

SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSION

REQUEST FOR DETERMINATION OF POSSIBLE LOSS OF UNITED STATES CITIZENSHIP (OMB No.1405-0178, Form DS-4079)

A. JUSTIFICATION

1. *Why is this collection necessary and what are the legal statutes that allow this?*

Section 349(a) of the Immigration and Nationality Act (INA), 8 U.S.C. §1481(a), establishes the statutory bases upon which United States nationals may relinquish their U.S. nationality. A U.S. citizen by birth or naturalization INA 301 ([8 U.S.C. 1401](#)), INA 310 ([8 U.S.C. 1421](#)) or a U.S. non-citizen national INA 308 ([8 U.S.C. 1408](#)), INA 101(29) ([8 U.S.C. 1101\(29\)](#)) will lose U.S. nationality (“expatriate” her or himself) by committing a statutory act of expatriation as defined in INA 349 ([8 U.S.C. 1481](#)), or predecessor statute, provided the act is performed (1) voluntarily and (2) with the intention of relinquishing U.S. nationality. (See [Afroyim v. Rusk](#), 387 U.S. 253 (1967) and [Vance v. Terrazas](#), 444 U.S. 252 (1980).) Section 104(a) of the INA (8 U.S.C. 1104(a)) charges the Secretary of State with the administration and enforcement of certain immigration and nationality laws, including loss of nationality. Section 358 (8 U.S.C. 1501) sets forth steps that must be followed in order to certify an individual’s loss of U.S. nationality.

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

The Department of State adjudicates loss of nationality cases primarily involving the following potentially expatriating acts: INA 349(a)(1), naturalizing in a foreign state after the age of 18; INA 349(a)(2), taking an oath of allegiance to a foreign state after the age of 18; INA 349(a)(3), entering or serving in the armed forces of a foreign state engaged in hostilities against the United States or if the person is serving as an officer; INA 349(a)(4)(A), accepting, serving in, or performing duties of any office, post, or employment under the government of a foreign state after the age of 18, if the person has or acquires the nationality of that foreign state; INA 349 (a) (4)(B), accepting, serving in, or performing duties of any office, post, or employment under the government of a foreign state after the age of 18, if an oath of allegiance is required; and INA 349(a)(5), making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state in such form as may be prescribed by the Secretary of State.

The Department of State uses the following forms in loss of nationality cases:

Form DS-4079, OMB Control No. 1405-0178, Request for Determination of Possible Loss of U.S. Citizenship;

Although there is no prohibition against completing the DS-4079 in connection with making a formal renunciation of U.S. nationality before a diplomatic or consular officer of the United States under INA 349(a)(5), most often U.S. nationals complete the Form DS-4079 when asserting the voluntary commission of a prior potentially expatriating act under INA 349(a)(1)-(a)(4) with intent to lose U.S. nationality. The DS-4079 can be completed at any time but must be signed in person before a U.S. diplomatic or consular officer overseas.

Additionally, when a U.S. diplomatic or consular officer overseas has reason to believe that a person may have relinquished his or her U.S. nationality, he/she may also request that the person complete the Form DS-4079 and/or submit other documentary evidence concerning intent. In these relatively rare cases, the person may have been elected to a high level office in the foreign government, which could be considered inconsistent with an intent to retain U.S. nationality, though merely serving in a high level office in a foreign government is not conclusive evidence of intent. An individual may also elect to complete the DS-4079 as a record of his/her lack of intent to lose U.S. nationality in case there is any question in the future.

With the exception of taking the oath of renunciation, INA 349(a)(5), which occurs in real time before a U.S. diplomatic or consular officer in a foreign state, the other potentially expatriating acts listed in 349(a)(1)-(4) already will have been committed (sometimes many years) before the person comes in to the U.S. embassy or consulate to request a Certificate of Loss of U.S. Nationality (CLN).

The business purpose for which the information gathered on the Form DS-4079 is used is to assist the Department in determining 1) whether the person has committed a potentially expatriating act under Immigration and Nationality Act (INA) Section 349(a) (1) through (a)(5), 8 U.S.C. 1481 (a)(1)-(a)(5) (or former sections of law not declared unconstitutional, such as former INA 350); 2) whether the person committing the act was a U.S. national at the time of the act; 3) whether the person committed the act or acts voluntarily and with the intent of relinquishing U.S. nationality; 4) whether a person asserting voluntary and intentional commission of an expatriating act has undertaken any other acts or maintains ties that may be considered inconsistent with an intent to lose U.S. nationality; and 5) other matters possibly germane to the adjudication, such as whether the person has another nationality and/or would be rendered stateless upon a finding of loss of U.S. nationality.

If the individual proceeds to request a CLN under 8 U.S.C. §1481 (a)(1)-(4), he or she will sign the Form DS-4079 before the diplomatic or consular officer at an overseas U.S. embassy or consulate and pay the mandatory fee for the associated consular service at that time. The diplomatic or consular officer would then send the Form DS-4079 with a detailed memorandum recommending approval or denial of the CLN to the Directorate of Overseas Citizens Services in Washington, D.C., for adjudication. The data provided in the Form DS-4079 is critical in establishing whether the four elements of loss of nationality are present. Those four elements as stated above are: (1) the person is a U.S. national who (2) has performed a potentially expatriating act; and (3) the performance of that act was voluntary and (4) performed with the intent to relinquish U.S. nationality. If

the individual establishes by a preponderance of the evidence that these elements are met, Overseas Citizens Services will find that a loss of nationality has occurred and will approve a CLN. The Form DS-4079 is, therefore, a required document for adjudication, becomes part of the file associated with an approved CLN, and is available for review if there is any subsequent request to reconsider a finding of loss or CLN denial. Section 349(b) of the INA, 8 U.S.C. § 1481(b) places the burden of establishing that loss occurred on the party asserting loss, so the information collection is often the determinative piece of evidence in these reconsiderations.

**Form DS-4080, (Not an information collection/no OMB Control Number)
Oath/Affirmation of Renunciation of Nationality of the United States;**

The DS-4080 must be signed in person before a U.S. diplomatic or consular officer in a foreign state. As noted above, a person renouncing U.S. citizenship generally would not be required to complete a DS-4079 but could do so before or during the interview in which the oath of renunciation is signed. Also, the Form DS-4081 would be completed at the same time as the DS-4080.

Form DS-4081, (Not an information collection/no OMB Control Number) Statement of Understanding Concerning the Consequences and Ramifications of Renunciation or Relinquishment of United States Nationality;

All persons requesting a Certificate of Loss of Nationality must sign the DS-4081 before a diplomatic or consular officer. This form may be signed at the same time, on the same visit to the U.S. embassy or consulate, as the oath of renunciation is taken or, if the claim is under INA 349(a)(1)-(4), at the same time the person completes/signs the DS-4079 before a U.S. diplomatic or consular officer. Although it varies from post to post, unless additional information is required, often the forms may be completed/signed in one trip to the U.S. embassy or consulate.

Form DS-4082, (Not an information collection/no OMB Control Number) Witnesses' Attestation Renunciation/Relinquishment of Citizenship;

This form is signed by a witness to the in-person interview when the individual requesting the Certificate of Loss of Nationality does not speak or understand English.

Form DS-4083, (Not an information collection/no OMB Control Number) Certificate of Loss of Nationality of the United States

This form is completed by the U.S. diplomatic or consular officer. If the Certificate is approved by the Department of State, such approval constitutes a final administrative determination of loss of United States nationality, and the person requesting the Certificate of Loss of Nationality may pick it up in person at the U.S. embassy or consulate.

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

The Department has an accessible fully fillable PDF of the DS-4079 online that can be completed by respondents. However, respondents must print the form and, if they wish to proceed with a request for a Certificate of Loss of Nationality (CLN) under INA 349(a)(1)-(4), sign it before a consular officer as indicated in Part II of the form itself.. The mandatory consular services fee for the processing of the request for a CLN is then collected at the time the respondent signs the DS-4079 before a consular officer. 22 C.F.R. § 22.1(8); 80 Fed. Reg. 53,704 and 53,707 (Sept. 8, 2015). The signed DS-4079 is a required document for the Department’s adjudication of the request for a CLN. 7 FAM 1227(a), 7 FAM Exhibit 1227(A); 7 FAM 1228.3. The requirement to appear in person to sign both the DS-4079 and the DS-4081 derives directly from the Department of State’s explicit authority under Section 104(a) of the INA, 8 U.S.C. §1104(a) to “establish such regulations, prescribe such forms of reports, entries, and other papers, issue such instructions, and perform such other acts *as deemed necessary*” to determine the nationality of a person not in the United States, as well as the Department’s discretion to determine whether a CLN should be issued under Section 358 of the INA, 8 U.S.C. §1501.

Scanned copies of the Form DS-4079 are maintained as part of the file documenting loss of nationality and are retrievable electronically through the Passport Lookout Tracking System (PLOTS). This minimizes the burden of production when reviewing requests for reconsideration of a previous finding of loss of nationality or CLN denial.

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

The information in the Form DS-4079 is not duplicative of information maintained elsewhere or otherwise available.

5. *Describe any impacts on small business*

The information collection does not involve or impact small businesses or other small entities.

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

Use of the Form DS-4079 facilitates the determination of whether a loss of nationality occurred under Section 349(a)(1)-(4) of the INA, 8 U.S.C. §1481(a)(1)-(4). Section 349 (b) of the Immigration and Nationality Act places the burden of proof on the person claiming that the loss has occurred. When findings of loss or non-loss of U.S. nationality are challenged, the Department uses the information collection as a key element of the record during reconsideration of a loss/non-loss determination.

The elimination of the information collection would significantly affect the ability of the Department of State to meaningfully reconsider its decisions of loss or non-loss of U.S.

nationality. Because Federal law mandates the circumstances under which loss of nationality occurs, the Department cannot take measures that would reduce the frequency of collection.

7. *Are there any special collection circumstances?*

No special circumstances exist.

8. *Document publication (or intent to publish) a request for public comments in the Federal Register*

The Department of State published a 60 day *Federal Register* (84 FR 57545) notice for public comments on October 25, 2019. The Department of State did not receive any public comments.

9. *Are payments or gifts given to the respondents?*

No payment or gift is provided to respondents.

10. *Describe assurances of privacy/confidentiality*

The Form DS-4079 includes no promises of confidentiality to the respondents.

11. *Are any questions of a sensitive nature asked?*

No sensitive questions are asked.

12. *Describe the hour time burden and the hour cost burden on the respondent needed to complete this collection*

An average of 3,250 U.S. citizens worldwide submit the Form DS-4079 annually to U.S. Consular Officers in order to document loss of U.S. nationality. The average total annual hour burden to complete the Form DS-4079 and attend the in-person interview for all respondents is 5,687.5 hours.

The annual hour burden was determined by multiplying 3,250 by 105 minutes equaling 341,250 minutes. Then 341,250 minutes was divided by 60 minutes, to give an annual burden of 5,687.5 hours $((3,250 \times 105) / 60)$.

The annualized cost to all respondents for the hour burden for collections of information is \$30,068.36. The custodial parent/legal guardian respondents to the form can come from any occupation. The Department used the mean hourly wage rate from the ¹Bureau of Labor Statistics - Comparison of All Employee Average Hourly Earnings to determine the mean hourly wage rate. At the end of September 2019, the mean hourly wage rate was \$37.03/hr. To get to \$30,068.36, we multiplied the mean hourly wage rate, which is \$37.03/hr., by 812 burden hours.

13. Describe the monetary burden to respondents (out of pocket costs) needed to complete this collection.

The cost to the respondent associated with this application would be mailing costs and/or travel costs for submitting the form to the U.S. diplomatic mission in person.

An estimated 325 respondents choose to use express mail to submit the form for preliminary consideration. The average rates were based on data for FedEx express mail shipments.² The average total cost per respondent for express mail shipments is \$45. Multiply 325 respondents by \$45 and the total overall cost for express mail is \$14,625.

Any individual who seeks to complete the process of requesting a CLN under INA 349(a)(1)-(4); 8 USC §1481(a)-(4) must appear for an in-person interview and sign the Form DS-4079 before a consular officer. An estimated 2,925 respondents travel to a U.S. diplomatic mission in person. Mileage costs for traveling by car will vary based on how far the person has to travel. If the travel is ten miles, the overall total cost based on 975 respondents that drive is \$5,752.50. If the travel is 25 miles, the overall total cost based on 975 respondents is \$14,381.25. If the travel is 50 miles, the overall total cost based on 975 respondents is \$28,762.50. The grand total mileage cost is \$48,896.25

The number of people traveling by vehicle per # of miles shown in the table below was determined by dividing 2,925 individuals by 3 which gives you 975 individuals. The driving cost per mile of \$0.59 was determined using the Bureau of Transportation Statistics (BTS) calculation from 2018.³ The BTS calculation is an adequate source because the method for calculating vehicle operating costs represent the real-world personal use of a vehicle over a five-year and 75,000-mile ownership period. The total cost of owning and operating an automobile include fuel, maintenance, tires, insurance, license, registration and taxes, depreciation, and finance.

¹ Source: "Table 2. Civilian workers by occupational and industry group". <https://www.bls.gov/news.release/ecec.t02.htm>

² Source: FedEx, "International Shipping". <https://www.fedex.com/en-us/shipping/international.html>

³ Source: "Average Cost of Owning and Operating an Automobile". <https://www.bts.gov/content/average-cost-owning-and-operating-automobile>

	Total # of Respondents	3,250		
	Total # of Respondents that Drove	2,925		
# of People	# of Miles	Reimbursement Cost Per Mile	Total Reimbursement for mileage listed for one person	Totals
975	10	\$0.59	\$5.90	\$5,752.50
975	25	\$0.59	\$14.75	\$14,381.25
975	50	\$0.59	\$29.50	\$28,762.50
				\$48,896.25

The estimated total cost for all respondents is \$63,521.25.

14. Describe the cost incurred by the Federal Government to complete this collection.

The total cost to the Federal Government for evaluating the responses to this information collection comes from calculating the cost to the Federal Government by average hours spent reviewing the DS-4079 form times the average compensation cost per hour. Again, on average, the Department receives 3,250 DS-4079 forms per year. On average each DS-4079 is reviewed for five minutes each by overseas Locally Employed Staff (LES) (3,250 respondents x \$2.05), an overseas Foreign Service officer (3,250 x \$6.60), a domestic Foreign Service officer (3,250 x \$5.80), and a domestic Civil Service officer (3,250 x \$5.80). The cost to the Federal Government related to this service is \$61,812.50. To get the calculations above, the hourly rate for an overseas LES is \$24.60, overseas Foreign Service officer is \$79.20, domestic Foreign Service officer is \$69.60 and a domestic Civil Service officer is \$69.60.

These calculations are based on the internal to the Department of State position costs for ⁴LES and the internal Bureau of Budget and Planning ⁵New Position Cost Model for the respective Foreign Service and Civil Service employment categories. The cost rates include fringe and overhead costs.

15. Explain any changes/adjustments to this collection since the previous submission

Based on the average number of respondents in the past 3 years (FY16-FY18), the number of respondents increased to 3,250 resulting in an associated increase in burden to 812 hours. The reason the number of respondents changed is because the number of respondents that complete the form varies from year to year depending on the number of citizens who may have relinquished their U.S. citizenship. Cost burden has increased due to the number of respondents on average that submit the DS-4079. The cost burden of \$63,521 was not included in previous iterations of the Supporting Statement.

Below is a summary of the proposed revisions to the DS-4079:

1. Changed the words “citizen” and “citizenship” to “national” and “nationality” to comport with the language of the governing statute, 8 U.S.C. § 1481, which refers to loss of U.S. nationality. U.S. citizens are also U.S. nationals under the Immigration and Nationality Act of 1952, as amended. U.S. non-citizen nationals may also elect to relinquish U.S. nationality.
2. Changed the term “foreign state” to “foreign country” for plain language purposes.
3. For number 13(g), we changed the word “registered” to “documented” for plain language purposes;
4. Made streamlining format changes and deleted unnecessary questions.

16. *Specify if the data gathered by this collection will be published.*

General statistical information regarding U.S. citizens and Loss of Nationality is maintained in the “Consular Package,” the Consular Workload Statistical System (CWSS) system. This is raw data broken down by the Foreign Service post issuing the report.

17. *If applicable, explain the reason(s) for seeking approval to not display the OMB expiration date*

The OMB expiration date will be displayed.

18. *Explain any exceptions to the OMB certification statement below*

No exceptions to the certification statement are requested.

B. STATISTICAL METHODS

This collection does not employ statistical methods.

⁴Source: “Local Employed Staff Cost Worksheet”, Department of State, Internal Use Only.

⁵Source: “Bureau of Budget and Planning New Position Cost Model”, Department of State, Internal Use Only.