

## **SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSIONS**

### **Statement of Political Contributions, Fees, and Commissions Relating to Sales of Defense Articles and Defense Services OMB No. 1405-0025**

#### **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.

Section 39 of the AECA mandates the Secretary of State to require timely reporting of political contributions, gifts, commissions and fees paid, or offered or agreed to be paid in connection with the sales of defense articles or defense services licensed or approved under §38 of the AECA. Pursuant to Part 130 of the ITAR, any license or approval for the export of defense articles and defense services to or for the armed forces of a foreign country or international organization and valued in an amount of \$500,000 or more requires a statement to be submitted specifying whether any political contributions, fees or commissions of \$1,000 or more were offered or agreed to be paid in connection to that specific sale. This statement must accompany the export license application or other request for approval, such as a manufacturing license agreement or technical assistance agreement. In the event there were political contributions, fees or commissions offered or agreed to be paid, those statements are reported to Congress in accordance with §§36(a)(8) and 36(b)(1) of the AECA.

2. DDTTC uses the information provided by applicants to meet the mandate described in item 1 above. This information is currently used in the review of license applications, requests for manufacturing license agreements or requests for technical assistance agreements submitted for approval and to ensure compliance with defense trade laws and regulations. Any statements that indicate that political contributions, fees or commissions were offered or agreed to be paid are reported to Congress.

3. The applicant can indicate on the DSP-5 or the DSP-85 that no political contributions, fees or commissions were offered or agreed to be paid in connection with the sale when submitting these forms. When the applicant does report that a political contribution, fee, or commission was offered or agreed to be paid, a written and signed statement containing specified information as directed in §130.10 of the ITAR must accompany the application. In the case of the DSP-5, the letter must be submitted electronically as an attachment to the form. In the case of a DSP-85 or any type of agreement, the letter is submitted in paper form.

4. Information provided about political contributions, fees and commissions regarding commercial defense exports 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.

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 exporting defense articles or defense services valued in an amount of \$500,000 or more to the armed forces of foreign countries or international organizations are required to submit information about political contributions, fees or commissions.

6. The AECA and the ITAR established the frequency of information collection. The information required for the proper assessment of a proposed defense export to the armed forces of a foreign country or to international organizations valued in an amount of \$500,000 or more 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.

When political contributions, fees or commissions have been offered or agree to be paid, those statements are reported to Congress. Elimination of this collection of information would 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 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 may be disclosed to foreign governments for law enforcement purposes or in the context of multilateral export regimes.

Pursuant to §130.15 of the ITAR, the information collected regarding political contributions, fees and commissions is considered confidential business information. No person shall disclose this information unless authorized by law or regulation.

11. Not applicable. This information collection 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 political contributions, fees and commissions concerning defense trade 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 700 annual responses are expected from a potential pool of 2,200 respondents. Frequency of response is on occasion. The estimated time that the respondent devotes to each written 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 700 hours.

13. There are no anticipated additional costs to respondents.

14. The 700 statements received by DDTC during FY 2007 accounted for approximately .2% of its budget of \$13 million. The estimated annualized cost to the Federal Government was \$25,700 for reviewing these statements.

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 is reported. Item 13(b), "Total Annual Responses," has been adjusted from 7,250 to 700. D-Trade enables the reporting of accurate data, whereas before, indirect data gathering methods led to an overestimation of the number of these responses. Item 13(b)(1) has been adjusted from 0% to 80%. As a result of the change to Item 13(b), "Total Annual Hours Requested" (Item 13(c)) has been adjusted from 7,250 to 700. There are no changes to Item 14.

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

17. The Department of State proposes that an expiration date for OMB approval of the statement regarding political contributions, fees or commissions not be displayed as the provision is part and parcel of a respondent's overall ITAR submission, which is several pages long and includes other forms that do display the same expiration date regarding OMB approval. Industry fulfillment of this requirement results in unique submissions that are unique in format.

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.