

# SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSIONS

## Brokering Prior Approval (License) OMB No. 1405-0142

### 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 (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 129 of the ITAR, U.S. and foreign persons who wish to engage in ITAR-controlled brokering activity of defense articles and defense services must first register with DDTC. Brokers must then submit a written request for approval to DDTC and must receive DDTC's consent prior to engaging in such activities unless exempted.

2. DDTC uses the information provided by respondents 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 the brokering request submitted for approval and to ensure compliance with defense trade statutes and regulations. It is also used to monitor and control the transfer of sensitive U.S. technology.

3. Currently, there is no option of electronic submission of this information. Submissions are made via hardcopy documentation. Applicants are referred to ITAR part 129 for guidance on information to submit regarding proposed brokering activity. DDTC plans to provide an electronic form that applicants may use for the purposes of obtaining prior written approval for proposed brokering activity. Eventually, the applicant will be able to access this form from the DDTC website, complete it online, and submit it via the Internet.

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. The AECA and ITAR are applicable equally to large and small businesses or entities. Only persons in the business of brokering defense articles and defense services are required to submit proposed brokering activity requests for approval and the information provided is typically maintained by such persons for standard commercial reasons.

6. The AECA and the ITAR establish the frequency of information collection. The information required for the proper assessment of a proposed brokering activity request is reviewed on a case-by-case basis and is specific to the transaction under consideration. Monitoring brokering activity ensures its

consistency with U.S. foreign policy, national security, and international arms embargoes. It would be extremely difficult to monitor and control arms brokering adequately without the required information, or if it were provided less frequently.

7. Respondents may be required to report information to the Department more often than quarterly because they need approval on a case-by-case basis for brokering activity. Also, the ITAR requires that respondents maintain records for a minimum period of five years from the expiration of a license or written approval.

8. The Department has published a notice in the *Federal Register* (77 FR 20686) 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. Comments were received from one commenting party. The commenting party stated the collection is redundant, as the information provided in this collection may be provided in other DDTC information collections. The submission of a Brokering Prior Approval (License) provides the Department of State the means of accessing and approving /disapproving proposed brokering activities upfront where there is normally not yet a signed contract or letter of intent with details such as quantities and prices needed for the approval of the actual sale. It is therefore typical that another authorization in the form of a license would be submitted for the resulting sale. A few of the elements collected to approve the brokering activity may indeed be included along with the follow-on license for the resulting sale. However, we disagree that because a couple of the elements collected are the same they should be characterized as redundant, as different types of information are required and provided in different stages and used in different capacities to approve/disapprove the initial brokering activity versus approve/disapprove the actual resulting sale of the items to a specific end-user for a specific end-use. Therefore, we disagree with the commenting party that this collection is redundant.

9. 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 ITAR §126.10, 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 statutes or regulations, no promises of confidentiality have been made to respondents.

11. 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 that the information that is required for a brokering activity request is already available to respondents because the same information is necessary for sales contracts. The Department receives an estimated 150 responses annually from the total number of respondents (1,515). Frequency of response is on occasion, when the respondent seeks prior approval for a proposed brokering activity. Also, the Department estimates that a respondent would need two hours to complete this specific written submission required by the ITAR. Consequently, the Department reasonably assumes that cost to industry in terms of money and other resources is minimal, and estimates that the annual hour burden is 300 hours.
13. There are no anticipated costs to respondents.
14. The estimated annualized cost to the Federal Government for processing the 150 brokering request submissions received by DDTC during FY 2011 was \$44,000. This corresponded to approximately 0.12% of DDTC's budget of \$36 million.
15. There are no changes or adjustments in the burden figures.
16. Publication of the relevant information is not anticipated.
17. DDTC will display the expiration date for OMB approval of the information collection.
18. The Department of State does not seek any exception to the certification statement.

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

This collection of information does not employ statistical methods.