

**SUPPORTING STATEMENT FOR
PAPERWORK REDUCTION ACT SUBMISSIONS**

**Nontransfer and Use Certificate
OMB No. 1405-0021
DSP-83**

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 information for various types of reports that are submitted to Congress. 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.

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 the 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.

Pursuant to §123.10 of the ITAR, a completed “Nontransfer and Use Certificate” (Form DSP-83) must be received by DDTC for the export of significant military equipment and classified articles, including classified technical data. Pursuant to §124.10 of the ITAR, a completed “Nontransfer and Use Certificate” must be submitted with any manufacturing license agreement or technical assistance agreement that relates to significant military equipment or classified defense articles, including classified technical data. The foreign consignee (if applicable), foreign end-user, and applicant execute this form. By signing the certificate the foreign end-user certifies that they will not, except as specifically authorized by prior written approval of the Department of State, re-export, resell or otherwise dispose of the defense articles enumerated in the application (1) outside the foreign country named as the country of ultimate destination; or (2) to any other person. With respect to agreements that involve classified articles or classified technical data, an authorized representative of the foreign government must also sign the form.

2. DDTC uses the information provided by applicants to meet the mandate described in item 1 above. As appropriate, such information may be shared with other U.S. Government entities. Requests for licenses and other authorizations are reviewed and adjudicated on a case-by-case basis. Form DSP-83 is assessed when reviewing license applications and requests for other authorizations to ensure the proposed transactions are consistent with U.S. foreign policy and are done in compliance with export control laws and regulations. Discontinuation of the DSP-83 would make it extremely difficult to meet statutory and regulatory requirements concerning the control of commercial defense trade.

3. Submissions are made via a completed and signed DSP-83. Respondents print a copy of this form from DDTC’s Web site (www.pmdddtc.state.gov). The DSP-83 is signed and included with license applications submitted via DDTC’s electronic system, the Defense Export Control and Compliance System (DECCS).

4. Information provided on the “Nontransfer and Use Certificate” is not duplicated in other forms. The information collected is limited to that necessary to properly evaluate a license application or request for an agreement.

5. The burden imposed on industry as a result of this record keeping requirement is directly correlated with the amount of qualifying exports conducted by the entity.

6. The AECA and the ITAR established the frequency of information collection. In order for U.S. Government control of defense trade to be effective, applications and requests for exports must be evaluated on a case-by-case basis. The information collected is used to obtain assurances from the foreign parties that (1) they are aware of the nontransfer requirements and (2) they agree to comply with those requirements. Absent this reporting requirement, it would be extremely difficult for DDTC to meet its legally mandated responsibility to ensure oversight of defense trade in furtherance of foreign policy objectives, national security interests, and world peace.

Furthermore, the “Nontransfer and Use Certificate” is a multi-purpose document. It is used initially to assess the national security and foreign policy impact of a proposed export. The information required on the form is also used to comply with the requirement to report quarterly to the Congress all licenses for exports of major defense equipment valued at \$1,000,000 or more. Elimination of this form would severely hinder congressional oversight of arms exports.

7. Respondents may have to report information to the Department more often than quarterly because they need approval on a case-by-case basis when seeking to export significant military equipment and classified articles and technical data, or when requesting a manufacturing license agreement or technical assistance agreement that relates to significant military equipment or classified defense articles and technical data. The ITAR requires maintenance of records for a minimum period of five years from the expiration of the license or written approval.

8. The Department published a 60 day notice in the Federal Register soliciting public comment. Three types of comments were received and are summarized below.

- 1) Sections 3 and 7 of Form DSP-83 should identify the specific military and police units that will control and use the exported weapons
- 2) Identify the specific individual(s) that will be legally responsible with ensuring compliance with U.S. end-use requirements

- 3) Add language in the signed certifications that end-users agree to use the articles in accordance with the laws of armed conflicts and human rights norms

Before DDTC may accept any of the proposed changes a Policy/Regulation change must be made. This will require further discussion within DDTC and Legal. If DDTC is able to incorporate these changes, consideration must be given to the second and third order effects that might result as a consequence. For example, DTCL currently requires a DSP-83 only for certain transactions (SME and classified, per ITAR 123.10(a)). However, ITAR 123.10(b) allows DDTC to ‘require a DSP-83 for the export of any other’ transaction. This will have interagency implications, for example, will the interagency start making approvals contingent on a DSP-83 for all transactions? How will U.S. allies (France, the UK, etc) respond to this new requirement? Coordination with the interagency is necessary before responding to these change requests.

9. No payment or gift has been or will be provided to any respondent.
10. Information submitted in response to this collection will be protected from disclosure to the extent allowed by ITAR § 126.10. No promises of confidentiality have been made to the respondent.
11. Respondents will not be required to provide answers to questions commonly considered to be sensitive.
12. The Department of State has reason to believe that the information that is required for the proposed export is already available to respondents 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). An estimated 675 annual responses are expected from 675 respondents. Frequency of response is on occasion. The estimated time that the respondent devotes to each submission is approximately one hour. Thus, the estimated annual hour burden is 675 hours. According to the Department of Labor’s Bureau of Labor Statistics, the average hourly wage (weighted) for a “Compliance Officer” is \$69.72¹. This was calculated by multiplying the average hourly wage (\$34.86) by 2 to account for overhead costs. The total hour-cost burden for this information

¹ Source: Bureau of Labor Statistics; Occupational Employment Statistics
<https://www.bls.gov/oes/current/oes131041.htm>

collection, based on the average weighted hourly wage listed above, is \$47,061 (\$69.72/hour x 675 hours).

13. Responses to this collection are included with DDTC license applications or requests for other authorizations. The costs associated with submitting DSP-83s, if any, are already reported in other approved DDTC collections.

14. Responses to this collection are included with DDTC applications or requests for other authorizations and are reviewed by DDTC licensing officers as part of a company's submission package. The costs associated with reviewing DSP-83 forms have already been reported in other DDTC collections, including, but not limited to, 1405-0003, 1405-0023, and 1405-0173.

15. No changes have been made to this information collection since its last approval.

16. DDTC will not publish relevant information.

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 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.