

**SUPPORTING STATEMENT
U.S. Department of Commerce
Bureau of Industry and Security**

**One-Time Report for Foreign Software Or
Technology Eligible for De Minimis Exclusion
EAR Section 734.4
OMB Control No. 0694- 0101**

A. Justification

1. Explain the circumstances that make the collection of information necessary.

Section 15(b) of the Export Administration Act (EAA) of 1979, as amended, authorizes the President and the Secretary of Commerce to issue regulations to implement the EAA including those provisions authorizing the control of exports of U.S. goods and technology to all foreign destinations, as necessary for the purpose of national security, foreign policy and short supply, and the provision prohibiting U.S. persons from participating in certain foreign boycotts. Export control authority has been assigned directly to the Secretary of Commerce by the EAA and delegated by the President to the Secretary of Commerce. This authority is administered by the Bureau of Industry and Security through the Export Administration Regulations (EAR). The EAA is not permanent legislation, and when it has lapsed due to the failure to enact a timely extension, Presidential executive orders under the International Emergency Economic Powers Act (IEEPA) have directed and authorized the continuation in force of the EAR.

2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.

Section 734.4 exempts from the EAR reexports of foreign technology commingled with or drawn from controlled U.S. origin technology valued at 10% or less of the total value of the foreign technology. Persons must submit a one-time report for the foreign software or technology to BIS prior to reliance upon this de minimis exclusion. As described in Supplement No. 2 to Part 734 of the EAR, the report must include the percentage of U.S.-content by value and a description of the calculations including relevant values, assumptions, and the basis or methodologies for making the percentage calculation.

The three criteria important to BIS in its review of the report will be the export price of the U.S.-content, the assumption regarding future sales of software, and the choice of the scope of foreign technology. The methodologies must be based upon the accounting standards used in the operation of your business, and must specify that standard in your report. Regardless of the accounting systems, standard, or conventions used in the operation of the business, the

respondent may not depreciate the fair market values reported or otherwise reduce the fair market values by other accounting conventions such as depreciation. The respondent may rely upon the de minimis exclusion from the commingled rule only to the extent reported. These values may be historic or projected. The respondent may rely on projected values only to the extent that and for so long as they remain consistent with your report or future values reduce the U.S.-content under the reported assumptions, basis, and methodologies.

If the respondent has not been contacted by BIS concerning the report within thirty days after filing the report with BIS, the respondent may rely upon the calculations in the report and the de minimis exclusions for software and technology for so long as the respondent is not contacted by BIS. BIS may contact the respondent concerning the report to inquire further or to indicate that BIS does not accept the assumptions or rationale for the calculations.

The Section 515 Information Quality Guidelines apply to this information collection and comply with all applicable information quality guidelines, i.e., OMB, Department of Commerce, and specific operating unit guidelines.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

BIS does not provide a form or specific format for the reports required under this collection. BIS does not intend to establish electronic means to collect such information because of the difficulty and expense in creating a secure electronic system capable of accepting reports of any size, form or electronic format.

4. Describe efforts to identify duplication.

The information contained in each report is unique for each applicant. It is not duplicated elsewhere.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

This collection is designed to reduce the export licensing burden on all businesses by allowing them to submit a one-time report to confirm that the de minimis provisions apply and that an individual validated export license is not required. This is a voluntary report and it is up to the individual company to decide whether it is most advantageous to continue to submit license requests or file the one-time report.

6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.

If this collection were not conducted or conducted less frequently, the companies involved would be unable to take advantage of this license exclusion and forced to submit export license applications.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

There are no special circumstances associated with this collection of information.

8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

The notice requesting public comment was published in the Federal Register on September 22, 2006, pp. 55423-55424. No comments were received.

9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

There will be no payments or gifts to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

Section 12(c) of the Export Administration Act of 1979, as amended, provides for the confidentiality of export license information submitted to the Department of Commerce.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

This collection does not require information of a sensitive nature.

12. Provide an estimate in hours of the burden of the collection of information.

There are 5,925 public burden hours associated with this collection of information. This

estimate is based on 237 reports received in calendar year 2006 and each requiring 25 hours to prepare.

$$237 \times 25 = 5,925$$

The estimated cost to the public is **\$148,125** annually.

$$5.925 \times \$25 = \$148,125$$

13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in #12 above).

Since no special equipment is required for this activity, there are no capital costs associated with this collection of information.

14. Provide estimates of annualized cost to the Federal government.

The estimated cost to the government is **\$2,963**. This is based on 30 minutes at an hourly rate of \$25 for an analyst to review 237 reports, BIS=s current annual volume for this collection of information.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.

The number of respondents increased from 35 in 2003 to 237 in 2006. This adjustment is due to increased sales of U.S. software and technology overseas and greater awareness of U.S. reexport controls on foreign products incorporating U.S. software and technology.

16. For collections whose results will be published, outline the plans for tabulation and publication.

This collection of information will not be published for statistical purposes.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

Not applicable.

18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.