

**SUPPORTING STATEMENT FOR
PAPERWORK REDUCTION ACT SUBMISSION**

**Application/License for Permanent Export of Unclassified Defense Articles
and Related Unclassified Technical Data**

OMB No. 1405-0003

DSP-5

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.

In accordance with Part 123 of the ITAR, any person who intends to permanently export unclassified defense articles or unclassified technical data must obtain a license from DDTC prior to export. “Application/License for Permanent Export of Unclassified Defense Articles and Related Unclassified Technical Data” (Form-DSP-5) is used to obtain permission for the permanent export of unclassified defense articles and related unclassified technical data covered by the USML.

2. DDTC uses the information provided by applicants to meet the mandate described in item 1 above. Form DSP-5 is used initially by DDTC to analyze the proposed export for foreign policy and national security considerations. Depending on the complexity of the proposed export, the application is forwarded to other Federal Government agencies for further review and recommendations. Discontinuation of the DSP-5 would make it extremely difficult to meet statutory and regulatory requirements concerning the control of commercial defense trade.

The DSP-5, when signed and dated by an official of DDTC, serves as the applicant’s notification and authorization for the permanent export. If the form were eliminated, it would hamper regulatory and enforcement oversight functions.

At U.S. ports, U.S. Customs and Border Protection (CBP) officials utilize the Form DSP-5 to monitor outbound shipments. CBP may delay shipments if they are thought to be defense-related and the DSP-5 has not been presented or approved by the Department of State. DDTC is then consulted and if it is determined that the items in question are covered by the USML, the items are detained or seized. If the shipment is seized, the shipper is fined and/or charged with a crime if it is determined that a license was not obtained.

The information collected with this form is also used to comply with Congressional notification and reporting requirements. A quarterly report is submitted to Congress for export authorizations of major defense equipment valued at one million dollars or more, and an annual report is transmitted to

Congress of all export authorizations, indicating the commodity and values by foreign country.

3. The DSP-5 must be submitted electronically via the electronic licensing subsystem (D-Trade) of the Defense Trade Application System, DDTC's Web-based electronic form system. The electronic requirement (allowing for very few exceptions) was instituted in 2007. Before, all respondents had the option of using a paper DSP-5. Electronic licensing eliminates the inefficiencies of paper submissions (travel time, misplacement, etc.), and built-in features of the system inform the applicant of a range of possible application deficiencies, thereby reducing the possible necessity of re-submitting the application.

4. The Department of State collects information from industry to carry out its various mandates as set out under Item 1, above. The Department is working to identify any duplication of reporting, and if it exists, will take steps to minimize or eliminate it.

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 registered exporters are required to complete the "Application/License for Permanent Export of Unclassified Defense Articles and Related Unclassified Technical Data" (Form-DSP-5) when permanently exporting unclassified defense articles or related unclassified technical data.

6. The AECA and the ITAR established the frequency of information collection. The information required for the proper assessment of a proposed permanent export request is reviewed on a case-by-case basis and is specific to the transaction under consideration. Absent this reporting requirement, it would be extremely difficult for DDTC to meet its legally mandated responsibilities to ensure oversight of defense trade exports in furtherance of foreign policy objectives, national security interests, and world peace.

7. Respondents may have to report information to the Department more often than quarterly because they need approval on a case-by-case basis when seeking to export defense articles and/or services and related technical data. The ITAR requires maintenance of records for a minimum period of five years from the expiration of the license or written approval.

8. The Department has published a notice in the *Federal Register* (76 FR 38450) 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 comments were received during the comment period.

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 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, 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 DSP-5 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 proposed export is already available to respondents in some form due to other needs and requirements (e.g., business transactional records, tax records, quality assurance and productivity, and legal issues posed by other federal laws). An estimated 56,000 annual responses are expected from 2,500 respondents. Frequency of response is on occasion. The estimated time that the respondent devotes to each submission is approximately one hour. Consequently, it can be reasonably assumed that the cost to industry in terms of money, time, and other resources is minimal. The estimated annual hour burden is 56,000 hours.

13. There are no anticipated additional costs to respondents.

14. The 56,000 responses received by DDTC during CY 2010 accounted for approximately 46% of its budget of \$36 million. The estimated annualized cost to the Federal Government was \$16,474,080 for reviewing these export applications.

15. Item 13(a) of form DS-83-I, "Number of Respondents," has been adjusted from 1,960, the previously estimated number of registrants who export defense articles, to 2,500, the most recent estimate. Item 13(b), "Total Annual Responses,"

has been adjusted from 53,000 to 56,000. The higher numbers accord with the trend of annual increase in defense trade activity. As a result of the change to Item 13(b), “Total Annual Hours Requested” (Item 13(c)) has been adjusted from 53,000 to 56,000. There are no changes to Item 14.

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 DS-83-I.

B. Collections of Information Employing Statistical Methods

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