

SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSIONS

Prior Approval for Brokering Activities OMB No. 1405-0142

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 appropriate 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 Part 129 of the ITAR, persons who wish to engage in certain brokering of defense articles and defense services must submit a written request for approval to DDTC and receive DDTC's consent prior to engaging in such activities unless exempted. Specifically, §129.7(d) stipulates that the written request "shall identify all parties involved in the proposed transaction and their roles, as well as outline in detail the defense article and related technical data (including manufacturer, military designation and model number), quantity and value, the security classification, if any, of the articles and related technical data, the country or countries involved, and the specific end use and end user(s)."

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 the brokering request submitted for approval and to ensure compliance with defense trade laws and regulations. It is also used to monitor and control the transfer of sensitive U.S. technology.

3. The provision is a requirement for information needed by U.S. Government decision-makers in the regulation of defense trade. 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. Applicants are referred to ITAR §129.7(d) for guidance on what information to submit regarding proposed brokering activity. DDTC will produce and make available a form that applicants may use for the purposes of obtaining prior written approval for proposed brokering activity. Eventually, the applicant will be able to electronically submit this information via the electronic licensing subsystem (D-Trade) of the Defense Trade Application System, DDTC's Web-based electronic form system. Since the last reporting period, the decision was made to substantially rewrite ITAR §129, the regulatory basis of this information collection. As the final version of the form is contingent on the final version of ITAR §129, plans for the form were put on hold. As such, no draft of such form is currently available. The projection is for the publication of the new ITAR §129 in 2009, with an electronic form for the information collection available a few months thereafter.

4. Each brokering activity request is assigned a unique number and entered into the DDTC database. The method of preparation and submission by private industry generally precludes duplicate submissions. The Department of State is unaware of any other U.S. Government requirements for the submission of this information.

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 submit proposed brokering activity requests for approval and the information provided is typically maintained by persons for standard commercial reasons.

6. The AECA and the ITAR established the frequency of information collection. The information required for the proper assessment of a proposed brokering activity request is reviewed on a case-by-case basis and is specific to the transaction under consideration. Monitoring brokering activity ensures its consistency with U.S. foreign policy, national security, and international arms embargoes. It would be extremely difficult to monitor and control arms brokering adequately without the required information, or if it were provided less frequently.

7. Respondents may have to report information to the Department more often than quarterly because they need approval on a case-by-case basis for brokering activity. Also, the ITAR requires that respondents maintain records for a minimum period of five years from the expiration of a 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 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 the brokering request process is already available to U.S. industry because the proposed brokering activity reviewed by DDTC contains information necessary for sales contracts. It is estimated that from the total number of respondents (40) we will receive an estimated 60 responses annually. Frequency of response is on occasion. Also, it is estimated that the respondent would need two hours to complete this specific written submission required by the ITAR. Consequently, it can be reasonably assumed that cost to industry in terms of money and other resources is minimal. It is estimated that the annual hour burden is 120 hours.

13. There are no anticipated additional costs to respondents.

14. The 60 responses received by DDTC during FY 2007 accounted for approximately .07 of its budget of \$13 million. The estimated annualized cost to the Federal Government was \$8,810 for processing brokering request submissions.

15. Item 13(a) of OMB Form 83-I, “Number of Respondents,” has been adjusted from 14 to 40, and 13(b), “Total Annual Responses,” has been adjusted from 25 to 60. Consequently, “Total Annual Hours Requested” (Item 13(c)) has been adjusted from 60 to 120. 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 license provisions not be displayed, as there is currently no form associated with this information collection and industry fulfillment of the brokering approval 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.