

**SUPPORTING STATEMENT FOR
PAPERWORK REDUCTION ACT SUBMISSION**

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

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 provisioning 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 if doubt exists as to 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. DDTC refers to this determination as a "commodity jurisdiction" (CJ) determination.

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

Information submitted in response to this collection will be shared with the Department of Defense, Department of Commerce, and other USG agencies, as needed, during the CJ review process. DDTC and the agencies with which DDTC shares information will review and analyze the information to determine if an article or service is covered by the USML, thus making it subject to the jurisdiction of the Department of State. If an article has already been determined to be covered by the USML, DDTC and other applicable agencies will use the information to determine if the previous designation shall stand.

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

Respondents who wish to receive a CJ determination must electronically submit their request through DDTC's web portal, The Defense Control and Compliance System (DECCS). Respondents may access the web portal through DDTC's website, pmdrtc.state.gov.

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

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

5. Describe any impact on small business.

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 businesses or entities unless they are in the business of defense trade and have doubt as to the jurisdiction of their article or service. Burdens have been minimized through the development of clear guidelines for the submission of information.

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

Form DS-4076 provides the Department with a mechanism to collect the information necessary to determine whether articles and services are described on the USML when doubt exists as to jurisdiction. Absent this information collection the Department would not have a process to assist industry in determining whether an article or service is covered by the USML.

7. Are there any special collection circumstances?

There are no special circumstances associated with this collection.

8. Explain the agency's intent to publish a notice in the *Federal Register*.

The Department published a notice in the *Federal Register* soliciting public comments for 60 days on February 6, 2019 (84 FR 2295). No comments were received.

9. Are payments or gifts given to the respondents?

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

10. Describe assurances of privacy/confidentiality.

Respondents to this collection may review 22 CFR 126.10, which describes DDTC's policy regarding the disclosure of information. Additionally, 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 questions of a sensitive nature asked?

No.

12. Describe the hour-time burden and hour-cost burden on the respondent.

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). DDTC expects to receive approximately 600 responses each year. The frequency of response is "on occasion." Each response is estimated to take an average of four hours to complete and submit. The estimated annual hour burden is 2,400 hours. According to the U.S. Department of Labor Bureau of Labor Statistics website (www.bls.gov), the average weighted wage for a Compliance Officer¹ is estimated to be \$69.72 per hour (\$34.86 average wage x 2 multiplier). Therefore, the estimated annual burden hour cost to respondents is \$167,328 (2,400 annual burden hours x \$69.72).

13. Describe the monetary burden to respondents.

There is no anticipated monetary burden to respondents.

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

14. Describe the cost to the Federal Government.

Nine DDTC staff members (a combination of government employees and contract staff) support the processing, analyzing, staffing, and responding to CJ requests. The total cost to the Federal Government as a result of this collection is estimated at approximately \$1,040,000. This was calculated by taking the average wage of the GS employees² and contractors who process CJ requests.

15. Describe changes or adjustments to this collection since the previous submission.

Previous submissions of this collection have included, by reference, a template for the original equipment manufacturer (OEM) authorization letter. This template was not referenced or included in the previous renewal of this collection (approved March 2016). DDTC revises this collection to standardize and include the OEM authorization letter. Respondents who do not manufacture the article that is the subject of a CJ request must receive a signed authorization letter from the OEM. This letter must at a minimum:

- Identify the OEM of the article that is the subject of the CJ request;
- Mention by name the company that is submitting the request;
- Include the product name and a brief description of the product;
- Describe the specific individuals involved in the request, as well as the nature of the relationship between the two companies;
- Authorize general publication of the information contained in block 4 of Form DS-4076; and
- Provide DDTC with a point of contact and contact information for the OEM so DDTC may contact the manufacturer directly, if necessary.

If an authorization letter is required, but not provided, the respondent must submit an explanation for DDTC's assessment and decision on whether to proceed with the CJ request. Respondents should include their OEM authorization letter or explanation with their CJ request.

Appendix A describes minor editorial changes to the form.

Additionally, DDTC has updated its response to paragraphs 12 and 14. The estimated number of responses has been lowered to reflect actual receipt of CJ requests. The cost to the Federal Government has been decreased to reflect this more accurate calculation.

16. Will data gathered by this collection be published?

DDTC will publish the following information to its website:

- Manufacturer of commodity,
- Name of commodity,
- Description of commodity,
- Final jurisdiction determination of commodity, and
- Date of final determination.

² Source: Office of Personnel Management; General Schedule Pay Table; <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2019/DCB.pdf>

Respondents may utilize block 13 of form DS-4076 to request that certain information be withheld from public disclosure.

17. DDTC will display the collection’s expiration date 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.

Appendix A

DS-4076 summary of changes

| # | Block # | Field | Change |
|---|---------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | 1 | Please provide documentation authoring you to file on the manufacturer’s behalf and to publicly release the information provided in Block 4. Additionally, this documentation must include the manufacturer’s name and contact information. | <ul style="list-style-type: none"> • Moved to Supporting Documents section • Updated to be a conditionally required attachment. Rule – this document becomes required if filer type is Manufacturer’s Representative. • Previously was a checkbox field the user checked and then required the document to be uploaded. |
| 2 | 1 | OEM letter | <ul style="list-style-type: none"> • Added to Supporting Documents section • Rule – this document becomes conditionally required if filer type is Exporter or Manufacturer’s Representative |
| 3 | 1 | Point of Contact | <ul style="list-style-type: none"> • Split Point of Contact field into First Name and Last Name fields • Removed “POC” text from labels |
| 4 | 1 | Technical Point of Contact | <ul style="list-style-type: none"> • Split Point of Contact field into First Name and Last Name fields • Removed “POC” text from labels |
| 5 | 2 | Select a reason for resubmission – <ul style="list-style-type: none"> • Prior CJ Returned Without Action (RWA) | <ul style="list-style-type: none"> • Text change • Current = Returned Without Action (RWA) • New = Prior CJ Returned Without Action (RWA) |
| 6 | 2 | U.S. Government Point of | <ul style="list-style-type: none"> • Split Point of Contact field into First |

| | | | |
|----|---|--------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | | Contact | <ul style="list-style-type: none"> Name and Last Name fields Removed “POC” text from labels |
| 7 | 3 | Commodity/Service Type <ul style="list-style-type: none"> Material Other, if other Explain | <ul style="list-style-type: none"> Add types Material and Other Add business rule, if other is selected show Explain text field |
| 8 | 3 | For software provide the following | <ul style="list-style-type: none"> Move all fields to block 5, commodity/service detailed description Rule - Updated to display if commodity/service type is software or firmware |
| 9 | 3 | Provide a top-level flowchart of the software architecture | <ul style="list-style-type: none"> Move to Supporting Documents section Rule – this document becomes conditionally required if commodity/service type is software |
| 10 | 4 | Section a. Commodity/service information related in block 13 | <ul style="list-style-type: none"> Add sub title Section a. Commodity/service information related in block 13 |
| 11 | 4 | Section b. Additional commodity/service information not released in block 13 | <ul style="list-style-type: none"> Add sub title Section b. Additional commodity/service information not released in block 13 |
| 12 | 5 | Describe supporting documentation attached | <ul style="list-style-type: none"> Moved to block 15 |
| 13 | 6 | Specially Designed [checkbox] Explain [text field] | <ul style="list-style-type: none"> Remove |
| 14 | 7 | Do these commodities have the same or “equivalent” form and fit? | <ul style="list-style-type: none"> Remove |
| 15 | 7 | Provide information on the “like” commodity | <ul style="list-style-type: none"> Remove |
| 16 | 7 | "Like" commodity identical or comparable products available through foreign means supporting documentation | <ul style="list-style-type: none"> Move to Supporting Documents section Rule – this document becomes conditionally required if commodity/service type is software |
| 17 | 7 | Does this commodity have the same function and performance capabilities ... | <ul style="list-style-type: none"> Updated text Current = Does this commodity have the same function and performance capabilities as another commodity used in or with an item that is both (a) currently or formerly in production and (b) <u>not</u> enumerated on the U.S. Munitions List? New = Does this commodity have the same function and performance capabilities, and same or equivalent form and fit, as another commodity used in or with an item that is both (a) currently or |

| | | | |
|----|----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | | | formerly in production and (b) <u>not</u> enumerated on the U.S. Munitions List? |
| 18 | 7 | Does this commodity have the same function and performance capabilities ... | <ul style="list-style-type: none"> • Add the following responses <ul style="list-style-type: none"> ○ Same function – [] Yes [] No [] Unknown ○ Same performance capabilities – [] Yes [] No [] Unknown ○ Same or equivalent form and fit – [] Yes [] No [] Unknown |
| 19 | 8 | What is the current stage of product development for this item? | <ul style="list-style-type: none"> • Add the option for “Proposal/concept stage” |
| 20 | 10 | Sales Information Have there been any sales in the past 5 years? | <ul style="list-style-type: none"> • Text change • Current = Have there been any sales in the past 5 years? • New = Have there been any military sales in the past 5 years? |
| 21 | 10 | Sales information | <ul style="list-style-type: none"> • Add, Have there been any civil/commercial sales in the past 5 years? |
| 22 | 10 | Have there been any civil/commercial sales in the past 5 years? | <ul style="list-style-type: none"> • Add • Rule - If yes, display and require purchaser, country, nomenclature/model #, end use, end user, sales date(s), units sold, additional information • Rule – If no, display and require there have not been any sales |
| 23 | 11 | Was this part of a Foreign Military Sales (FMS) case? | <ul style="list-style-type: none"> • Fix typo • Was this part of a Foreign Military Sales (FMS) case? |
| 24 | 11 | Copy of the classification request | <ul style="list-style-type: none"> • Move to supporting documents section • Rule - this document becomes conditionally required if yes, this commodity has been subject to a Department of Commerce Classification Request |
| 25 | 12 | Order of Review Analysis | <ul style="list-style-type: none"> • Remove |
| 26 | 13 | The Directorate of Defense Trade Controls may post a description of the commodity and final DDTC action on its website to provide the public access to the information in Block 4a and any other | <ul style="list-style-type: none"> • Text change • Added “a” to Block 4a |

| | | | |
|----|-----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | | descriptive information provided below. If you believe that any information contained in Block 4a is proprietary, please specifically identify the information below and provide a summarized rationale for DDTC to consider withholding the information from public notice. | |
| 27 | 15 | Add block for supporting documentation | <ul style="list-style-type: none"> • All optional document types to be added are listed • All conditionally required document types are listed and specified when they become required |
| 28 | 16 | Applicant/Submitter's Certification | <ul style="list-style-type: none"> • Modify block number from 15 to 16 |
| 29 | N/A | CJ Request Number | <ul style="list-style-type: none"> • A block in the top right of the form on page one will be added to record the CJ request number |