

**SUPPORTING STATEMENT
U.S. DEPARTMENT OF COMMERCE
INTERNATIONAL TRADE ADMINISTRATION
APPLICATION FOR AN EXPORT TRADE CERTIFICATE OF REVIEW
OMB CONTROL NO. 0625-0125**

A. JUSTIFICATION

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

This supporting statement is to request renewal of OMB Control No. 0625-0125.

Title III of the Export Trading Company Act (hereinafter “the Act”) of 1982 (P.L. No. 97-290, 15 U.S.C. §§ 4001 et seq.), authorizes the Secretary of Commerce to issue, with the concurrence of the Attorney General, an Export Trade Certificate of Review to any person that establishes that its proposed export trade, export trade activities, and methods of operation meet the four standards found in Section 303 (a) of the Act. An Export Trade Certificate of Review provides the certificate holder and its members with limited antitrust immunity for specified export-related activities. The information to be collected is found at 15 C.F.R. part 325—Export Trade Certificates of Review. The collection of information is necessary for the Department of Commerce and the Department of Justice (Departments) to conduct an antitrust analysis, in order to determine whether the applicant’s proposed export-related conduct meets the four standards (see below listing). The collection of information constitutes the essential basis of the statutory determinations to be made by the Secretary of Commerce and the Attorney General. This information is collected via the Export Trade Certificate of Review Application, Form ITA-4093P and is voluntary.

Standards for the Issuance of an Export Trade Certificate of Review:

A certificate of review shall be issued to any applicant that establishes that its specified export trade, export trade activities, and methods of operation will—

- (1) result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of the applicant,
- (2) not unreasonably enhance, stabilize, or depress, prices within the United States of the goods, wares, merchandise, or services of the class exported by the applicant,
- (3) not constitute unfair methods of competition against competitors engaged in the export of goods, wares, merchandise or services of the class exported by the applicant, and
- (4) not include any act that may reasonably be expected to result in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the applicant.

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.

The information contained in the application will be used by the Departments in performing the antitrust analysis required by the Act. In the Department of Commerce, the economic and legal analysis will be performed by the Export Trading Company Affairs (ETCA) unit and the Office of the General Counsel, respectively. The Department of Justice analysis will be conducted by its Antitrust Division. The purpose of such analysis is to make a determination as to whether or not to issue an Export Trade Certificate of Review. A certificate provides its holder and members named in the certificate: (a) immunity from government actions under state and Federal antitrust laws for the export conduct specified in the certificate; (b) some protection from frivolous private suits by limiting their liability in private actions to actual damages when the challenged activities are covered by an Export Certificate of Review. Title III was enacted to reduce uncertainty regarding application of U.S. antitrust laws to export activities – especially those involving actions by domestic competitors.

The information will not be disseminated to the public.

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.

The subject application form is available via the Internet, and the form can be printed by the applicant for their use. The application form cannot be submitted online.

4. Describe efforts to identify duplication.

No duplication exists.

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

The collection of information often involves small businesses. The application is restricted to information, which is required for the antitrust analysis and exclusively in the possession of the applicant and its members. This information is the minimal required by all applicants.

It may not be necessary for every applicant to respond to every question on the application form. If an applicant believes that certain information requested is not necessary for a determination on the application, the applicant may request a waiver prior to submitting the application by contacting ITA's Export Trading Company Affairs.

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

Without the collection of information, the Department of Commerce could not issue Export Trade Certificates of Review which would be detrimental to the U.S. trade.

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

The information will be collected consistent with OMB guidelines.

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.

A Federal Register Notice requesting comments from the public was published on May 23, 2008 (Volume 73, pg. 30049). No comments from the public were generated from this notice.

The ETCA staff regularly consults with respondents and prospective clients to determine areas where improvements to the application and application process can be made. The ETCA staff provides confidential counseling to persons and firms interested in seeking Title III certification. These counseling sessions involve a detailed discussion of the application process and the information required to be included in the application. These counseling sessions have been a valuable means of consultation about the collection of information. Because these counseling sessions are confidential and were conducted on that basis, the names of those counseled cannot be revealed. There are no unresolved or material issues stemming from these consultation efforts.

In addition to respondents and prospective clients, ETCA staff routinely consults with the Chief Counsel for International Commerce to determine areas of improvement for the application and application process.

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

No payments or gifts are provided to applicants.

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

ETCA staff notifies each respondent of the following policy:

Information submitted by any person in connection with the issuance, amendment, or revocation of a certificate of review is exempt from disclosure under the Freedom of Information Act, Section 552, Title 5, United States Code. Except as provided under Section 309(b)(2) of the Export Trading Company Act (“Act”) and 15 CFR 325.16(b)(3), no officer or employee of the United States shall disclose commercial or financial information submitted pursuant to the Act if the information is privileged or confidential and if disclosure of the information would cause harm to the person who submitted the information.

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.

No questions of a sensitive nature are asked.

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

On the basis of recent experience, the ETCA will receive approximately 12 applications per year, and require an estimated 32 hours in preparing an application for submission. Therefore, the total estimated burden hours = **384**.

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).

Not Applicable.

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

ETCA staff salaries and benefits allocated to the program total approximately \$308,675. An additional estimated \$50,000 in related costs, such as publication in the Federal Register, computer time, and supplies, are attributed to the statutory review of applications for an Export Trade Certificate of Review.

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

None.

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

Not Applicable.

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.

The OMB number and expiration date will be displayed on the form.

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

This collection of information does not employ statistical methodologies.