

**SUPPORTING STATEMENT FOR
PAPERWORK REDUCTION ACT SUBMISSIONS**

**Authority to Export Defense Articles Sold Under the Foreign Military Sales
Program**

OMB No. 1405-0051

DSP-94

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, 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 and Regional Security and the Directorate of Defense Trade Controls, Bureau of Political-Military Affairs.

In accordance with §126.6(c) of the ITAR, for the permanent export of unclassified defense articles and technical data sold under the Foreign Military Sales (FMS) program of the AECA, the foreign diplomatic mission or authorized freight forwarder presents the form entitled “Authority to Export Defense Articles Sold Under the Foreign Military Sales Program” along with the Department of Defense Letter of Offer and Acceptance to the U.S. Customs and Border Protection (CBP) upon export.

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.

3. The signed DSP-94 and supporting documentation is submitted by the exporter directly to CBP at the time of export. The form is currently available for submission only in hardcopy, although it can be downloaded for use from the DDTC Web site (www.pmdtdc.state.gov).

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 freight forwarders authorized by a foreign diplomatic mission are required to complete the “Authority to Export Defense Articles Sold Under the Foreign Military Sales Program” (Form DSP-94).

6. The AECA and the ITAR established the frequency of information collection. The information required for the proper assessment of a proposed permanent export request 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. The one comment received pertained to the validity period of the form once executed. The recommendation is to increase it from two to four years (which is the validity period for other DDTC forms). This suggestion will be submitted to the work group that convenes periodically to study FMS issues.

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-94 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 proposed export is already available to respondents 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 2,500 responses are expected from 250 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 1,250 hours.
13. There are no anticipated additional costs to respondents.
14. Form DSP-94 is not submitted to DDTC for review, although it does receive a copy of the form at the time of initial shipment. The DSP-94 is presented to CBP upon export.
15. There are no changes or adjustments in Items 13 and 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.