

**SUPPORTING STATEMENT FOR
PAPERWORK REDUCTION ACT SUBMISSIONS**

**Nontransfer and Use Certificate
OMB No. 1405-0021
DSP-83**

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 missions 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.

Under the AECA, the President is charged with the review of munitions license and agreement applications 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 the appropriateness of offers or payment of political contributions, gifts, commissions, and fees, has 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 and Regional Security and the Directorate of Defense Trade Controls, Bureau of Political-Military Affairs.

Pursuant to §123.10 of the ITAR, a completed “Nontransfer and Use Certificate” (Form DSP-83) must accompany an export license application to export significant military equipment and classified articles and technical data. And pursuant to §124.10 of the ITAR, a completed “Nontransfer and Use Certificate” must be submitted with any request for a manufacturing license agreement or technical assistance agreement that relates to significant military equipment or classified defense articles and technical data. The foreign consignee, foreign end-user, and applicant execute this form. The certificate stipulates that, except as specifically authorized by prior written approval of the Department of State, the foreign consignee and foreign end-user will not re-export, resell or otherwise dispose of the significant military equipment enumerated in the application outside the foreign country named as the location of the foreign end-user or to any other person. With respect to agreements that involve classified articles or classified technical data, an authorized representative of the foreign government must also sign the form.

2. DDTC uses the information provided by applicants to meet the mandate described in item 1 above. As appropriate, such information may be shared with other U.S. Government entities. This information is currently used in the review of license applications, requests for manufacturing license or technical assistance agreements submitted for approval, and to ensure compliance with defense trade laws and regulations.

3. Submissions are made via a completed and signed DSP-83. A copy of this form can be printed from DDTC’s Web site (www.pmdtcc.state.gov). When a license application is submitted via the Web-based electronic licensing subsystem (D-Trade) of the Defense Trade Application System, the DSP-83 is attached in the electronic submission. For submissions via paper, the collection of this information does not involve the use of automated, electronic, mechanical, or other technological collection techniques.

4. Information provided on the “Nontransfer and Use Certificate” is not duplicated in other forms. The information collected is limited to that necessary to properly evaluate a license application or request for an agreement. Also, the format and content of this form is unique.

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 registered exporters are required to submit license applications and other requests for approval that may require submission of the “Nontransfer and Use Certificate.”

6. The AECA and the ITAR established the frequency of information collection. In order for U.S. Government control of defense trade to be effective, applications and requests for exports must be evaluated on a case-by-case basis. The information collected is used to determine whether a license should be approved. Absent this reporting requirement, it would be extremely difficult for DDTTC to meet its legally mandated responsibilities to ensure oversight of defense trade in furtherance of foreign policy objectives, national security interests, and world peace.

Furthermore, the “Nontransfer and Use Certificate” is a multi-purpose document. It is used initially to assess the national security and foreign policy impact of a proposed export. The information required on the form is also used to comply with the requirement to report quarterly to the Congress all licenses for exports of major defense equipment valued at \$1,000,000 or more. Elimination of this form would severely hinder Congressional oversight of arms exports.

7. Respondents may have to report information to the Department more often than quarterly because they need approval on a case-by-case basis when seeking to export significant military equipment and classified articles and technical data, or when requesting a manufacturing license agreement or technical assistance agreement that relates to significant military equipment or classified defense articles and technical data. The ITAR requires maintenance of records for a minimum period of five years from the expiration of the license or written approval.

8. The Department has published a notice in the *Federal Register* (73 FR 31731) in accordance with 5 CFR 1320.8(d) soliciting public comments on this collection and notifying the public that this collection has been submitted to OMB for review and approval. No public comments were received.

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

10. Respondents are engaged in the business of defense trade and use the ITAR regularly in the course of their work. Thus, respondents would be familiar with §126.10 of the ITAR that 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 DSP-83 does not solicit any information regarding questions of a sensitive nature or matters commonly considered private.

12. An estimated 7,400 annual responses are expected from the estimated 2,200 respondents. Frequency is on occasion. The estimated time that the respondent devotes to each submission is approximately one hour. Consequently, it can be reasonably assumed that the cost to industry in terms of money, time, and other resources is minimal. The estimated annual hour burden is 7,400 hours.

13. There are no anticipated additional costs to respondents.

14. The 7,400 responses received by DDTC during FY 2007 accounted for approximately 2.1% of its budget of \$13 million. The estimated annualized cost to the Federal Government was \$271,600 for reviewing these forms.

15. Item 13(a) of OMB Form 83-I, "Number of Respondents," has been adjusted from 5,000 to 2,200. Rather than report the total number of registrants, many of whom manufacture but do not export defense articles, the estimated number of actual exporters who may need to use the DSP-83 is reported. Item 13(b), "Total

Annual Responses,” has been adjusted from 9,000 to 7,400, a result of more accurate accounting techniques. Item 13(b)(1) has been adjusted from 0% to 75%. Reflecting the change in 13(b), “Total Annual Hours Requested” (Item 13(c)) has been adjusted to 7,400. There are no changes to Item 14.

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 form.

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.