

# SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSIONS

## Annual Brokering Report OMB No. 1405-0141

### 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.

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 the appropriateness of 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.

In accordance with ITAR part 129, U.S. and foreign persons required to register as a broker shall provide annually a report to DDTC enumerating and describing brokering activities by quantity, type, U.S. dollar value, purchaser/recipient, and license number for approved activities and any exemptions utilized for other covered activities.

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 munitions export and brokering license applications and to ensure compliance with defense trade statutes and regulations.

Revision of ITAR part 129 has the following impact on this information collection, regarding the information that must be provided by the respondent: clarifies that respondents must include their registration code on the submitted report; clarifies that an “empowered official” must sign and certify the report; requests information on all parties to a brokering transaction, and not just the purchaser and recipient; requests information on whether any fees or other considerations are to be made from the proposed brokering activity; requests the submission of a report stipulating there were no brokering activities during the reporting time period, if applicable; and provides when the report must be submitted.

The collection would also apply to fewer brokers, as the regulation change necessitates the registration of fewer of the brokers currently registered (certain foreign person brokers no longer are to register with the Department). Without the regulation change, the Department would have reported an increase in the number of respondents, from 1,515 to 2,060. With the regulation change, the Department estimates the number of respondents to be 760. As each registered broker must submit one brokering report annually, the Department estimates the number of responses to this information collection to be 760, a reduction of 1,300.

3. Currently, there is no form for this information collection. Applicants are referred to ITAR §129.10 (in revised ITAR part 129; §129.9 in the current ITAR) for guidance on information to submit in the Annual Brokering Report. Pursuant to the revised brokering regulations, reports are to be submitted as an attachment to the respondents’ annual registration renewal or, if not renewing, within 30 days after expiration of registration. DDTC plans to provide an electronic means of

submitting the report (contingent upon enabling the electronic submission of the Statement of Registration, OMB no. 1405-0002).

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 statute and regulations 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 register and are thus subject to this reporting provision.

6. Absent this reporting requirement, or if reports were submitted less frequently than annually, the Department of State would find it difficult to provide policy and enforcement oversight for the brokering of regulated defense transactions. Thus, it would be extremely difficult for DDTC to meet its legally mandated responsibilities to ensure defense trade is consistent with foreign policy objectives, national security interests, and world peace.

7. ITAR §122.5(a) requires maintenance of records (including those regarding brokering activity) for a period of five years from the expiration of the license or other approval.

8. The Department has published notices in the *Federal Register* 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. In the proposed rule regarding revision of the brokering regulation published on December 19, 2011 (76 FR 78578), the Department described the proposed changes to this information collection. Subsequently, the Department sought and obtained approval of the collection without the proposed changes, for the purposes of continuing use of the collection while the final rule of the brokering regulation, which contains the changes described above, was prepared (see 77 FR 20686, published April 5, 2012, and 77 FR 29443, published May 17, 2012). The Department received and responded to comments at that time, and those responses are provided here for reference.

Comments were received from one party. The commenting party requested an explanation of the utility of this report, on the premise that this information collection is redundant. While the submission of a Brokering Prior Approval (License) provides the Department of State the means of assessing and

approving/disapproving proposed brokering activities, it does not provide the Department information on which brokering activities were actually undertaken. In addition, without submission of an Annual Brokering Report, the Department would not be informed of brokering activities undertaken pursuant to exemptions available in ITAR part 129. Finally, submission of the information requested via this collection allows the Department to monitor compliance with ITAR part 130, which provides for the reporting of certain payments relating to sales of defense articles and defense services.

The commenting party also stated that the estimated burden of two hours to complete an Annual Brokering Report is incorrect, the true burden being much higher. The Department notes that the estimated burden is an estimated average, and therefore will not accurately reflect the actual time necessary for all respondents to complete the report.

The Department, therefore, disagrees that this collection is redundant, and that the estimated burden is incorrect.

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, 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 has reason to believe that the information that is required for a brokering report is already collected by and available to respondents due to other needs and requirements (*i.e.*, business transactional records, tax records, quality assurance and productivity, and legal requirements imposed by other federal laws). The Department estimates that the number of respondents for FY 2011 is 1,515 (on average 1,515 entities were registered as brokers in that time period). The frequency of reporting is once a year. The Department estimates that each respondent requires an average of two hours annually to complete the brokering report, with a total annual burden of 3,030. Consequently, it can be

reasonably assumed that the cost to industry in terms of money, time, and other resources is minimal.

The Department projects that the revision of the regulation will result in a decrease to 760 entities registered as brokers. This will result in a commensurate decrease in the number of brokering reports received (to 760). As a result, the Department estimates that the total annual burden will be 1,520 hours.

13. There are no anticipated costs to respondents.
14. The estimated annualized cost to the Federal Government for processing the 1,515 responses for FY 2011 was \$112,000. This corresponded to approximately 0.3% of DDTC's budget of \$36 million. The projected decrease in the number of responses (to 760) should result in a proportionate decrease in cost.
15. "Number of Respondents" has been adjusted from 1,515 to 760. The number of respondents would have been 2,060 without the regulation change. The Department estimates that 1,300 of the currently-registered brokers will not need to maintain registration as a result of the regulation change, thereby yielding the new "Number of Respondents" estimate of 760. As a result of this change, "Total Annual Hours Requested" has been adjusted from 3,030 to 1,520.
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.