

**SUPPORTING STATEMENT FOR
PAPERWORK REDUCTION ACT SUBMISSIONS**

**Technology Security/Clearance Plans, Screening Records, and Non-Disclosure
Agreements Pursuant to 22 CFR 126.18**

OMB 1405-0195

No Form

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 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 Controls and the Directorate of Defense Trade Controls, Bureau of Political-Military Affairs.

ITAR §126.18 eliminates, subject to certain conditions, the requirement for an approval by DDTC of the transfer of unclassified defense articles, which includes technical data, within a foreign business entity, foreign governmental entity, or international organization, that is an approved or otherwise authorized end-user or consignee (including transfers to approved sub-licensees) for those defense articles, including the transfer to dual nationals or third-country nationals who are bona fide regular employees, directly employed by the foreign consignee or end-user. The conditions are that effective procedures must be in place to prevent diversion to any destination, entity, or for purposes other than those authorized by the applicable export license or other authorization. Those conditions can be met by requiring a security clearance approved by the host nation government for its employees, or the end-user or consignee having in place a process to screen all its employees and having executed a Non-Disclosure Agreement that provides assurances that the employee will not transfer any defense articles to persons or entities unless specifically authorized by the consignee or end-user. ITAR §126.18 also provides that the technology security/clearance plan, screening records, and Non-Disclosure Agreements will be made available to DDTC or its agents for law enforcement purposes upon request.

2. DDTC requires that respondents maintain the subject information to ensure compliance with defense trade statutes and regulations, and may request access to the information to monitor and control the transfer of sensitive U.S. technology.
3. The recordkeeping requirement for compliance with this exemption may be realized via the maintenance of electronic records. The Department of State will provide respondents with the option of submitting these records via e-mail in the event the Department requests their submission.
4. Certain of the means of meeting the specified conditions may be obtained by respondents for other business requirements (i.e., security clearance, Non-Disclosure Agreement). In these instances, and if appropriate, these records may be used for the purposes described in item 2 above.

5. The AECA and ITAR are applicable equally to large and small businesses or entities. Only end users seeking the benefit of the licensing exemption in ITAR §126.18 are required to obtain and maintain the specified records.
6. Absent this recordkeeping requirement, it would be extremely difficult for DDTTC 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. The ITAR requires that respondents maintain records for a minimum period of five years from the expiration of a license or written approval. Requests for the submission of these records occur on an irregular basis.
8. The Department has published a notice in the *Federal Register* (**79 FR 16088**) 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. The Department did not receive any comments during the comment period.
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 DDTTC 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 maintenance of records concerning the licensing exemption at ITAR §126.18 is already available to foreign end-users in some form due to other needs and requirements (i.e., security clearance for employment eligibility, including for employees who are dual-country and third-country nationals). Therefore, the additional cost to industry in terms of money, time, and other resources is minimal. Frequency of response is on occasion. The Department estimates that 100,000

respondents devote approximately 10 hours per annum to this recordkeeping requirement. Therefore, the estimated annual hour burden is 1,000,000 hours.

13. There are no anticipated costs to respondents.
14. DDTC did not request the subject records from any respondent in CY 2013. Accordingly, the Federal Government incurred no cost for reviewing the records maintained pursuant to ITAR §126.18.
15. There are no changes or adjustments in the burden figures.
16. Publication of the relevant information is not anticipated.
17. The Department of State proposes that an expiration date for OMB approval of the information collection not be displayed, as this is a recordkeeping requirement and does not involve the use of a 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.