

## SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSION

### Request for Advisory Opinion OMB No. 1405-0174

#### 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

11958, as amended. These regulations are primarily administered by the Deputy Assistant Secretary of State for Defense Trade and Regional Security and the Directorate of Defense Trade Controls, Bureau of Political-Military Affairs.

Pursuant to ITAR §126.9, a person may request an “advisory opinion” from DDTC on whether it would be likely to grant a license or other approval for the export or approval of a particular defense article or defense service to a particular country. Advisory opinions are issued on a case-by-case basis and apply only to the particular matters presented to DDTC. These opinions are not binding on the Department of State, and may not be used in future matters before the Department. A request for an advisory opinion must be made in writing and must outline in detail the equipment, its usage, the security classification (if any) of the articles or related technical data, and the country or countries involved.

2. DDTC reviews the submitted information to determine whether it would likely grant a license or other approval for the export of a defense article or defense service.

3. Currently, there is no option of electronic submission of this information. Submissions are made via hardcopy documentation. Applicants are referred to ITAR §126.9 for guidance on information to submit regarding the request for an advisory opinion. 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 inquire into incorporating other information collections into the system, to include this information collection.

Due to incorrect reporting in the prior OMB reauthorization period, a draft form (form DS-6001) was characterized as the means by which this information is collected. Although DDTC did describe this draft form in the prior supporting statement, it intended to indicate that it made it available to the public as guidance on the types of information to be submitted by the respondent pursuant to this collection. DDTC did not intend to report the form as operational, and has never used it for the purposes of collecting information. Because of the change in licensing IT systems, as described above, DDTC has discontinued making the draft form available as guidance to respondents. Instead, it will rely on the reporting

procedures outlined in ITAR §126.9. This process change will not affect the reporting burden. DDTC requests that OMB discontinue associating the draft DS-6001 form with this information collection.

4. The Department of State is unaware of any other U.S. Government requirements that would cause U.S. industry to duplicate this reporting requirement.
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. Submitting a “Request for Advisory Opinion” is optional and applies only to small businesses and small entities when they are “in the business” of defense trade.
6. The AECA and the ITAR established the frequency of information collection. The information required for the proper assessment of a proposed permanent export request is reviewed on a case-by-case basis and is specific to the transaction under consideration. Absent this procedure for the collection of this information, the Department would not have a process of responding to requests on whether DDTC would likely grant a license or other approval for a proposed export transaction involving defense articles and defense services.
7. The ITAR requires any person who is required to register with DDTC to maintain records for a minimum period of five years.
8. The Department has published a notice in the *Federal Register* (77 FR 29443) 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. No comments were received 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 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 §126.10 of the ITAR, 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 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 requested in an advisory opinion is already available to respondents as an aspect of their customary and usual business practices. An estimated 250 annual responses are expected from 250 respondents. Frequency of response is on occasion. The estimated time that the respondent devotes to each submission is approximately one hour. Consequently, it can be reasonably assumed that the cost to industry in terms of money, time, and other resources is minimal. The estimated annual hour burden is 250 hours.
13. There are no anticipated costs to respondents.
14. Processing the 250 responses received by DDTC during CY 2011 accounted for approximately 0.3% of its budget of \$36 million. The estimated annualized cost to the Federal Government was \$73,545 for reviewing these submissions.
15. In the previous submission, there were data entry errors regarding number of respondents and cost. Number of respondents should have been 250 rather than 170, and the cost should be adjusted from 8,840 to 0. There are no other changes.
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.