

SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSION

Request for Advisory Opinion OMB No. 1405-0174 Form Number DS-7786

A. Justification

1. Why is this collection necessary and what are the legal statutes that allow this?

The Directorate of Defense Trade Controls (DDTC), part of the Department of State's Bureau of Political-Military Affairs, 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 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). 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).

The statutory authority of the President to promulgate regulations with respect to the export and the temporary import of defense articles, the provision of defense services and the brokering thereof was delegated to the Secretary of State by Executive Order 13673, as amended. 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.

Sections 126.9 (Advisory opinions and related authorizations) and 129.9 (Guidance) of the International Traffic in Arms Regulations (ITAR, 22 CFR 120-130) may be used by entities and individuals involved in the manufacture, export, temporary import, and brokering of defense articles and defense services to request an advisory opinion as to whether DDTC would be likely to grant a license or other approval for the export of a particular defense article or defense service to a particular country (§126.9(a)); for an interpretation of regulatory requirements (§126.9(c)); whether certain activity constitutes brokering under the ITAR (129.9(a)); or for other guidance pertaining to brokering (129.9(c)).

2. What business purpose is the information gathered going to be used for?

DDTC reviews the submitted information to:

- Determine whether it would likely grant a license or other approval for the export of a particular defense article or defense service to a particular country,
- Provide a response to a request for an interpretation of regulatory requirements,

- Provide a response as to whether certain activity constitutes brokering under the ITAR, or
- Provide a response to a request for other guidance pertaining to brokering.

3. Is this collection able to be completed electronically (e.g. through a website or application)?

Requests for advisory opinions are currently collected via mail; however, DDTC is in the process of developing a new case management system that will automate and streamline many of DDTC's current processes. Form DS-7786 will be incorporated into this new system. Once deployed, respondents will have the option of submitting their requests for advisory opinions in hard copy via mail or electronically via Form DS-7786. Respondents who choose to submit their requests electronically will be able to access Form DS-7786 through DDTC's website (<https://www.pmdtc.state.gov>). The form currently uploaded with this collection does not represent what Form DS-7786 will look like electronically. Rather, the form currently uploaded with this collection is meant to demonstrate Form DS-7786's required and conditional fields.

4. Does this collection duplicate any other collection of information?

The Department of State is unaware of any other U.S. Government information collection that duplicates the Request for Advisory Opinion.

5. Describe any impacts on small business.

Export control law and regulations are designed to safeguard U.S. 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 to small businesses and small entities only when they are in the business of defense trade. Burdens have been minimized through development of clear guidelines for the submission of information.

6. What are consequences if this collection is not done?

This information is required for DDTC to provide guidance to requesters on the proper assessment of a proposed export request, request for interpretation of a regulatory requirement, request for opinion on brokering activity, or request for other brokering guidance. Requests for advisory opinions are reviewed on a case-by-case basis and DDTC provides guidance specific to the transaction described in each request. Without this information collection the Department would not have a process of responding to requests pursuant to ITAR §§ 126.9 and 129.9, and would be unable to provide individualized assistance.

7. Are there any special collection circumstances (e.g. responding in less than 30 days, excessive record retention, or requiring submission of proprietary trade secrets)?

There are no special circumstances associated with this collection.

8. Document the publication (or intent to publish) a request for public comments in the Federal Register.

The Department published a notice in the *Federal Register* on September 16, 2016 (81 FR 63840) soliciting public comment on this information collection. Two comments were received.

One commenter expressed concern that the drop down lists in blocks one, two, and three did not include a comprehensive selection of countries. Similarly, both commenters identified that there were only a few countries listed in the nationality field in block three of the form. When creating form DS-7786, DDTC included only a representative sample of countries. This sample was meant to provide the form's "look and feel." Form DS-7786, which has since been finalized, now displays an exhaustive list of countries and territories.

One commenter suggested that DDTC include ITAR §126.9(c) in block three as an option for which advisory opinions may be requested. This comment came in response to a final rule published on August 17, 2016, (81 FR 54732) which added §126.9(c). This new section allows respondents to request an interpretation of the ITAR in the form of an advisory opinion. DDTC agrees with this suggestion; the form has been updated accordingly.

It was also identified that the sub-category field in block three did not allow for respondents to enter or select information. This field is now functional; however, what is shown is not an accurate or complete list of what will populate in the final product. This proposed form is a static form that is meant to illustrate what information will be collected in the new case management system. Once deployed in the case management system, the sub-category field of the DS-7786 will include a comprehensive list of sub-categories.

In block four of the form, one commenter suggested including an option for "Letter of Explanation" to give respondents a means of providing descriptive information concerning their request. While this change has not been incorporated, DDTC notes that there are two unlimited text fields, describing details and end-use, which allow respondents to provide their request in detail. Respondents are encouraged to utilize both fields, as appropriate, to submit detailed, factual discussions regarding their request. Respondents who submit requests without context risk requesting broad statements of agency policy, which may be outside the scope of this collection.

One commenter suggested amending the "Disclosures" portion of the Privacy Act Statement by adding the words "or approval" to the third sentence in order to be more consistent with ITAR § 120.1(c)(1). The proposed amendment would read: "The requested information may be used to make advisory opinions from the Directorate of Defense Trade Controls as to whether a license or other approval for the export **or approval** of a particular defense article or defense service to a particular country would be granted." DDTC believes the current language is sufficient to satisfy the commenter's concern; thus, the disclosure statement was not changed.

Lastly, DDTC received questions from the commenters regarding use of the form by foreign persons and for matters of general correspondence. DDTC would like to clarify that foreign persons are able to use this form to request advisory opinions. This form, however, is limited in scope and cannot be used for matters of general correspondence not covered under ITAR §126.9(a), § 126.9(c), and §129.9. DDTC noted this in the form's instructions, as requested.

9. Are any payments or gifts given to the respondents?

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

10. Describe any assurances of privacy/confidentiality.

A privacy impact assessment (PIA) was conducted in 2016 and can be viewed at <https://www.state.gov/privacy>. STATE-42, Munitions Control Records, is in the process of being amended to include this collection. Once finalized, STATE-42 will be published in the *Federal Register* and on <https://www.state.gov/privacy>.

Respondents to this collection may review ITAR § 126.10, which describes DDTC's policy regarding the disclosure of information.

11. Are any questions of a sensitive nature asked?

The Department of State is not soliciting any information regarding questions of a sensitive nature or matters commonly considered private.

12. Describe the hour time burden and the hour cost burden on the respondent needed to complete this collection.

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. The frequency of response is on occasion. DDTC estimates that each respondent will devote, on average, approximately two hours per response. The total hour-time burden is estimated to be 500 hours (2 hours x 250 responses).

According to the Department of Labor's Bureau of Labor Statistics, the average hourly wage (*weighted*) for a "Compliance Officer" is \$46.56. This was calculated by multiplying the average hourly wage (\$33.26) by 1.4 to account for overhead costs. The total hour-cost burden for this information collection, based on the average weighted hourly wage listed above, is \$23,280.00 (\$46.56/hour x 500 hours).

13. Describe any monetary burden on the respondent needed to complete this collection.

Respondents primarily utilize mail services such as UPS and FedEx to submit documents to DDTC. DDTC estimates the average monetary cost to respondents (the cost of shipping) per

submission to be approximately \$35.00. Therefore, the annual monetary burden to respondents is estimated to be \$8,750, based on 250 submissions per year.

The monetary burden to respondents will decrease once the electronic DS-7786 is launched. Respondents who elect to submit electronically will save, on average, \$35.00 per response because there will be no costs associated with electronic submission other than what is usual and customary for their business practices.

14. Describe the cost to the Federal Government to complete this collection.

Conducting this collection costs DDTC approximately \$189,814 per year. This figure is broken down further in the chart below.

Role	Average Hourly Wage	Hours Spent/Week	Average Annual Cost
Analyst Processing, Review, and Response	\$62.41 <i>(average salary, Washington, DC GS-13 or equivalent)</i>	48	\$130,815
Analyst Processing, Review, and Response	\$30.39 <i>(average salary, Washington, DC GS-9 or equivalent)</i>	20	\$31,606
Supervisory Review	\$65.85 <i>(average salary, Washington, DC GS-14, GS-15 or equivalent)</i>	8	\$27,393
Average Annual Cost:			\$189,814

The cost to the Federal Government will decrease as more respondents choose to submit their requests electronically via Form DS-7786. This reduction will come as a result of a decrease in the time spent processing each request.

15. Explain any changes/adjustments to this collection since the previous submission.

DDTC previously miscalculated the costs enumerated in questions 13 and 14. Approval of this revision will not increase the costs associated with responding to or conducting this collection. In fact, approval of this revision is likely to lower the costs to the respondent and federal government by allowing respondents to respond electronically in the near future. Electronic submission will:

- Eliminate the respondent costs associated with mailing requests, and
- Reduce the amount of government time spent processing each request.

DDTC has modified this collection to include electronic form fields in the form of DS-7786. Form DS-7786 was developed in order to:

- Provide respondents the opportunity to submit information to DDTC electronically, eliminating the monetary burden for those respondents who choose to utilize the electronic form,

- Standardize the information submitted by respondents to ensure DDTC has all of the information needed to provide an advisory opinion, and
- Structure the data to be more easily assessed by DDTC.

DDTC has also added to this collection submissions of information pursuant to 22 CFR § 129.9. Although described in a different section of the CFR, the information required to be submitted for determinations and guidance pursuant to § 129.9 is very similar to that required for requests for advisory opinions pursuant to § 126.9. The collection of information pursuant to § 129.9 is not a new requirement in the ITAR. Adding this collection of this information to 1405-0174 is, thus, not creating *new* burden on the public; rather, it is reporting existing burden that has previously not been reported to or authorized by OMB.

There are no changes to responses sent via mail.

16. Specify if the data gathered by this collection will be published.

DDTC does not plan to publish data submitted in response to this collection.

17. Explain the reasons for seeking approval to not display the OMB expiration date.

DDTC will display the expiration date for OMB approval of the information collection on the form.

18. Explain any exceptions to the OMB certification statement.

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.