

**SUPPORTING STATEMENT FOR
PAPERWORK REDUCTION ACT SUBMISSION**

**Request for Commodity Jurisdiction (CJ) Determination
OMB No. 1405-0163
Form DS-4076**

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 13637. 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.

Pursuant to ITAR §120.4, a person may request a written determination from the Department of State whether a particular article or service is a defense article or defense service covered by the USML. DDTC's policy on designating and determining whether an article or service is a defense article or defense service covered by the USML is described in ITAR §120.3.

2. DDTC reviews and analyzes the submitted information for the purposes of deciding whether the described article or service is covered by the USML, and thus subject to the export licensing jurisdiction of the Department of State. Part of the process entails sharing the submitted information with, and soliciting the recommendations of, the Department of Defense and the Department of Commerce, and other appropriate government agencies.

3. Respondents submit a request for commodity jurisdiction determination electronically. Form DS-4076 is accessible from DDTC's website, is completed online, accepts attachment of electronic files as supporting documentation, and is submitted to DDTC via the Internet. DDTC is currently developing a new information technology system which will substantially enhance the Commodity Jurisdiction determination process, both for users of the system and for the Department of State.

4. The Department of State is unaware of any other U.S. Government programs that would require respondents to duplicate this voluntary submission.

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 Commodity Jurisdiction (CJ) Determination" is optional and does not apply to small businesses or small entities unless they are "in the business" of defense trade. Burdens have been minimized through development of clear guidelines for the submission of information.

6. The information required for the proper assessment of a request for commodity jurisdiction determination is reviewed on a case-by-case basis and is specific to the request under consideration. Absent this procedure for the

collection of this information, the Department would not have a process of responding to requests on whether an article or service is a defense article or defense service covered by the USML.

7. The ITAR requires maintenance of records for a minimum period of five years. For a proper assessment of a request for commodity jurisdiction determination, a respondent may have to submit proprietary trade secret or other confidential information. DDTC has procedures in place to protect this type of information to the extent permitted by law.

8. The Department published a notice in the *Federal Register* seeking public comments on June 2, 2015 (80 FR 31446). No public comments were received.

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 ITAR §126.10, 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 statutes or 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 required 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). An estimated 1,043 annual responses are expected from 1,090 respondents. Frequency of response is on occasion. The estimated time that the respondent devotes to each submission is approximately 4 hours. The estimated annual hour burden is 4,172 hours. According to the U.S. Department of Labor Bureau of Labor Statistics website (www.bls.gov), the weighted wage rate category for a "Compliance Officer" is estimated to be \$44.94 per hour (\$32.10 average wage x 1.4 multiplier). Therefore, the estimated annual burden hour cost to respondents is \$187,489 (4,172 annual burden hours x \$44.94).

13. There are no anticipated costs to respondents.

14. The 1,043 responses received by DDTC during CY 2015 accounted for approximately 1.3% of its budget of \$36 million. The estimated annualized cost to the Federal Government was \$468,000 for reviewing these applications. This estimated figure was determined by identifying the decrease in submissions since the last reauthorization of this collection, and comparing the resulting figure to the overall budget.

15. The number of respondents has been adjusted from 1,260 to 1,043, the most recent estimate based on CY 2015 data. Total annual responses have been adjusted from 1,260 to 1,043. Burden hours have been adjusted downward from 10 hours per response to 4 hours per response. Consequently, total annual burden hours have been adjusted to 4,172.

Additionally, the form has been significantly altered as a result of an internal review process conducted with the intent of: (1) making the form easier to use; (2) to better utilize the information being collected by PM/DDTC; (3) to conform to data requirements and naming conventions associated with an IT modernization project currently underway in PM/DDTC, with the ultimate goal of automating the commodity jurisdiction determination process entirely. A record of changes has been added to the end of this document for ease of comparison.

16. DDTC will describe the subject of a commodity jurisdiction request and provide its determination on its website. A respondent may request that certain information (e.g., proprietary business information) not be disclosed in the description of the request provided by DDTC on its website. This information will be published and ordered on the DDTC website according to the date of record decision.

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.

ANNEX – RECORD OF CHANGES TO FORM

Below is a table of recorded changes to the Commodity Jurisdiction Request form (DS-4076) which were effected by a comprehensive internal review performed by DDTC.

RECORD OF CHANGES, DS-4076 (COMMODITY JURISDICTION DETERMINATION)			
Revised block number	Old block number	Change	Reason
Instructions	n/a	Revisions to form instructions	Originally included on the form itself; now a separate document with more in-depth guidance
Block 1	Section "A" Block 1	Added "U.S. Government/Foreign Government" options	Request of respondents and ease of use
		Moved "Registration Code" option to top of page	Ease of use and primacy of data
		Added "Technical POC" option	Response to user requests
		Added "Original Equipment Manufacturer Information" option	User requests and need to determine OEM information
	Section "A" Block 2	Added "Third Party Information" option	Incorporated into Block 1 for ease of use and need to identify third party submitters
		Moved "Authorization to Submit" attachment option to the top of the page under	New placement is more logical

		primary filer information	
Block 2	Section "B" Block 3 & Section "F" Block 16	Removed "Reason for Submission" question out of Section "F"	Old version was redundant
	Section "B" Block 3	Changed order of questions in new version and removed "Related to Compliance Matter" field	New order of questions is more logical
	Section "B" Block 3	Added "Related to U.S. Government Request" field	This needed to be a separate section for functional purposes
Block 3	Section "C" Block 4	Renamed on new form and added more precise descriptors	Minor semantic changes
	n/a	Added more precise software description options	Not available on old form. Gives more precise options for applicants to detail software that is submitted for a commodity jurisdiction
Block 4	Section "C" Blocks 5, 6a, 6c, 8a	Combined the information of multiple blocks into one field	Ease of use and logical order of questions
Block 5	Section "C" Blocks 6b, 7	Combined functionality of summarizing the item and attaching supporting documentation	Not logical on the old form
Block 6	Section "C" Blocks 8a, 8b, 8c	Combined separate sub-questions from old version and added	Ease of use and logical order of questions

		functionality to provide explanation with each option	
	N/A	Added "Other" option with text field	This was not originally available on the form
Block 7	Section "D" Block 9	Added text boxes to explain beneath each option	Not originally available
	Section "D" Block 9	Expanded number of questions	Better articulates the concept of an item being "specifically designed" as defined in the ITAR (22 CFR 120.41)
	Section "D" Block 12	Added questions from Block 12 to Block 7 of new form	More logical placement
Block 8	Section "D" Block 10	Expanded list of options	Response to user requests; captures more detail about the item in question
Block 9	Section "D" Block 11	Allows respondents to explain their choice and give greater clarity as to their funding source	Expands options to attach supporting documentation and adds questions implied by old form but not enunciated (Statements of Work, contact name for foreign contracts, etc.)
Block 10	Section "E" Block 13	Added "Sales Information" section to form (originally was a separate template to be attached to DS-4076 for submission)	More logical to have this information as part of the form itself rather than an attachment

Block 11	Section "F" Block 14a, 14c, 14d	Revises questions and adds option to attach Department of Commerce classification request; removes Foreign Military Sales (FMS) option	Ease of use
Block 12	Section "F" Block 16	Added option for respondent to identify their proposed classification and USML category	Ease of use and to help DDTC jurisdiction analysts more accurately process jurisdiction determination requests
	Section "F" Block 17	Combined with Section "F" Block 16	New placement is more logical
Block 13	Section "F" Block 15	No substantive change	
Block 14	Section "F" Block 18	No substantive change	
Block 15	Section "G" Block 19	Added Privacy Act Statement and revised Commodity Jurisdiction determination conveyance to email vs. regular mail	Privacy Act Statement is essential to the form; emailing determinations is in keeping with DDTC's commitment to streamlining to processing and response time of the form