

# 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

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 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 those brokering activities are exempted from the requirement for approval.

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.

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 certifications on eligibility to engage in defense exports, found in ITAR §126.13 and incorporated and expanded upon in ITAR §129.8, apply to brokering activities; clarifies the requirement to report to DDTC any changes in the eligibility status of persons party to an application for approval of brokering activities; requests identification of types of defense articles and defense services to be brokered by using appropriate USML category numbers; requests information on whether the brokering activities concern a commercial sale or are pursuant to a government program; and requests information on whether any fees or other considerations are to be made from the proposed brokering activity.

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. However, at this time, the Department does not anticipate a change in the number of responses it receives annually.

3. Currently, there is no option of electronic submission of this information. Submissions are made via hardcopy documentation. Applicants are referred to ITAR §§129.4 through 129.6 (in revised ITAR part 129; §§129.6 and 129.7 in the current ITAR) for guidance on information to submit regarding proposed brokering activity. DDTC's preliminary plans to provide an electronic means of submission based on its existing IT system 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 this information collection. Once transition to USXports is completed, the focus of which is on information collections that are already electronic and more frequently used by the defense industry, DDTC will investigate options for incorporating other information collections into the system, to include this information collection.

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 period of five years from the expiration of a license or written 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 the responses are provided below.

Comments were received from one 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 the means of accessing and approving/disapproving proposed brokering activities upfront, when there is normally not yet a signed contract or letter of intent with such details 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 in the follow-on license for the resulting sale. However, the Department disagrees that because a few 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.

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 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. 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 2012 was \$44,000. This corresponded to approximately 0.12% of DDTC's budget of \$36 million.

15. "Number of Respondents" has been adjusted from 1,515 to 760, as a result of the regulation change. 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, thereby yielding the new "Number of Respondents" estimate of 760. The Department estimates that "Total Annual Responses" will remain the same because the number of responses from continued and new respondents will offset the any decrease due to the decrease in "Number of Respondents."

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.