

**SUPPORTING STATEMENT FOR
PAPERWORK REDUCTION ACT SUBMISSION**

**Application/License for Permanent/Temporary Export or Temporary Import
of Classified Defense Articles and Classified Technical Data**

OMB No. 1405-0022

DSP-85

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 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.

In accordance with Part 125 of the ITAR, any person who intends to permanently export, temporarily export, or temporarily import classified defense articles or classified technical data must first obtain a license from DDTC. “Application/License for Permanent/Temporary Export or Temporary Import of Classified Defense Articles and Classified Technical Data” (Form DSP-85) is used to obtain permission for the permanent export, temporary export, or temporary import of classified defense articles and classified 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-85 is used initially by DDTC to analyze the proposed transaction for foreign policy and national security considerations. Usually, it is staffed to other Federal Government agencies for further evaluation. Discontinuation of the DSP-85 would make it extremely difficult to meet statutory and regulatory requirements concerning the control of commercial defense trade.

Licenses for the export or temporary import of classified defense articles and classified technical data are forwarded by DDTC to the Defense Security Service of the Department of Defense in accordance with the provisions of the National Industrial Security Program Operating Manual. DDTC forwards a copy of the license to the applicant for his/her information. The Defense Security Service will endorse the back of the license after each shipment indicating the date of shipment, quantity, commodity, shipment value, Electronic Export Information number, and port of exit/entry.

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-85 is an export authorization request that involves transfer of classified material. As the electronic licensing system operated by DDTC is unclassified, the technical means of enabling electronic transmission of the DSP-85 form is under review. In the meantime, an online-fillable version of the form is available from the DDTC website. Respondents may enter data online, print the completed form, and then mail it to DDTC.

4. The Department of State collects information from industry to carry out its various statutory and interagency mandates as set out under Items 1 and 2, above. The Department is working to identify any unnecessary 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/Temporary Export or Temporary Import of Classified Defense Articles and Classified Technical Data” (Form-DSP-85) when temporarily/permanently exporting and temporarily importing classified defense articles and classified 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/temporary export or temporary import of classified defense articles and technical data 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 defense trade exports are consistent with 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 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.

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-85 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 DSP-85 is already available to U.S. industry 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 300 annual responses are expected from 35 respondents. Frequency of response is on occasion. The estimated time that the respondent devotes to each submission is approximately 30 minutes. 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 150 hours.

13. There are no anticipated additional costs to respondents.

14. The 300 responses received by DDTC during CY 2010 accounted for approximately 0.3% of its budget of \$36 million. The estimated annualized cost to the Federal Government was \$88,254 for reviewing these export applications.

15. Item 13(a) of form DS-83-I, "Number of Respondents," has been adjusted from 40 to 35. Item 13(b), "Total Annual Responses," has been adjusted from 360 to 300. Consequently, "Total Annual Hours Requested" (Item 13(c)) has been adjusted from 180 to 150. 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.