

**Supporting Statement
U.S. Department of Commerce
Bureau of Industry and Security
Foreign Availability Procedures and Criteria
EAR Part 768
OMB Control No. 0694-0004**

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.

Section 5(f)(6) of the EAA states that BIS “shall be responsible for gathering and analyzing all the necessary information in order for the Secretary to make determinations of foreign availability under the Act.”

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.

BIS’s Office of Technology Evaluation responds to requests by Congress and industry to make foreign availability determinations. This office identifies foreign goods and technology analogous to American equipment subject to export controls. The U.S. and foreign equipment, however, must demonstrate a similarity of design or approach to the technical problems as well as exhibit similar performance and reliability characteristics. The foreign equipment must be available in sufficient quantities to controlled destinations. Continued restrictions on exports when comparable items are available from uncontrollable sources decreases U.S. competitiveness in high technology industries and undermines U.S. national security interests.

Exporters play a critical role in the search for foreign availability evidence. They are urged to submit data regarding foreign products' technical characteristics and the availability of these products in foreign markets. Without this information from the exporting community, the U.S. could easily lose its competitiveness in foreign markets.

All submissions are entirely voluntary. The information provided in an allegation of a commodity's foreign availability is used first in determining whether to conduct a foreign availability assessment. If the evidence presented merits an assessment, then the information is used in that specific study of foreign availability. A positive finding of foreign availability leads either to actions aimed at eliminating foreign availability (and thus putting our competitors under the same constraints as U.S. exporters), or at removing the controls so that U.S. exporters may export freely.

Without the supporting information provided by the claimant and other industry sources under this information collection, the time expended by the U.S. Government in obtaining evidence to evaluate the foreign availability claim would increase considerably. Each hour of effort expended by an expert and knowledgeable submitter would probably take a government analyst much longer to replicate. In addition, a government analyst might overlook certain sources of information or avenues of investigation that would be considered by a more knowledgeable and experienced industry source. Under such conditions, the overall quality of foreign availability assessments would be adversely affected because the U.S. Government would probably have greater difficulty finding evidence to support the existence of foreign availability. As a result, there would be fewer positive determinations of foreign availability, which would reduce the effectiveness of the foreign availability program in meeting its objective of maintaining the competitiveness of U.S. industry without compromising the integrity of U.S. national security export controls.

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.

There are no plans for the use of improved technology under this procedure. Based on the small number of claims received and varied format in which the data may be provided, it is not cost-effective to develop an automated method of collection.

4. Describe efforts to identify duplication.

The information voluntarily submitted by exporters is not duplicated anywhere else in the Federal Government. Similar information is not available from any other source.

The requested information is unique to BIS.

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

The information voluntarily submitted must be provided by exporters, regardless of size, if they wish to prove foreign availability of a controlled product. These requirements cannot be minimized to lessen the paperwork burden on small businesses.

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 submitted less frequently, there would be a loss of export sales by U.S. companies due to export controls that would have otherwise been lifted following proof of foreign availability.

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

There are no special circumstances that require the collection to be conducted in a manner inconsistent with the guidelines in 5 CFR 1320.6.

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 April 17, 2007, (Vol. 72, p. 19170). No comments were received.

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

There is no plan to provide any payment or gift to respondents.

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

The companies that provide information to the Department can claim confidential treatment under the Freedom of Information Act (5 USC 552 (b)(4). Further, Section 12 (c) of the EAA provides for the confidentiality of export licensing information contained in the records of respondents. The U.S. Criminal Code (18 USC 1905) also prohibits the disclosure by any U.S. Government employee of the proprietary information contained in foreign availability assessments.

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.

There are no questions of a sensitive nature.

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

The total annual burden related to the foreign availability information collection activities described in Part 768 of the EAR is expected to be approximately 510 burden hours for all respondents. It is estimated that BIS will receive two foreign availability submissions per annum. For each foreign availability submission, the claimant is expected to file a report that would take approximately 105 hours to prepare. This estimate is based on the average reported public burden of past foreign availability submissions. In addition, it is estimated that 10 other individuals, on average, will provide additional supporting information per assessment, spending an estimated 150 hours to gather this information (10 persons x 15 hours). Therefore, the per submission public burden is 255 hours (105 hours for each submission + 150 hours for additional supporting information) and the total annual public burden is 510 hours (255 hours per submission x 2 submissions).

The total annual cost to the public of this information collection burden is approximately \$15,300. This total is based on two foreign availability submissions, with each submission costing the respondents an average of \$30 an hour and involving an estimated 255 hours of work (510 hours x \$30/hour).

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 capitalized costs associated with this collection of information. Mailing costs for two submissions annually is estimated to be \$20.

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

It is estimated that the total annual cost to the Federal Government of the foreign availability information collection activities described in Part 768 of the EAR will be approximately \$36,000. This figure includes the salaries of those handling the information collected and reviewing the foreign availability submissions. The total annual burden hours for the Government are not expected to exceed 1,200 hours (600 hours per submission x 2 submissions), with an average hourly rate of \$30 per hour.

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

Not applicable.

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

There are no plans to publish this information 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.