

SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSIONS

Brokering Prior Approval (License) 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 the Arms Export Control Act (AECA) (22 U.S.C. 2751 et seq.) 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 other requests for defense trade transactions via commercial channels, ensuring compliance with the statute and regulation and collecting various types of reports. By statute, Executive Order, regulation, and delegation of authority, DDTC is charged with controlling the export and temporary import of defense articles and provision of 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 the export and the temporary import of defense articles and the provision of 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 of State for Defense Trade and the Directorate of Defense Trade Controls, Bureau of Political-Military Affairs.

In accordance with Part 129 of the ITAR, U.S. and foreign persons who wish to engage in ITAR-controlled brokering activity of defense articles and defense services must first register with DDTC. Brokers must then submit a written request for approval to DDTC and must receive DDTC's consent prior to engaging in such activities unless exempted.

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 statutes and regulations. It is also used to monitor and control the transfer of sensitive U.S. technology.

3. Currently, there is no option of electronic submission of this information. 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 plans to provide an electronic form that applicants may use for the purposes of obtaining prior written approval for proposed brokering activity. Eventually, the applicant will be able to access this form from the DDTC Web site, complete it online, and submit it via the Internet.

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 requirement for the submission of this information.

5. The AECA and ITAR 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 such persons for standard commercial reasons.

6. The AECA and the ITAR establish 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 be required 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 (22 CFR 122.5(a); 22 CFR 129.4(c)) 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* (74 FR 55618) 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 Parts 120-130), 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 the protection given to respondents' confidential information. These include:

- 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 confidential 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(e)) 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 activity request is already available to respondents because the same information is necessary for sales contracts. The Department estimates that from the total number of respondents (980) we will receive an estimated 100 responses annually. Frequency of response is on occasion. Also, it is estimated that a 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 200 hours.

13. There are no anticipated additional costs to respondents.

14. The estimated annualized cost to the Federal Government for processing the 100 brokering request submissions received by DDTC during CY 2008 was \$27,778. This corresponded to approximately 0.1% of DDTC's budget of \$25 million.

15. For Item 13(a) of OMB Form 83-I, "Number of Respondents," has been adjusted from 40 to 980, and 13(b), "Total Annual Responses," has been adjusted from 60 to 100. The former change is a result of reporting the total number of respondents registered with DDTC who may use this information collection, rather than the number that typically have used this information collection in a given year, which historically has been a smaller percentage than the number of potential respondents. The latter change reflects the increase in respondents who have used the information collection. As a result of the latter change, "Total Annual Hours Requested" (Item 13(c)) has been adjusted from 120 to 200.

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.