

SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSIONS

Brokering Activities Reports OMB No. 1405-0141

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 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 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 ITAR §129.9, any person required to register as a broker “shall provide annually a report to [DDTC] enumerating and describing its brokering activities by quantity, type, U.S. dollar value, and purchaser(s) and recipient(s), license(s) numbers for approved activities and any exemptions utilized for other covered activities.”

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 munitions export and brokering license applications and to ensure compliance with defense trade laws and regulations.

3. The provision is a reporting requirement. The Department of State has reason to believe, on the basis of discussions with U.S. industry, that all of the information is already maintained in electronic as well as hard copy files. Thus, the information can be produced for Department of State review without difficulty or new infrastructure investment. Currently, submissions are made via hardcopy documentation. Before these reports are due, DDTC notifies all registered brokers via letter of the upcoming reporting deadline. The letter reiterates the requirements as stated in ITAR §129.9. A copy of this letter is provided with this submission. DDTC is working on creating a form that applicants may use for this reporting requirement. Eventually, the applicant will be able to electronically submit this form via the electronic licensing subsystem (D-Trade) of the Defense Trade Application System, DDTC’s Web-based electronic form system. A working draft of this form is included with this submission. The final version of the form is contingent on the final version of ITAR §129, which currently is being rewritten. The projection is for the publication of the new ITAR §129 in 2009, with a final version of the electronic form for the information collection available a few months thereafter.

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 persons in the business of brokering defense articles

and defense services are required to register and are thus subject to this record keeping provision.

6. Absent this reporting requirement, the Department of State would find it difficult to provide policy and enforcement oversight for the brokering of international munitions transactions. Thus, it would be extremely difficult for DDTC to meet its legally mandated responsibilities to ensure defense trade is in furtherance of foreign policy objectives, national security interests, and world peace.

7. The ITAR requires maintenance of records for a minimum period of five years from the expiration of the brokering 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 brokering defense articles/services, have registered with DDTC pursuant to the ITAR (22 CFR Subchapter M), and correspondingly use the ITAR in the regular course of business. Thus, respondents would be familiar with §126.10 of the ITAR (22 CFR §126.10), 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 or bilateral export regimes.

11. Not applicable. This 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 a brokering report is already available to U.S. industry due to other needs and requirements (*i.e.*, business transactional records, tax records, quality assurance and productivity, and legal issues posed by other federal laws). It is estimated that the annual number of respondents is 430 and the frequency of reporting is once a year. Also, it is estimated that not more than two hours per year for each respondent is devoted to this specific reporting effort. Consequently, it can be reasonably assumed that the cost to industry in terms of money, time, and other resources is minimal. It is estimated that the annual hour burden is 860 hours.

13. There are no anticipated additional costs to respondents.

14. The 430 responses received by DDTC during FY 2007 accounted for approximately .5% of its budget of \$13 million. The estimated annualized cost to the Federal Government was \$63,140 for reviewing these brokering reports.

15. Item 13(a) of OMB Form 83-I, "Number of Respondents," has been adjusted from 280 to 430, and 13(b), "Total Annual Responses," has been adjusted from 280 to 430. Consequently, "Total Annual Hours Requested" (Item 13(c)) has been adjusted from 560 to 860. The higher numbers accord with the trend of annual increase in defense trade activity. 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 brokering reporting provision not be displayed, as there is currently no form associated with this information collection and industry fulfillment of the brokering reporting requirement results in individualized 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.