

Dear Office of Management and Budget:

The opportunity to comment on “proposed” forms, especially when they can have a significant impact on the licensing process, is appreciated. With respect to the DS-4076 Commodity Jurisdiction determination form, the approach of gathering “like” information from all applicants is a positive step that should help with providing a level of consistency in both the industry submissions and the U.S. government determinations.

The primary concern with the form is with its relative biased nature which would appear to result in more ITAR jurisdictional determinations. The proposed form completely omits any references to the key parameters within section 120.3,

“{a} Is specifically designed, developed, configured, adapted, or modified for a military application, and

- (i) Does not have predominant civil applications, and***
- (ii) Does not have performance equivalent (defined by form, fit and function) to those of an article or service used for civil applications; or”***

while adding several new discriminators not currently within 120.3. These include requests for information on sales history, cost per unit, and funding history. Each of these appear to be inconsistent with the current wording in 120.3 which states: ***“The intended use of the article or service after its export (i.e. for a military or civilian purpose) is not relevant in determining whether the article or service is subject to the controls of this subchapter.”***

Applicants requesting determinations on raw materials (e.g., metals, composites, adhesives, sealants, etc) or new products transitioning from research programs to the market place will have a particularly difficult time in obtaining EAR jurisdictional determinations. The unintended consequence of this new form is that it may result in the control of more commodities under the ITAR that are essentially equivalent to similar items currently controlled under the EAR.

Best regards,

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