

# SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSIONS

## Nontransfer and Use Certificate OMB No. 1405-0021 DSP-83

### 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.

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 are consistent with 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.

Pursuant to §123.10 of the ITAR, a completed “Nontransfer and Use Certificate” (Form DSP-83) must accompany an export license application to export significant military equipment and classified articles and technical data. And pursuant to §124.10 of the ITAR, a completed “Nontransfer and Use Certificate” must be submitted with any request for a manufacturing license agreement or technical assistance agreement that relates to significant military equipment or classified defense articles and technical data. The foreign consignee, foreign end-user, and applicant execute this form. The certificate stipulates that, except as specifically authorized by prior written approval of the Department of State, the foreign consignee and foreign end-user will not re-export, resell or otherwise dispose of the significant military equipment enumerated in the application outside the foreign country named as the location of the foreign end-user or to any other person. With respect to agreements that involve classified articles or classified technical data, an authorized representative of the foreign government must also sign the form.

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 license applications, requests for manufacturing license or technical assistance agreements submitted for approval, and to ensure compliance with defense trade laws and regulations.

3. Submissions are made via a completed and signed DSP-83. Respondents print a copy of this form from DDTC’s Web site ([www.pmdtcc.state.gov](http://www.pmdtcc.state.gov)). When a license application is submitted via the Web-based electronic licensing subsystem (D-Trade) of the Defense Trade Application System, the DSP-83 is attached in the electronic submission.

4. The information collected is limited to that necessary to properly evaluate a license application or request for an agreement. The format and content of this form is unique to meet the requirements of the mandate described in the last paragraph of item 1, above. See also the second paragraph of item 6, below.

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 submit license applications and other requests for approval that may require submission of the “Nontransfer and Use Certificate.”

6. The AECA and the ITAR established the frequency of information collection. In order for U.S. Government control of defense trade to be effective, applications and requests for exports must be evaluated on a case-by-case basis. The information collected is used to determine whether a license should be approved. Absent this reporting requirement, it would be extremely difficult for DDTTC to meet its legally mandated responsibilities to ensure defense trade exports are consistent with foreign policy objectives, national security interests, and world peace.

Furthermore, the “Nontransfer and Use Certificate” is a multi-purpose document. It is used initially to assess the national security and foreign policy impact of a proposed export. The information required on the form is also used to comply with the requirement to report quarterly to the Congress all licenses for exports of major defense equipment valued at \$1,000,000 or more. Elimination of this form would severely hinder Congressional oversight of arms exports.

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 significant military equipment and classified articles and technical data, or when requesting a manufacturing license agreement or technical assistance agreement that relates to significant military equipment or classified defense articles and 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-83 does not solicit any information regarding questions of a sensitive nature or matters commonly considered private.

12. An estimated 9,400 annual responses are expected from the estimated 2,600 respondents. Frequency 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 9,400 hours.

13. There are no anticipated additional costs to respondents.

14. The 9,400 responses received by DDTC during CY 2010 accounted for approximately 7.7% of its budget of \$36 million. The estimated annualized cost to the Federal Government was \$2,765,292 for reviewing these forms.

15. Item 13(a) of form DS-83-I, "Number of Respondents," has been adjusted from 2,200, the previously estimated number of actual exporters who may need to use the DSP-83, to 2,600, the current estimate. Item 13(b), "Total Annual Responses," has been adjusted from 7,400 to 9,400. The higher numbers accord with the trend of annual increase in defense trade activity. Item 13(b)(1) has been adjusted from 75% to 100%. Reflecting the change in 13(b), "Total Annual Hours Requested" (Item 13(c)) has been adjusted to 9,400. 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.