declarations submitted electronically for review during a year would account for approximately .9% of DDTC's budget of \$13 million. The estimated cost to the Federal government would be \$117,000 for processing those declarations.

15. Item 13(C) of OMB Form 83-I, "Total Annual Hours Requested," has been adjusted from 2,500 to 5,000. The original burden time inadequately accounted for the estimated time needed for completing this form.

16. Not applicable. Publication of the relevant information is not anticipated.

17. DDTC is planning to display the expiration date for OMB approval of the information collection on the electronic submission.

18. Not applicable. The Department of State does not seek any exception to the statement, "Certification for Paperwork Reduction Act Submissions," of OMB 83-I.

B. Collections of Information Employing Statistical Methods

Not applicable. This collection of information does not employ statistical methods.