

To Whom It May Concern:

If the Department of State adopts the proposed form DS-4076 as mandatory for all Commodity Jurisdiction Determination ("CJ") requests, this will have a chilling effect on the submission of such requests, giving rise to greater uncertainty for manufacturers and exporters as to the classification of their products and services and increasing the risk of ITAR non-compliance.

Block 14.a of the proposed form directs the applicant to indicate whether the item for which a CJ is requested has previously been exported and, if so, to indicate the U.S. government licensing jurisdiction and license number. In the event that a requestor has engaged in previous exports without an ITAR license, this question effectively requires the requestor to disclose potential ITAR violations. Consequently, manufacturers and exporters who have engaged in previous unlicensed exports of items for which the commodity jurisdiction is unclear will be reluctant to take the prudent and appropriate step of seeking a formal CJ, as such a request will necessarily open them up to potential enforcement action. Companies in this position may choose instead, albeit unwisely, to continue to sell, and possibly to export, the item(s) at issue without the certainty of classification that a formal CJ would provide.

Information as to whether an item has previously been exported is not necessary, or even relevant, to an evaluation of whether or not that item is covered by the U.S. Munitions List. If the purpose of this block is to ascertain whether the item has been previously licensed for export by any U.S. government agency, then the form should ask that question more precisely, e.g., "Has the applicant ever sought a U.S. government license to export this product?"

As explained above, the inclusion of the proposed Block 14.a. as part of a mandatory form for CJ requests will serve to chill the submission of CJ requests, thereby undermining the purpose of the CJ process, increasing uncertainty on the part of manufacturers and exporters, and significantly heightening the risk of ITAR non-compliance. Therefore, it is our opinion that Block 14.a should be removed from the proposed form or amended as described above.

We will be happy to elaborate further on this comment upon request.

Best regards

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