

## SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSION

### Statement of Political Contributions, Fees, and Commissions Relating to Sales of Defense Articles and Defense Services

OMB No. 1405-0025

#### 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.*), the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120-130), and associated delegations of authority, has the principal missions of promulgating regulations for the import and export of defense articles and defense services; 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 of such items.

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, as amended. These regulations are primarily administered by the Deputy Assistant Secretary of State for Defense Trade and DDTC.

DDTC reviews 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.

In accordance with section 39 of the AECA, the Secretary of State must require, in part, adequate and timely reporting of political contributions, gifts, commissions and fees paid, or offered or agreed to be paid in connection with the sales of defense articles or defense services licensed or approved under AECA sections 22 and 38. Pursuant to ITAR § 130.9(a), any person applying for a license or approval required under section 38 of the AECA for sale to the armed forces of a foreign country or international organization valued at \$500,000 or more must inform DDTC, and provide certain specified information, when they have paid, offered to, or agreed to pay, (1) political contributions in an aggregate amount of \$5,000 or greater; or (2) fees or commissions in an aggregate amount equaling or exceeding \$100,000. Similarly, ITAR § 130.9(b) requires any person who enters into a contract with the Department of Defense under section 22 of the AECA, valued at \$500,000 or more, to inform DDTC and provide the specified information, when they or their vendors, have paid, or offered or agreed to pay, in respect to any sale (1) political contributions in an aggregate amount of \$5,000 or greater; or (2) fees or commissions in an aggregate amount equaling or exceeding \$100,000. In order to sufficiently report information pursuant to § 130.10, respondents must collect information pursuant to §§ 130.12 and 130.13.

2. DDTC uses the information provided by applicants to meet the mandate described in item 1 above. This information is currently used in the review of license applications and requests for other approvals to ensure compliance with defense trade laws and regulations. DDTC also utilizes the information submitted to prepare and submit statutorily-mandated reports to Congress. The information collected through this collection will also be made available, upon request, for utilization by Congress and U.S Government agencies in accordance with the AECA.

3. When this information is submitted via a request for a DDTC license or other approval, this information must be submitted in the same format as the parent request. For example, since requests for DDTC licenses regarding unclassified materials are made electronically, information submitted pursuant to this collection, but in support of the license application, must also be submitted electronically. Respondents submitting pursuant to § 130.9(b), section 22 sales, may provide the information via paper copy.

4. The Department of State is unaware of any other U.S. Government requirements that would cause U.S. industry to duplicate this record keeping requirement.

5. Export control laws and regulations are applicable equally to large and small entities. The burden imposed on respondents by this collection is directly correlated with the amount and type of business conducted by these entities, rather than the size of such entities.

6. The AECA and the ITAR established the frequency of information collection. The information required for the proper assessment of a proposed defense export to the armed forces of a foreign country or to international organizations valued in an amount of \$500,000 or more is reviewed on a case-by-case basis and is specific to the transaction under consideration. Absent this reporting requirement, it would be extremely difficult for DDTC 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.

Elimination of this collection would also hinder Congressional oversight of arms exports since DDTC utilizes this information to generate and submit statutorily-mandated reports to Congress.

7. Respondents may have to report information to the Department more often than quarterly because approval is required on a case-by-case basis related to licenses and approvals, or sales, of defense articles and/or services. Many respondents must maintain records in accordance with §130.14 of the ITAR, which requires respondents to maintain records for a minimum period of five years following the date of the report for which they pertain.

8. The Department published a notice in the Federal Register on March 6, 2018, soliciting public comment. 83 FR 9570. DDTC received three comments for this collection.

1) Part 130: One commenter recommend that DDTC examine the dollar amount reporting thresholds in Part 130, to ensure that they appropriately reflect the current business operating environment.

The Department agrees that the dollar amount reporting thresholds in Part 130 should be reviewed to ensure that they continue to appropriately inform the Department. Any changes will be made by a subsequent Federal Register Notice.

2)Part 130.7: One commenter recommend that DDTC consider removing the requirement for FMS sales reporting under Part 130.7, and that notification of fees and commissions instead move to directives regarding the FMS contracting process.

Changes in the scope of the reporting requirements in Part 130 of the ITAR are beyond of the scope of the review of the information collection. Any changes to substance of Part 130 will be done through a separate rulemaking.

3) Parts 130.9 and 130.11: One commenter recommend removal of the requirement to furnish information to DDTC no later than 30 days after learning of a payment or an offer of payment, and instead alignment of this type of reporting with annual and semi- annual regulatory reports. In the normal course of business, contracts and related contract modifications are regularly executed. This can potentially require multiple instances of subsequent reporting.

DTCC recommends maintaining the 30-day reporting requirement after learning of a payment of offer of payment. This report signifies the applicant's failure to provide accurate information at the time of license submission. In fact, the language in Part 130.9 indicates that the applicant must provide a detailed statement regarding the reason why the applicant did not furnish the information in the approval request. This is not just a reporting requirement at that point. DTCC also notes that the 30 days is not distinct from any other voluntary disclosure process. Boeing's proposed provision of this corrected information with annual and semi- annual regulatory reports does not support DDTC's timely review of this information, which is possible when a company collects this information and provides it to DDTC in a reasonable time, 30 days.

9. No payment or gift has been or will be provided to any respondent.

10. A privacy impact assessment (PIA) for DDTC's electronic system was conducted in 2016 and can be viewed at <https://www.state.gov/privacy>. DDTC's system of records notice (SORN), State-42, is being amended, in part, to accommodate implementation of DDTC's new electronic case management system, Defense Export Control and Compliance System (DECCS). Information entered or transferred into DECCS will be covered under the relevant SORN and PIA.

Respondents to this collection may review the following ITAR sections, which describe DDTC's policy regarding the disclosure of information:

- § 126.10,
- § 130.15,

- § 130.17.

11. This information 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 reporting political contributions, fees and commissions concerning defense trade is already available to U.S. industry in some form due to other needs and requirements (e.g., business transactional records, tax records, quality assurance and productivity, and legal issues posed by other federal laws). DDTC expects to receive 500 responses annually from 120 respondents. DDTC estimates the burden for each response to be approximately 60 minutes. Based on this information DDTC estimates the annual hour burden for this collection to be 500 hours. According to the U.S. Department of Labor Bureau of Labor Statistics website ([www.bls.gov](http://www.bls.gov)), the weighted wage rate category for a “Compliance Officer” is estimated to be \$48.15 per hour (\$34.39 average wage x 1.4 multiplier). Therefore, DDTC estimates the annual hour-cost burden to respondents to be \$24,075 (500 annual burden hours x \$48.15).

13. DDTC believes there are no monetary costs to respondents associated with submitting this information collection.

14. DDTC utilizes this information to generate and provide statutorily-mandated quarterly reports to the Department of Defense, which includes this information in its reports to Congress. One employee (GS-13 or equivalent) spends approximately 3 days per quarter gathering information to be included in DDTC’s quarterly report. Based on an average hourly rate of \$52.41, DDTC estimates the reporting requirements associated with this collection cost the Federal Government approximately \$5,031 per year. This was calculated by multiplying 3 business days (24 hours) by 4, the frequency of reporting, and then multiplying that total by the average hourly rate (24 x 4 x \$52.41). DDTC expects this cost to decrease upon implementation of DDTC’s new case management system (CMS) in 2018.

15. DDTC updated its burden estimates as a result of agency adjustments. The hour burden reported in question 12 was reduced from 1,900 hours to 500 hours. The hour-cost burden was reduced accordingly. This updated estimate was made based on reviewing more recent DDTC data. This decrease is consistent with DDTC’s overall burden as the number of annual responses has decreased across all licensing and authorization-related collections in recent years.

The cost to the Federal Government was previously reported to be \$576,000. DDTC also updated this number to reflect a more accurate estimate. The previous estimate accounted for processing significantly more responses. In addition, the previous estimate accounted for costs of licensing and compliance officers to review information submitted pursuant to section 38 of the AECA. The cost to the Federal Government for licensing and compliance officers in reviewing these submissions is more accurately estimated at \$0. Although the information submitted pursuant to this information collection is integrated into DDTC's licensing and compliance decisions, and is consequently reviewed as part of an overall decision, the unique costs to the Federal Government associated with this information collection are those required to generate and provide statutorily-mandated quarterly reports.

DDTC is proposing to include the requirements to submit information pursuant to § 130.11 and 130.12 (d) in a new collection request, titled "Notifications," and assigned form DS-4295. DDTC is of the opinion that information submitted pursuant to these sections is better suited in the "Notifications" collection.

16. DDTC will submit statutorily-mandated reports to DOD for submission to Congress based on the information received through this collection. Respondents should review ITAR § 130.17, 22 U.S.C. 2779(d), and 22 U.S.C. 2776(a) (7) and (b) (1) for more information.

17. The Department of State requests approval to not display the OMB expiration date. Many submissions made pursuant to this collection in relation to exports under section 38 of the AECA are submitted via DDTC forms approved through other collections, including the DSP-5. Displaying this collection's expiration date on those forms would result in two expiration dates on one form. The presence of two expiration dates could result in more confusion than benefit to the public. For submissions made pursuant to this collection in relation to section 22 of the AECA, there is no form on which to provide an expiration date.

18. The Department of State does not seek any exception to the statement, "Certification for Paperwork Reduction Act Submissions," of DS-83-I.

## **B. Collections of Information Employing Statistical Methods**

This collection of information does not employ statistical methods.