

**SUPPORTING STATEMENT FOR
PAPERWORK REDUCTION ACT SUBMISSION**

**Export Declaration of Defense Technical Data or Services
OMB Number 1405 – 0157
DS-4071**

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 13637. 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.

Under the provisions of §§123.22(a) and 123.22(b)(3) of the ITAR, any person who exports technical data or furnishes a defense service must report that actual export to DDTC. Reporting to the Department of the export of technical data and provision of defense services covered by the USML must occur prior to the export when using an Application/License for Permanent Export of Unclassified Defense Articles and Related Unclassified Technical Data (Form DSP-5), Application/License for Permanent/Temporary Export or Temporary Import of Classified Defense Articles and Classified Technical Data (Form DSP-85), and Manufacturing License and Technical Assistance Agreements. According to the ITAR, when the export of technical data or provision of a defense service is made using an exemption and using a U.S. port, the exporter is not required to declare the export using the Department of Commerce's Automated Export System, but is required to electronically report that actual export to DDTC. The DS-4071 is the form for submitting this information to DDTC (although, as detailed in Section 3, below, it is a form still in draft stage and cannot be used by the public for actual submission of information).

2. DDTC uses the information provided by applicants to meet the mandate described in item 1 above. The information is also used to monitor and control transfer of sensitive U.S. technology. Without such information, effective control of the proliferation of destabilizing defense technology would not be possible.

3. ITAR §§123.22(a) and 123.22(b)(3) stipulate that actual exports of defense technical data and provision of defense services pursuant to a licensing exemption are to be electronically reported to DDTC. In a previous submission, DDTC explained a phased approach to the implementation of full electronic reporting for this regulatory requirement. DDTC has enabled the first step, wherein respondents may now provide the required information via D-Trade when the export is made pursuant to a form DSP-5. (D-Trade is the electronic licensing subsystem of the Defense Trade Application System, DDTC's Web-based electronic form system.) The respondent in this case would upload as an attachment to the DSP-5 case the report on actual export. For the export of technical data or the furnishing of defense services effected through use of a licensing exemption, the respondent

must submit the report to DDTC in hardcopy. DDTC's website, www.pmdrtc.state.gov, instructs the public on compliance with this provision of the regulation. The draft of form DS-4071 with instructions is available on the website to assist respondents with submitting the necessary information in these reports.

DDTC's plans were to move from step 1 of the phased approach to the availability to the respondent of full electronic reporting for this collection (described above) to step 2 (online-fillable format for the DS-4071) and then step 3 (electronic submission of the form in all instances via the Electronic Form Submission system, an application developed by DDTC for the purposes of forms submissions). However, those plans have changed. Pursuant to the President's Export Control Reform initiative, DDTC is in the process of adopting the Department of Defense's USXports electronic licensing system, which does not accommodate the DS-4071. Once transition to USXports is completed, the focus of which is on information collections that are already fully electronic and more frequently used by the defense industry, DDTC will inquire into incorporating other information collections into that system, to include this information collection.

4. The Department of State is unaware of any other U.S. Government requirements for the submission of this information. Department of Commerce's Automated Export System does not collect information on exports of defense technical data and defense services controlled by the ITAR.

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 persons in the business of defense trade are required to submit information regarding actual exports of technical data and defense services. Burdens have been minimized as much as possible.

6. The AECA and the ITAR require the declaration of the actual export of technical data and provision of defense services to a foreign person. The monitoring and control of the actual export of technical data and furnishing of defense services to foreign persons could not occur adequately without the exporter declaring such export. Monitoring actual exports of technical data and provision of defense services ensures these transactions are consistent with U.S. foreign policy, national security, and international arms embargoes. Without such monitoring, DDTC would be unable to meet its legally mandated responsibilities.

7. Respondents may have to report information to the Department more often than quarterly. Regulations require the exporter to report each export, and such reports must be submitted prior to the actual export when the authorization is procured through an approved DSP-5, and at the time of export when using a licensing exemption. The ITAR requires maintenance of records for a minimum period of five years.

8. The Department has published a notice in the *Federal Register* (78 FR 11947) 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. One comment was received during the comment period.

The commenting party recommended that the form DS-4071 be discontinued, as the information to be gathered via this form is already collected by the Department via other methods. The Department does gather this information via other methods, but only because the form DS-4071 has not been implemented yet. Once the DS-4071 is implemented, it would be the only method of providing the Department with the requested information. The Department anticipates many benefits in providing to the public one means of reporting the requested information, among them clarity (the form will have designated fields for requested information), ease of use (electronic submission, rather than mailing paper reports), and data centralization (for better Department assessment of the data).

The commenting party also recommended the regulations provide for the reporting of only the initial export of technical data or provision of defense services, rather than each instance pursuant to an authorization. The regulations currently provide for this in certain circumstances. The Department will review the feasibility of expanding this provision.

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 the respondent.

11. The Department of State is not soliciting 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 reporting the actual export of technical data or defense services is already available to respondents because they arrange the shipment of the technical data or defense service. Therefore, the burden to collect the information is considered a customary and usual business practice, and the additional cost to industry in terms of money, time, and other resources is minimal. An estimated 18,000 annual responses are expected from 12,000 respondents. The average time a respondent devotes to each submission is estimated to be 30 minutes. Therefore, the estimated annual hour burden is 9,000 hours.

13. There are no anticipated costs to respondents.

14. Reviewing the 18,000 responses received by DDTC during CY 2012 accounted for approximately 3.6% of its budget of \$36 million. The estimated annualized cost to the Federal Government was \$1,324,000 for reviewing these submissions.

15. “Number of Respondents” has been adjusted from 8,100 to 12,000, reflecting the increase in the number of potential respondents who may use this information collection. There are 12,000 persons registered as manufacturers and/or exporters of defense articles. All of them potentially may seek to export technical data or furnish defense services, although in practice roughly one-third of registrants actually export defense services or technical data in a given year. “Total Annual Responses” has been adjusted from 15,000 to 18,000. This change reflects the increase in respondents who have used the information collection. As a result of this change, “Total Annual Hours Requested” has been adjusted from 7,500 to 9,000.

16. Publication of the relevant information is not anticipated.

17. DDTC will display the expiration date for OMB approval of the information collection on the form.

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.