

**SUPPORTING STATEMENT FOR  
PAPERWORK REDUCTION ACT SUBMISSIONS**

**Technology Security/Clearance Plans, Screening Records, and Non-Disclosure  
Agreements Pursuant to 22 CFR 126.18  
OMB No. 1405-XXXX**

**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 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 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.

Section 126.18 eliminates, subject to certain conditions, the requirement for an approval by DDTC of the transfer of unclassified defense articles, which includes technical data, within a foreign business entity, foreign governmental entity, or international organization, that is an approved or otherwise authorized end-user or consignee (including transfers to approved sub-licensees) for those defense articles, including the transfer to dual nationals or third-country nationals who are bona fide regular employees, directly employed by the foreign consignee or end-user. The conditions are that effective procedures must be in place to prevent diversion to any destination, entity, or for purposes other than those authorized by the applicable export license or other authorization. Those conditions can be met by requiring a security clearance approved by the host nation government for its employees, or the end-user or consignee have in place a process to screen all its employees and to have executed a Non-Disclosure Agreement that provides assurances that the employee will not transfer any defense articles to persons or entities unless specifically authorized by the consignee or end-user. Section 126.18 also provides that the technology security/clearance plan, screening records, and Non-Disclosure Agreements will be made available to DDTC or its agents for law enforcement purposes upon request.

2. DDTC will use the information provided by respondents to ensure compliance with defense trade statutes and regulations and to monitor and control the transfer of sensitive U.S. technology.
3. The record keeping requirement pursuant to compliance with this exemption may be realized via the maintenance of electronic records. The Department of State intends to provide respondents with electronic means of submitting these records in the event the Department requests their submission.
4. Certain of the means of meeting the specified conditions may be obtained by respondents for other of their business requirements (i.e., security clearance, Non-Disclosure Agreement). In these instances, and if appropriate, these records may be used for the purposes described in item 1 above.

5. The AECA and ITAR are applicable equally to large and small businesses or entities. Only end users seeking the benefit of the licensing exemption in §126.18 will be required to obtain and maintain the specified records.
6. Absent this record keeping requirement, it would be extremely difficult for DDTTC to meet its legally mandated responsibility to ensure oversight of defense trade exports in furtherance of foreign policy objectives, national security interests, and world peace.
7. The ITAR requires that respondents maintain records for a minimum period of five years from the expiration of a license or written approval. Requests for the submission of these records would occur on an irregular basis.
8. The Department published a notice in the *Federal Register* (76 FR 27741) soliciting public comments on this collection and notifying the public that this collection has been submitted to OMB for review and approval. One public comment was received. The comment did not address aspects of the information collection (the necessity of the information collection, the accuracy of the estimated time burden or ways in which it may be reduced, or the accuracy or clarity of the regulation with regard to the information requested). Rather, it addressed the legality of the regulation itself. The regulation was published as a proposed rule on August 11, 2010, and as a final rule on May 16, 2011, with an implementation date of August 15, 2011. The Department of State has worked with the defense industry and foreign governments in writing the final rule and in the development of procedures for compliance with the regulation. The substance of the commenting party's concern has been addressed in various fora during this time.
9. Not applicable. No payment or gift has been or will be provided to any respondent.
10. Section 126.10 of the ITAR describes protection of confidentiality given to respondents' information. Other than provisions for confidentiality or nondisclosure included in the Privacy Act, the ITAR, or other Federal regulations, no promises of confidentiality will be made to respondents.
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 the information required for maintenance of records concerning the licensing exemption at ITAR §126.18 is already available to foreign end-users in some form due to other needs and requirements (i.e., security clearance for employment eligibility, including for employees that are dual country or third-country nationals). The Department believes the estimated 100,000 respondents would devote approximately 10 hours per annum to this recordkeeping requirement. Consequently, it can be reasonably assumed the cost to industry in terms of money, time, and other resources is minimal. The estimated annual hour burden is 1,000,000 hours.

13. There are no anticipated additional costs to respondents.

14. The Department estimates it will request records per ITAR §126.18 from 300 respondents on an annual basis. The auditing of those records by DDTC would account for approximately 0.2% of its current budget of \$36 million. The estimated annualized cost to the Federal government would be \$88,254 for reviewing these records.

15. Item 13(a) of Form DS 83-I, “Number of Respondents,” is 100,000, and “Total Annual Responses” (Item 13(b)) is 100,000. “Total Annual Hours Requested” (Item 13(c)) is 1,000,000.

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

17. The Department of State has no objection to displaying the expiration date; however, it should be noted that this is a recordkeeping requirement and does not involve the use of a form.

18. Not applicable. The Department of State does not seek any exception to the statement, “Certification for Paperwork Reduction Act Submissions,” of DS-83-I.

## **B. Collections of Information Employing Statistical Methods**

Not applicable. This collection of information does not employ statistical methods.