

SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSIONS

Technology Security/Clearance Plans, Screening Records, and Non-Disclosure Agreements Pursuant to 22 CFR 126.18 OMB 1405-0195 (No Form)

A. Justification

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

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.

ITAR §126.18 eliminates, subject to certain conditions, the requirement for an approval by DDTC of the transfer of unclassified defense articles, which includes technical data, to or within a foreign business entity, foreign governmental entity, or international organization that is an authorized end-user or consignee (including transfers to approved sub-licensees) for those defense articles, including the transfer to dual nationals or third-country nationals who are bona fide regular employees of the foreign business entity, foreign governmental entity, or international organization. In order to use this provision, the regulations require that effective procedures must be in place to prevent diversion to any destination, entity, or for purposes other than those authorized by the applicable export license or other authorization. Those conditions can be met under ITAR §126.18(c)(1) by requiring a security clearance approved by the host nation government for its employees, or under §126.18(c)(2) by the end-user or consignee having in place a process to screen its employees and having executed a Non-Disclosure Agreement that provides assurances that the employee will not transfer any defense articles or technical data to persons or entities unless specifically authorized by the consignee or end-user. ITAR §126.18(c)(2) also provides that the technology security/clearance plan and screening records shall be made available to DDTC or its agents for law enforcement purposes upon request.

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

DDTC requires that respondents maintain the subject information to ensure compliance with applicable statutes and regulations, and may request access to the information to monitor and control the transfer of sensitive U.S. technology.

3. Is this collection able to be completed electronically (e.g. through a website or application)?
The recordkeeping requirement for compliance with this exemption may be realized via the maintenance of electronic records.

4. Does this collection duplicate any other collection of information?
Certain information required by ITAR §126.18 may already be available to individuals and entities subject to this recordkeeping requirement through the course of normal business operations; however, ITAR §§ 122.5 and 126.18 ensures that specific records are held for compliance purposes and the Department is not aware of other information collections that duplicates this requirement.

5. Describe any impacts on small business.
The AECA and ITAR are applicable equally to large and small businesses or entities. Only end-users seeking the benefit of the licensing exemption in ITAR §126.18 are required to maintain the specified records.

6. What are consequences if this collection is not done?
Absent this recordkeeping requirement, it would be extremely difficult for DDTC to meet its legally mandated responsibilities to ensure oversight of exports of defense articles and defense services in furtherance of foreign policy objectives, national security interests, and world peace.

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)?
ITAR § 122.5 requires that persons who are registered with DDTC maintain records for a minimum period of five years from the expiration of a license or written approval or from the date of the transaction. Requests by the U.S. government for inspection and copying of these records occur on an irregular basis.

8. Document the publication (or intent to publish) a request for public comments in the Federal Register.
The Department published a 60 Day notice in The Federal Register May 7, 2019 (84 FR 19986) seeking public comment on this recordkeeping requirement. One comment was received but was deemed non-substantive as it referred to ITAR language and not the record keeping requirement of this Information Collection.

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.
Respondents may review the Privacy Impact Assessment (PIA) for DDTC's electronic system (DECCS) on the Department of State's PIA webpage (<https://www.state.gov/privacy/pias/index.htm>). The System of Records Notice STATE-42, Munitions Control Records, is being revised to include this collection of information. Once

approved, STATE-42 will be published in the *Federal Register* and on the Department's Privacy webpage (<https://www.state.gov/privacy/sorns/index.htm>).

11. Are any questions of a sensitive nature asked?

No.

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 maintenance of records concerning the licensing exemption at ITAR §126.18 is already in place due to other needs and requirements (i.e., maintaining records on security clearances for employment eligibility, including for employees who are dual-country and third-country nationals). Therefore, the additional cost to industry in terms of money, time, and other resources is minimal. Frequency of response is on occasion.

Because this is a recordkeeping requirement for companies utilizing a specific ITAR exemption, and companies need not seek prior approval to use the exemption, the Department does not have a tally of the number of companies currently maintaining records pursuant to ITAR § 126.18(c) (2). The Department estimates that 10,000 companies spend an average of 10 hours per year maintaining these records; therefore, the annual hourly burden requested is 100,000 hours.

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

There are no anticipated costs to respondents.

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

There is no cost to the Federal government for requiring these records to be maintained by respondents who utilize the exemption in ITAR § 126.18.

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

There are no changes or adjustment to this collection since the previous submission.

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

Because the information required to be maintained pursuant to this data collection contains sensitive, business-proprietary, or personally-identifiable information held by companies that are registered and licensed by DDTC, and may be used in either criminal or civil enforcement activities of the Federal government, there is no anticipated publication of this information.

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

The Department of State proposes that an expiration date for OMB approval of the information collection not be displayed, as this is a recordkeeping requirement and does not involve the use of a 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.