



Commodity Jurisdiction: State or Commerce

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U.S. Department of Commerce



Commodity Jurisdiction vs. Commodity Classification

- Two separate processes
- Sequentially significant
- Supported by different data sets
- Administered by different departments
- Both essential elements in export control process



First Step: Jurisdiction Determination

- Exclusive military--- State
- Exclusive civil--- Commerce
- “Dual Use” is the area of potential concern
- Items transitioning from or to exclusive military end-use are most frequent candidates for review
- In most cases, you will know!
- State Department is the final arbiter



The Process

Commodity Jurisdiction (CJ) submissions are all electronic using the DS-4076 CJ Determination Form

The Form:

- Provides structure
- Identifies areas of specific Jurisdiction concerns
- Must be supported with facts and in-depth support documentation to be effective



The Process

- State is the gate keeper.
- While under review the jurisdiction is State Dept.
- Commerce, Defense and others provide technical review and recommendations.
- Questions/clarifications are worked through State.
- State makes decision and shares with agency reviewers.
- Escalation of decision can be made by any reviewing agency.



Commerce Review

- Received electronically from State
- Up-loaded in Commerce system
- Assigned to a Commerce engineer for action
 - preparation of “Fact Sheet” with recommendation
- Commerce position is uploaded back in State system
- Escalations are worked through by the Deputy Assistant Secretary’s office
- When the process is completed, Commerce system is updated with the final position for reference purposes



The CJ Fact Sheet

- Name of item
- Description of item
- Description of use
- Specifications
- Was item designed, modified, adapted for applications
- Civil applications
- Performance Equivalent to civil applications



The CJ Fact Sheet (cont'd)

- Funding Sources
- Existing markets
- Number of units sold, civil and military
- Foreign Availability
- Export History
- Related cases
- Previous jurisdiction history
- Classification if subject to EAR



Areas of Special Interest

- **Commodity Description**
 - Narrow scope is best:
 - DS-4076 Form limited to one commodity or family
 - Identify the item or items to be reviewed by model number and technical description
 - Technical descriptions should have enough detail for placement in ITAR Category or CCL classification (ECCN).
 - If sales brochures are used to support, be sure they accurately identify real capability and end uses. Information provided should be consistent with your website or other information sources for same items.
 - If there are known precedent cases, identify by CJ number.



Areas of Special Interest

- **Product Origin**
 - **Provide Development history, if known**
 - Who provided funding for development/modification of item under review?
 - What was the target market for item?
- **What is the current market for item**
 - Have there been sales---if so to whom?
 - Does the item have specific military or intelligence capability?
 - Are there comparable items in the market place either domestic or foreign?
- Provide specific information from the manufacturer including model numbers and technical comparison



Jurisdiction Summary

- Few people request CJs to confirm State Jurisdiction, therefore:
 - Make the case that the item(s) really are dual use.
 - The “real” facts must support your recommendation.
 - If the information submitted is complete, credible, and verifiable; the result will likely be an interagency agreement on proper jurisdiction.
- If you modify a USML item for a civil end use, change the model/part number.
- Until the Export Control Reform leads to a Single Export Control Agency, the CJ process is your first step to compliance.



Second Step: Commerce Classification

- Classification is the first step for items subject to the Export Administration Regulations (EAR).
- Commerce (BIS) licensing requirements are based on the correct classification.
- The exporter is responsible for classifying.
- BIS will assist when requested



Classification - the Process

- The Commerce Control list is “Positive”
- Export Control Classification Numbers (ECCN) are defined by very specific technical parameters
- Classification is determining which ECCN accurately describes your item
- Exact fit of your item within the ECCN is the requirement
- Not exact- but close means keep looking or ask for help—the Related Controls Section of the ECCN can be helpful



Request for Assistance

- Classification—Commerce makes final decision
- Formal requests for assistance---See Section 748.3 Submit via SNAPR.
- System works best when the applicant’s analysis is validated.
- BIS uses your input; experience and publically available sources to make the final determination.
- Turn around time is dependent on completeness of the submission and response to follow up actions.



A Reminder

- **Jurisdiction is the first gate in the process**
 - State Department has final authority
 - Commerce Commodity Classifications and/or Advisory Opinions do not serve same purpose

Federal Register of Aug 2, 2010 is very Clear: “This commodity classification is not a determination by BIS as to whether the above-listed items are “subject to the EAR””



Things to Ponder

- Classification to Subparagraph level necessary to fix reasons for control which in turn drive license requirement and license exception eligibility
- Classifications are valid as long as regulation has not changed and your item has not changed
- When seeking help identify your item in the technical terms of the potentially relevant ECCNs
- Current classifications facilitate timely license decisions
- Don't over classify or under classify
- Technical data packages may be controlled by multiple ECCNs
- EAR99 may be the correct classification but don't start there



Summary

- Correct classifications are fundamental to correct licensing decisions.
- Keep your classifications current.
- If assistance is requested, give us the benefit of your preliminary analysis.
- For both classification requests and license applications, identify your item (s) in technical terms of the relevant ECCNs.



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Commodity Jurisdiction Review & Update

Directorate of Defense Trade Controls
Bureau of Political Military Affairs



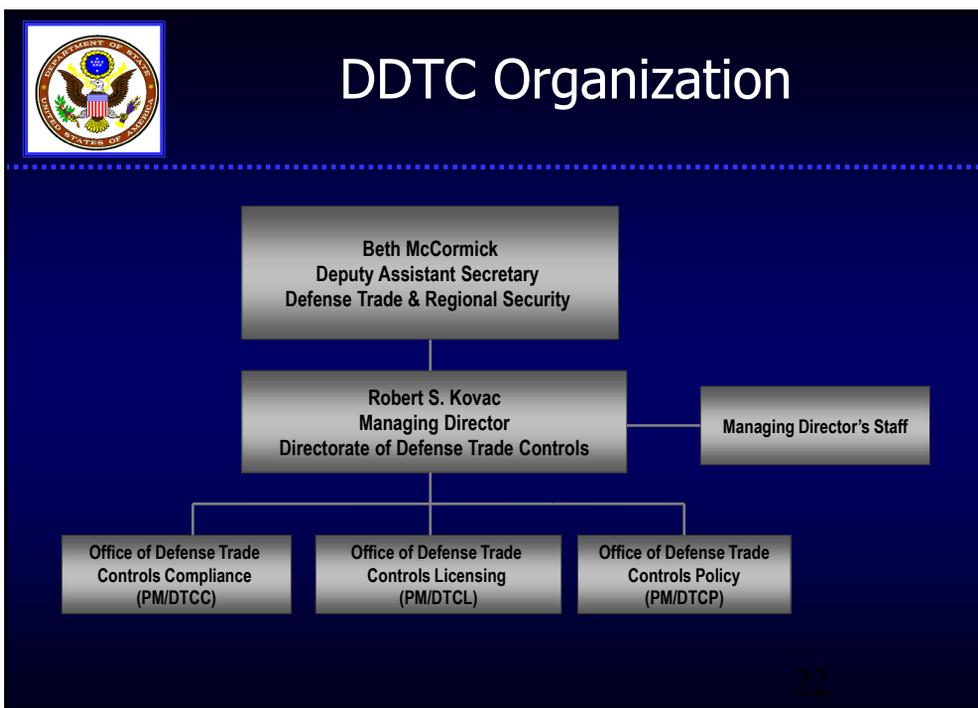
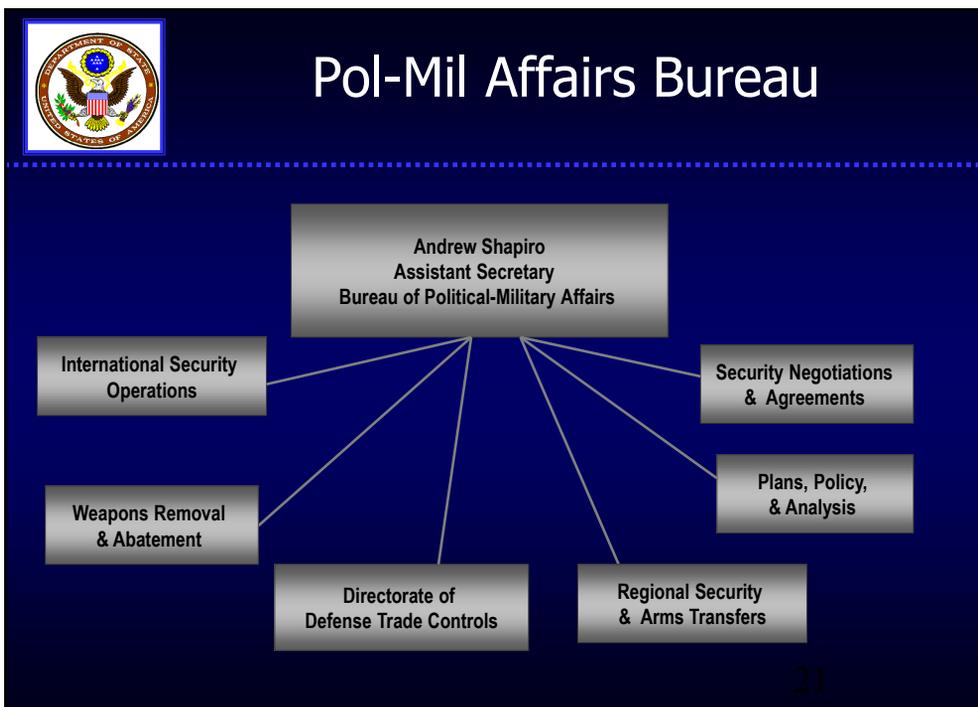
PM/DDTC's Mission

- *"Advance US national security and foreign policy through licensing of direct commercial sales in defense articles and the development and enforcement of defense trade export control laws, regulations and policies."*
- Hostile nations, terrorist groups and others want U.S. defense articles and technologies
- Export Controls are key to defeating this threat and safeguarding our national security



UNCLASSIFIED

7/15/2011





Legal Framework: Arms Export Control Act (AECA):

Sec. 38. Control of Arms Exports and Imports.—

(a)(1) In furtherance of world peace and the security and foreign policy of the United States, the President is authorized to control the import and the export of defense articles and defense services and to provide foreign policy guidance to persons of the United States involved in the export and import of such articles and services. **The President is authorized to designate those items which shall be considered as defense articles and defense services** for the purposes of this section and to promulgate regulations for the import and export of such articles and services. The items so designated shall constitute the United States Munitions List.

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Legal Framework

Arms Export Control Act (AECA): Establishes the legal requirements for the control of arms exports

Executive Order 11958: Assigns responsibility for designation of defense articles and control of Direct Commercial Sales (DCS) to the Secretary of State

International Traffic in Arms Regulations (ITAR): Implements the AECA

United States Munitions List (USML): Part 121 of the ITAR, identifies items subject to State Jurisdiction

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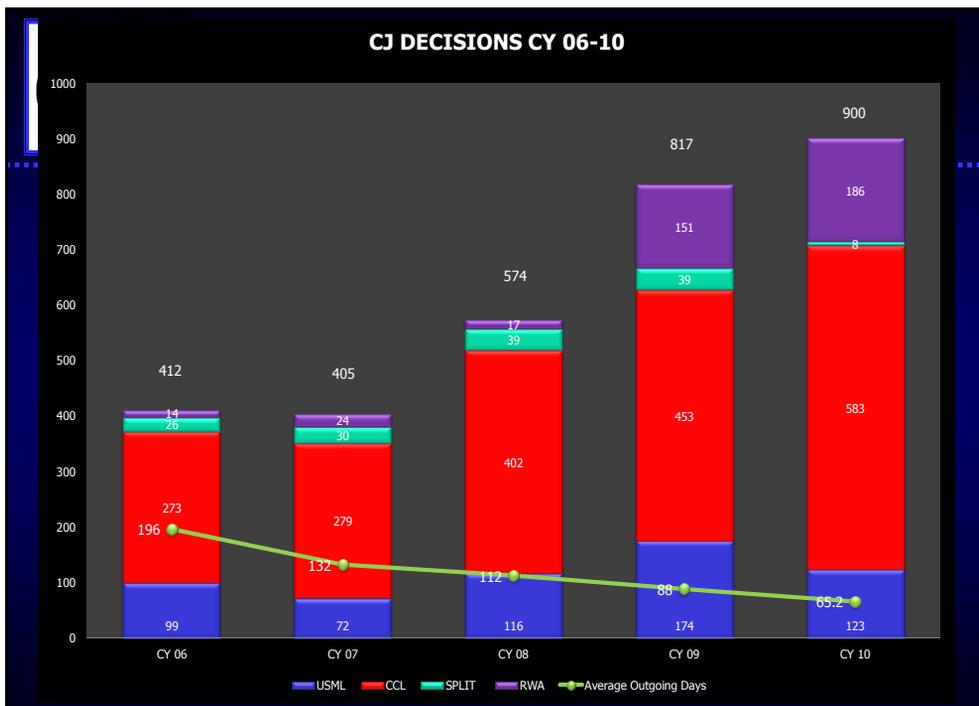
Commodity Jurisdiction Statistics

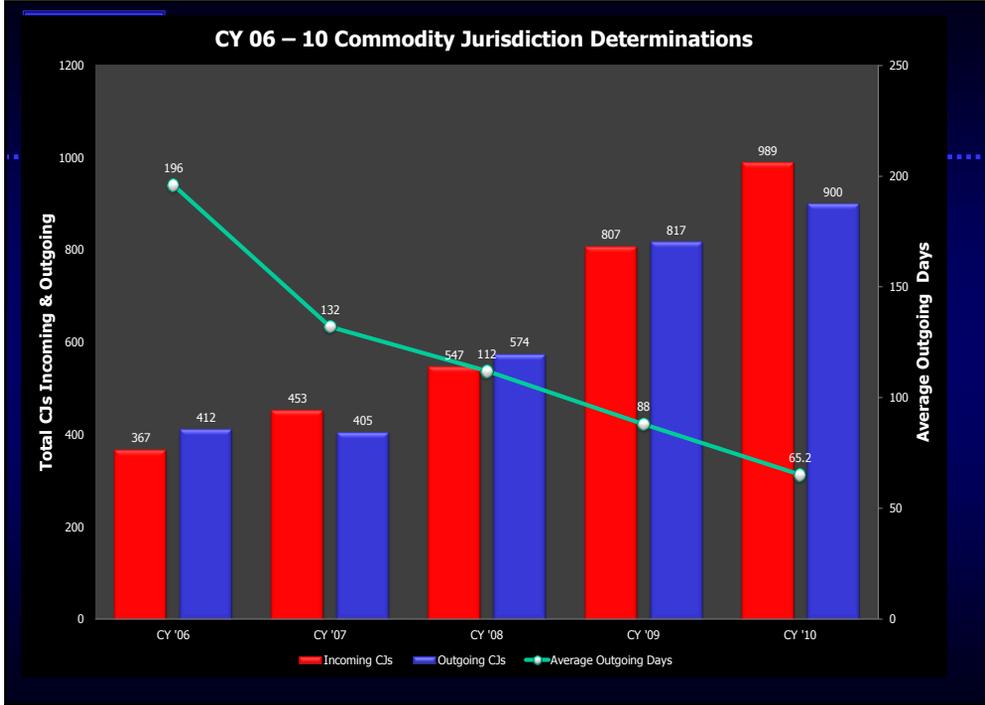
Completed in CY10:

900 (14% USML, 65% not USML)

Steady increase of caseload:

- Incoming CJs increased by 23% in 2010
- Incoming CJs increased by 80% from 2008 to 2010







What percentage increase has that over the previous year?
How long does it take to process (average, median)?

Statistics

	CY 2006	CY 2007	CY 2008	CY 2009	CY 2010
Incoming CJs	367	453	547	807	989
Outgoing CJs	412	405	574	817	900
OUTGOING CJs					
USML	99	72	116	174	123
not USML	273	279	402	453	583
Split Jurisdiction	26	30	39	39	8
RWA/Withdrawn	14	24	17	151	186
TOTAL	412	405	574	817	900
OUTGOING by %					
USML	24%	18%	20%	21%	14%
not USML	66%	69%	70%	55%	65%
Split Jurisdiction	6%	7%	7%	5%	1%
RWA/Withdrawn	3%	6%	3%	18%	21%
TOTAL	100%	100%	100%	100%	100%



Commodity Jurisdiction Developments

- **New CJ Form – 2009**
- **Electronic CJ submission – Sep 2010**
- **Electronic staffing of CJs – Fall 2010**
- **ECR USML Review underway**



Commodity Jurisdiction Upcoming Developments

- **Status of CJ application posted on line**
- **Publication of CJ results**
- **AECA 38f notification process**



Best Practices for CJ Applications

- Explain the origin of the product
 - Full background on R&D funding
- Include comprehensive sales data
 - Commercial & Governmental markets
- Fully identify foreign performance equivalents
 - Country, company, & model number
 - How is form, fit, & function equivalent?



Department of Defense's Role in Export Control

*Susan Daoussi
Defense Technology Security
Administration (DTSA)*





Agenda

- How DTSA and DTSA Licensing offices are organized
- DTSA Review of Commodity Jurisdictions

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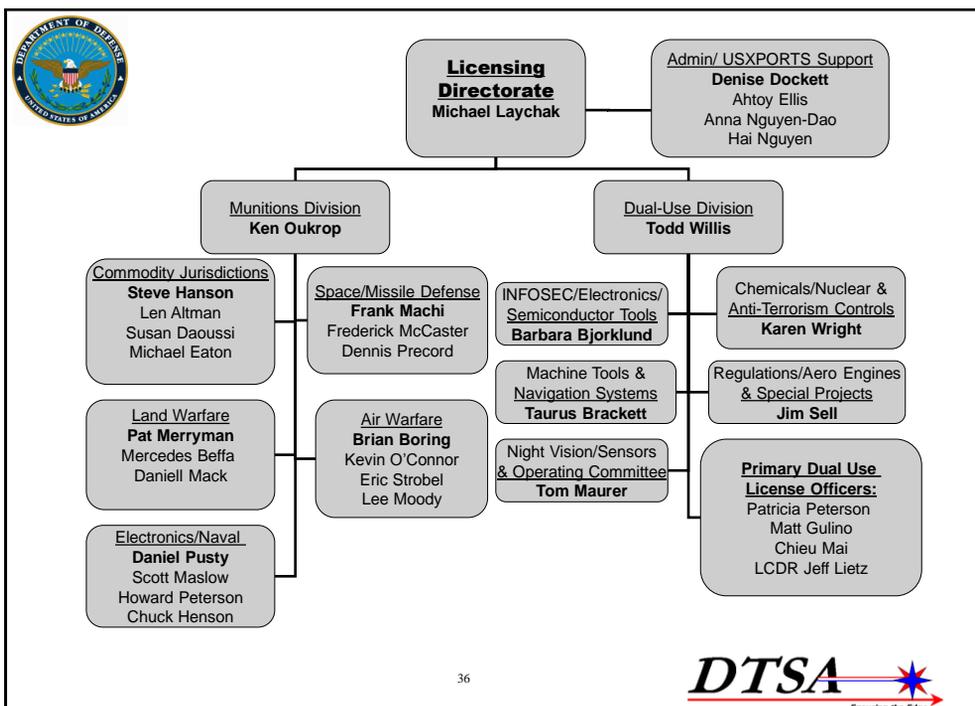
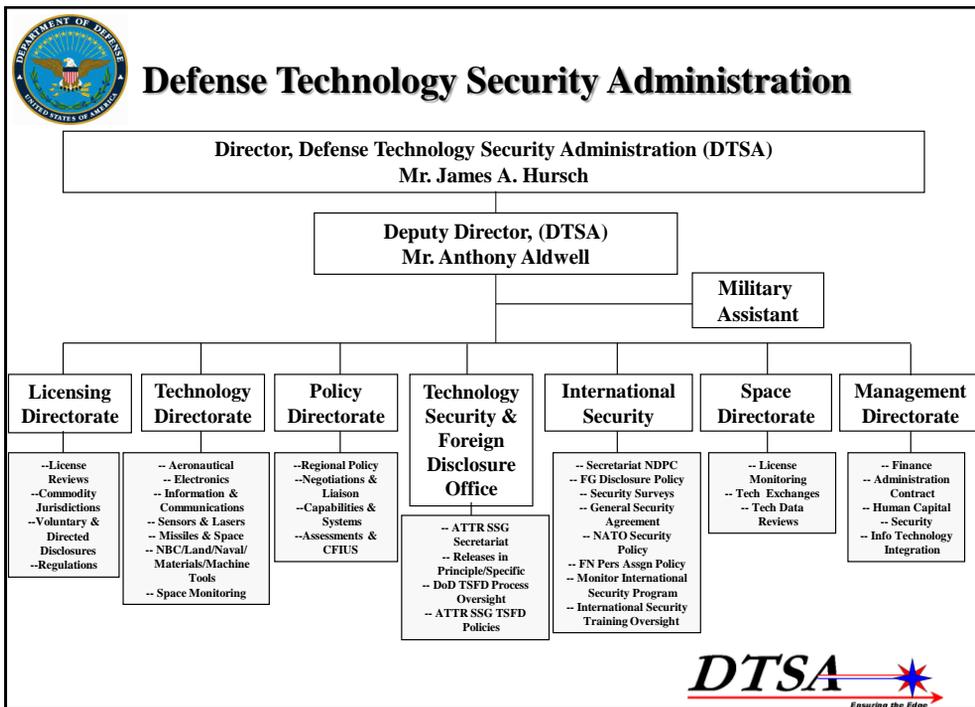


DTSA's Mission & Strategic Goals

- “To promote United States national security interests by protecting critical technology while building partnership capacity”**
- Preserve the U.S. defense edge by preventing the proliferation and diversion of technology that could prove detrimental to U.S. national security
 - Engage U.S. allies and partners to increase interoperability and protect critical technologies
 - Facilitate the health of the U.S. industrial base

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DTSA Role in Export Control

- **Protect U.S. Technology Security Interests**
- **Work with Departments of State and Commerce to Ensure Appropriate Export Controls**
- **Participate in Multilateral Control Regimes (Missile Technology Control Regime (MTCR), Wassenaar)**
- **Technical Evaluation**
- **US National Security Evaluation**

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DoD Licensing Community

- **Defense Technology Security Administration (DTSA)**
- **US Military Services:**
 - **US Air Force – Secretary of the Air Force- International Affairs Division (SAF/IA)**
 - **US Army - Deputy Assistant Secretary of the Army, Defense Exports & Cooperation (DASA (DE&C))**
 - **US Navy and US Marine Corps - Navy International Programs Office (Navy-IPO)**

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DoD Licensing Community (Cont'd)

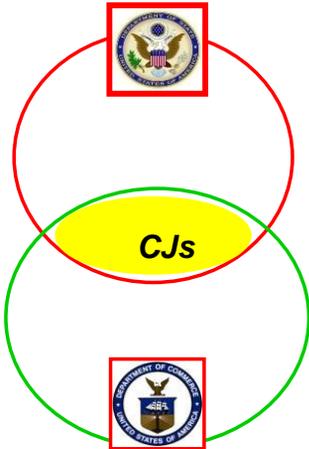
- **Other DoD Organizations**
 - National Security Agency (NSA)
 - Joint Chiefs of Staff (JCS/J5)
 - Defense Security Cooperation Agency (DSCA)
 - Under Secretary of Defense for Policy
 - Under Secretary of Defense for Acquisition, Technology and Logistics (AT&L)
- **Other**
 - Defense Intelligence Agency
 - National Geospatial Intelligence Agency
 - National Reconnaissance Office
 - Missile Defense Agency
 - Defense Advanced Research Projects Agency, etc.

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Commodity Jurisdictions

- The AECA provides that the President shall designate defense articles and services
- CJ Policy is at 22 CFR 120.3
- Determining a commodity's "jurisdiction" means determining which regulation controls the product – the ITAR or the EAR



DTSA 



DTSA CJ Review Process

- Receive all CJs staffed from DoS/DDTC
- Coordinates National Security and Technical Analysis review in accordance with ITAR/USML & DoD Policy
- Staff to DTSA/Technical & within DoD, as appropriate: Services, Joint Staff, DARPA, MDA, NGA, NSA, and DoD intelligence community.
- Provides DoD recommendations for commodities jurisdictional control to DoS/DDTC for CJs



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CJ Submission

- CJs are submitted to Department of State, Directorate of Defense Trade Controls (DDTC) in accordance with ITAR §120.4 and guidelines on the DDTC website
 - http://www.pmddtc.state.gov/commodity_jurisdiction/index.html
 - Requestor does not need to be registered with DDTC
- Preferable for the manufacturer to submit CJ
 - If you are not the manufacturer, coordinate with the manufacturer to obtain necessary information
 - Letter of authorization from manufacturer





CJ Submission Documents

- **The CJ Package:**
 - **Completed Form DS-4076**
 - **Supporting information such as:**
 - **Explanatory letter**
 - **Product specifications, blueprints, drawings, course handouts, training materials**
 - **Sales data**
 - **Foreign availability information**
 - **Authorization Letter, if CJ submitted by a third party or representative**



CJ Interagency Review

- **Interagency review of CJs is governed by National Security Council (NSC):**
 - **Department of State**
 - **Department of Defense**
 - **Department of Commerce**
 - **As necessary:**
 - **NASA**
 - **Department of Energy**
 - **Department of Homeland Security**
 - **Other U.S. Government agencies**





Conclusion

- The focus of DoD's role in export control is National Security.
- DoD is committed to maintaining the technological edge for itself and its closest friends and allies.
- DoD is committed to working with the State Department and Commerce Department and other law enforcement agencies to identify and take appropriate action when U.S. export controls are violated.

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POLICY

Questions?

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