

**SUPPORTING STATEMENT FOR
PAPERWORK REDUCTION ACT SUBMISSIONS**

**Application/License for Permanent/Temporary Export or Temporary Import
of Classified Defense Articles and Related Classified Technical Data**

OMB No. 1405-0022

DSP-85

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 (USML).

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.

In accordance with Part 123 of the ITAR, any person who intends to permanently export, temporarily export, or temporarily import classified defense articles or related classified technical data must first obtain a license from DDTC. “Application/License for Permanent/Temporary Export or Temporary Import of Classified Defense Articles and Related Classified Technical Data” (Form DSP-85) is used to obtain permission for the permanent export, temporary export, or temporary import of classified defense articles and classified technical data covered by the USML.

2. DDTC uses the information provided by applicants to meet the mandate described in item 1 above. Form DSP-85 is used initially by DDTC to analyze the proposed transaction for foreign policy and national security considerations. Usually, it is staffed to other Federal Government agencies for further evaluation. Discontinuation of the DSP-85 would make it extremely difficult to meet statutory and regulatory requirements concerning the control of commercial defense trade.

Licenses for the export or temporary import of classified defense articles and classified technical data are forwarded by DDTC to the Defense Security Service of the Department of Defense in accordance with the provisions of the National Industrial Security Program Operating Manual. DDTC forwards a copy of the license to the applicant for his/her information. The Defense Security Service will endorse the back of the license after each shipment indicating the date of shipment, quantity, commodity, shipment value, Shipper’s Export Declaration number, and port of exit/entry.

The information collected with this form is also used to comply with Congressional notification and reporting requirements. A quarterly report is submitted to Congress for export authorizations of major defense equipment valued at one million dollars or more. Also, an annual report by fiscal year is transmitted to Congress of all export authorizations indicating the commodity and values by foreign country. Congressional notification is required for exports of major defense equipment in the amount of \$25 million or more in the case of NATO countries, Australia, New Zealand, or Japan, and \$14 million or more for all other countries; for all other exports of defense articles and defense services, those that are valued at \$100 million or more in the case of NATO countries,

Australia, New Zealand, or Japan, and \$50 million or more for all other countries, are notified. Also notified are proposals for the manufacture abroad of significant military equipment. Congress receives a 15-day advance notification for these types of proposed exports to NATO countries, Australia, New Zealand, or Japan. For all other countries, Congress receives a 30-day advance notification.

3. The DSP-85 is an export authorization request that involves transfer of classified material. As the electronic licensing system operated by DDTC is unclassified, the technical means of enabling electronic transmission of this form is under review. In the meantime, DDTC is arranging for the distribution of this form from its Web site.

4. The Department of State is unaware of any other U.S. Government requirements that would cause U.S. industry to duplicate this reporting requirement.

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 complete the "Application/License for Permanent/Temporary Export or Temporary Import of Classified Defense Articles and Related Classified Technical Data" (Form-DSP-85) when temporarily/permanently exporting and temporarily importing classified defense articles and related classified technical data.

6. The AECA and the ITAR established the frequency of information collection. The information required for the proper assessment of a proposed permanent/temporary export or temporary import of classified defense articles and technical data is reviewed on a case-by-case basis and is specific to the transaction under consideration. Absent this reporting requirement, it would be extremely difficult for DDTC to meet its legally mandated responsibilities to ensure oversight of defense trade exports in furtherance of foreign policy objectives, national security interests, and world peace.

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 defense articles and/or services and related 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 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 DSP-85 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 the DSP-85 is already available to U.S. industry in some form due to other needs and requirements (e.g., business transactional records, tax records, quality assurance and productivity, and legal issues posed by other federal laws). An estimated 360 annual responses are expected from 40 respondents. Frequency of response is on occasion. The estimated time that the respondent devotes to each submission is approximately 30 minutes. 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 180 hours.

13. There are no anticipated additional costs to respondents.

14. The 360 responses received by DDTC during FY 2007 accounted for approximately .4% of its budget of \$13 million. The estimated annualized cost to the Federal Government was \$52,860 for reviewing these export applications.

15. Item 13(a) of OMB Form 83-I, "Number of Respondents," has been adjusted from 100 to 40. Item 13(b), "Total Annual Responses," has been adjusted from 260 to 360. Consequently, "Total Annual Hours Requested" (Item 13(c)) has been adjusted from 130 to 180. 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.