



U.S. Department of State  
**Directorate of Defense Trade Controls**

## **Guidance for Submissions Requiring Congressional Notification**

The Directorate of Defense Trade Controls – Licensing (DTCL) handles several types of Congressional Notifications (CN) mandated by the Arms Export Control Act (AECA), including:

- a. 36(c) Value-based Notification. The AECA requires that a certification be provided to the Congress prior to the granting of any license or other approval for the export of defense articles or defense services that exceeds certain values. See AECA section 36(c) for the notification thresholds.
- b. 36(d) Notification for the Manufacture of Significant Military Equipment (SME). Any agreement that involves the manufacture abroad of SME shall be notified regardless of value. See AECA section 36(d).
- c. 3(d) Retransfer/Re-export Notification. Prior to authorizing the retransfer/re-export of major defense equipment (MDE), defense articles, or defense services exceeding certain values, a certification must be provided to the Congress. See AECA section 3(d) for the notification thresholds.

### **SUBMISSION REQUIREMENTS**

Include the documentation described below with all submissions that require CN. When exceptional circumstances prevent the inclusion of these documents with the request, explain why the documents are not included and when they will be provided. DTCL may accept and conduct initial staffing of requests exceeding notification thresholds that do not include these documents. However, the documents must be received by the time initial staffing is complete or the request may be returned without action. DTCL may not proceed beyond initial staffing without these documents.

**Signed Contract:** A contract between the applicant and the Foreign Licensee that is signed by both parties should accompany the application.

**Executive Summary:** The executive summary is a clear, concise summary of the proposed transaction and should be one to two pages in length. It should include the following:

- A list of the parties to the transaction and their roles,
- A summary of the scope of the transaction,
- A statement of offsets (see guidance below), and
- A brief description of the defense articles and defense services to be provided.



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Note that DDTC may include the summary in the notification package to Congress.

**Statement of Offsets:** Offsets are arrangements that ensure the award of a contract. Direct offsets are directly related to the activity in the proposed transaction (i.e., foreign country industrial participation). Indirect offsets usually relate to future contracts or projects the U.S. applicant plans to conduct with the foreign company or country (e.g., monetary assistance in building a hospital or future sales to that company or country). If offsets are included, the applicant should provide a complete summary of the offset arrangement to include the percentage of direct and indirect offsets, what these offsets involve, and where they are found in the contractual documentation. If there are no offsets, state so.

### Congressional Notification Process

What follows is a step-by-step explanation of the process for notifying an application to Congress under sections 3(d), 36(c), or 36(d) of the AECA.

#### Initial Staffing

When a proposed license or other authorization requiring CN is received by DTCL, it is processed according to established policies and procedures based upon commodity, country and/or territory of export, and foreign policy and national security considerations. All cases requiring CN are staffed to the Department of Defense, applicable country desks, and the Office of Regional Security and Arms Transfers (RSAT). Some cases may require additional review by other bureaus depending on the nature of the transaction, such as for Missile Technology Control Regime (MTCR) assurances or human rights. The case is assigned a CN number, separate from the license or agreement number. While the proposed license or other authorization is undergoing review, a CN certification is provided to the professional staff of the Chairman and Ranking Member of both the Senate Foreign Relations Committee (SFRC) and House Foreign Affairs Committee (HFAC) for concurrent review.

#### Tiered Review

Once a CN has completed initial staffing, DTCL will send a revised CN certification (with initial interagency clearances) to the same SFRC and HFAC professional staff for informal tiered review. During informal tiered review, SFRC and HFAC have 20-40 days (depending on the country to which the proposed export or retransfer/re-export will be made) to review the CN certification and ask any questions they may have regarding the proposed transfer. Once cleared by the professional staffs of each committee, DTCL makes a formal notification to Congress.



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### Formal Notification

DTCL sends the CN certification to the Bureau of Legislative Affairs in the Department of State for formal submission to Congress.

For NATO+5 countries:

- Approval may not be granted until at least 15 calendar days have elapsed after formal receipt of the CN by Congress.

For all other countries:

- Approval may not be granted until at least 30 calendar days have elapsed after formal receipt of the CN by Congress.

### Other Considerations

The Executive Branch, after complying with the terms of applicable U.S. law, may proceed with an arms sale request unless Congress enacts a joint resolution of disapproval prohibiting or modifying the proposed export. A congressional recess or adjournment does not stop the statutory review period.

In accordance with AECA section 36(c)(2), the required 15 or 30-day waiting period can be waived if “the President states in his certification that an emergency exists which requires the proposed export in the national security interests of the United States.” AECA section 36(c)(2) provides that in such situations, the certification shall set forth “a detailed justification for his determination, including a description of the emergency circumstances which necessitate the immediate issuance of the export license and a discussion of the national security interests involved.”