

**SUPPORTING STATEMENT FOR
PAPERWORK REDUCTION ACT SUBMISSION**

**Export Declaration of Defense Technical Data or Services
OMB Number 1405 – 0157
DS-4071**

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 regulations, 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, the provision of defense services and the brokering thereof which are covered by the U.S. Munitions List (USML).

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 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.

Under the provisions of §§123.22(a) and 123.22(b)(3) of the ITAR, any person who exports technical data or furnishes a defense service must report that actual export to DDTC. Reporting to the Department of the export of technical data and provision of defense services covered by the USML must occur prior to the export when using an Application/License for Permanent Export of Unclassified Defense Articles and Related Unclassified Technical Data (Form DSP-5), Application/License for Permanent/Temporary Export or Temporary Import of Classified Defense Articles and Classified Technical Data (Form DSP-85), and Manufacturing License and Technical Assistance Agreements. According to the ITAR, when the export of technical data or provision of a defense service is made using an exemption and using a U.S. port, the exporter is not required to declare the export using the Department of Commerce's Automated Export System, but is required to electronically report that actual export to DDTC. The DS-4071 is the form for submitting this information (although, as detailed in Block 3, this cannot be done electronically at this time).

2. DDTC uses the information provided by applicants to meet the mandate described in item 1 above. The information is also used to monitor and control transfer of sensitive U.S. technology. Without such information, effective control of the proliferation of destabilizing defense technology would not be possible.

3. Although ITAR §§123.22(a) and 123.22(b)(3) stipulate that actual exports of defense technical data and provision of defense services are to be electronically reported to DDTC, the system by which respondents may do so is not yet available. In the meantime, DDTC's website, www.pmdrtc.state.gov, instructs the public on compliance with this provision of the regulation. Currently, respondents must submit such reports via paper. DDTC has a draft of form DS-4071 with instructions on its website to assist respondents with submitting the necessary information in these reports.

DDTC intends to take a phased approach to providing respondents with the means of submitting the required information electronically. In step 1, when an export is made pursuant to a DSP-5 (which includes agreements), the respondent

may provide the required information via D-Trade, as an addition to the DSP-5 file. (D-Trade is the electronic licensing subsystem of the Defense Trade Application System, DDTC's Web-based electronic form system.) In step 2, DDTC will have the DS-4071 available in an online-fillable format via its website. Once completed, the respondent may submit the form via D-Trade when the export is made pursuant to a DSP-5 and via mail when the export is made pursuant to an available licensing exemption. Step 3 will entail the electronic submission of the form in all instances via the Electronic Form Submission system, an application developed by DDTC for the purposes of forms submissions. Step 1 is a near-term solution, whereas steps 2 and 3 are middle-term and longer-term solutions, respectively.

4. The Department of State is unaware of any other U.S. Government requirements for the submission of this information. Department of Commerce's Automated Export System does not collect information on exports of defense technical data and defense services controlled by the ITAR.

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 defense trade are required to submit information regarding actual exports of technical data and defense services. Burdens have been minimized through development of a clear, concise electronic form that seeks only information needed by DDTC.

6. The AECA and the ITAR require the declaration of the actual export of technical data and provision of defense services to a foreign person that has been authorized by the Department of State. The monitoring and control of the actual export of technical data and furnishing of defense services to foreign persons could not occur adequately without the exporter declaring such export. Monitoring actual exports of technical data and provision of defense services ensures these transactions are consistent with U.S. foreign policy, national security, and international arms embargoes. Without such monitoring, DDTC would be unable to meet its legally mandated responsibilities.

7. Respondents may have to report information to the Department more often than quarterly. Regulations require the exporter to report each export, and such reports must be submitted prior to the actual export when the authorization is a Form DSP-5, manufacturing license agreement or technical assistance agreement

and at the time of export when using an exemption. The ITAR requires maintenance of records for a minimum period of five years.

8. The Department has published a notice in the *Federal Register* (76 FR 5236) 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 or temporarily importing defense articles/services or brokering thereof, have registered with DDTTC 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, which describes protection of confidentiality given to respondents' information. Other than provisions for confidentiality or nondisclosure included in the Freedom of Information Act, the ITAR, or other Federal regulations, no promises of confidentiality have been made to the respondent.

11. Not applicable. Form DS-4071 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 the actual export of technical data or defense services is already available to respondents because they arrange the shipment of the technical data or defense service. Therefore, the burden to collect the information is considered a customary and usual business practice, and the cost to industry in terms of money, time, and other resources is minimal. The respondent would need approximately 30 minutes to complete this form. The annual number of potential respondents is estimated to be 8,100 and the frequency of response is on occasion. DDTTC estimates there will be 15,000 declarations submitted annually. Estimated aggregate annual hour burden is 7,500 hours.

13. There are no anticipated additional costs to respondents.

14. The estimated annualized cost to the Federal Government for reviewing the 15,000 declarations of export or provision of defense technical data or defense

services, respectively, received by DDTC during CY 2009 was \$1,042,000. This corresponded to approximately 3.7% of DDTC's budget of \$28 million.

15. Item 13(a) of OMB Form 83-I, "Number of Respondents," has been adjusted from 2,000 to 8,100. This change reflects the decision to report the total number of potential respondents who may use this information collection. There are 8,100 persons registered as manufacturers and/or exporters of defense articles. All of them potentially may seek to export technical data or furnish defense services, although in practice roughly one-third of registrants actually export defense services or technical data in a given year. Item 13(b), "Total Annual Responses," has been adjusted from 10,000 to 15,000. This 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 5,000 to 7,500.

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 electronic submission.

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.