

SUPPORTING STATEMENT
U.S. Department of Commerce
Bureau of Industry and Security
Licensing Responsibilities and Enforcement
OMB Control No. 0694-0122

A. Justification

This request is to renew the Office of Management and Budget approval of the information collection.

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 (BIS) 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)**.

This collection of information involves nine miscellaneous activities described in section 758 of the EAR that are associated with the export of items controlled by the Department of Commerce. Most of these activities do not involve submission of documents to the BIS but instead involve exchange of documents among parties in the export transaction to insure that each party understands its obligations under U.S. law. Others involve writing certain export control statements on shipping documents or reporting unforeseen changes in shipping and disposition of exported commodities. The specific responsibilities are described more fully in the answer to Question 2. These activities are needed by the Office of Export Enforcement and the U.S. Customs Service (Customs) to document export transactions, enforce the EAR and protect the National Security of the United States.

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.

This package supports the collection of various documents, notifications, reports, and information exchanges that are needed by the Office of Export Enforcement and Customs to enforce the EAR and maintain the National Security of the United States.

a) Assumption of Responsibility in Writing. (758.3(d) of the EAR): For most export transactions, the EAR make the U.S. principal party in interest (typically the U.S. seller) responsible for determining whether a license is required and for obtaining any required licenses. In the case of routed transactions (transactions where the foreign principal party in interest selects the freight forwarder and instructs the U.S. seller to ship to that forwarder), the EAR allow the parties to shift responsibility for determining license requirements and obtaining any needed licenses to the foreign principal party interest, making the U.S. agent of the foreign principal party in interest the exporter for purposes of the EAR. Under the EAR, this shift is effective only if the foreign principal party in interest expressly assumes these responsibilities in writing and gives that writing to the U.S. principal party in interest. One writing may cover as many shipments as the parties elect to cover. The requirement to deliver a written assumption of responsibility is necessary to avoid ambiguity over the issue of whether the parties elected to depart from standard EAR provisions that place these responsibilities on the U.S. principal party in interest.

b) Information Sharing Requirements. (§758.2(d) of the EAR): In routed export transactions where the foreign principal party in interest assumes responsibility for determining license requirements and for obtaining licenses through its U.S. agent, the U.S. principal party in interest must, upon request, provide the foreign principal party in interest and its forwarding or other agent with the Export Control Classification Number (ECCN), or with sufficient technical information to determine the ECCN of the item to be exported. In addition, the U.S. principal party in interest must provide the foreign principal party in interest or the foreign principal's agent any information that it knows will affect the determination of license requirements. This information can be transmitted electronically, orally, or by other conventional means as often as is requested with respect to the ECCN, or as often as the U.S. principal party in interest has knowledge that will affect the determination of the license in routed transactions. This information sharing requirement is necessary because the foreign principal and/or its agent has taken on the responsibility for license requirements without necessarily having all the information necessary to make a license determination or obtain a license. The sole source of this information in most cases is the U.S. principal party in interest.

c) Power of attorney or other written authorization. (§748.4(b) and §758.1(h): A person who acts as an agent, applicant or exporter for a Foreign Principal Party in Interest and a person who acts as an agent for a U.S. Principal Party in Interest must obtain a power of attorney or other written authorization as evidence of its authority. Requiring written evidence of authority

is necessary to prevent uncertainty regarding the authority of persons who submit license applications to the government on behalf of others.

d) Procedures for unscheduled unloading. (758.5(e)): Unloading in a country where a license is required. When, due to unforeseen circumstances, items are unloaded in a country in which they were not scheduled to be unloaded and to which the items would require a license, the EAR require that the carrier take steps to prevent those items from entering the economy of that country and to notify the exporter in sufficient time that the exporter will be able to notify BIS within 10 days of the unscheduled unloading, report the facts to, and request authorization for disposition from, BIS using mail, fax, or E-mail. The report to BIS must include a copy of the manifest of the diverted cargo and identify the place of unloading. The report must also propose a disposition of the items and request authorization for such disposition from BIS.

This collection is needed so that BIS may review the facts and determine whether to authorize the proposed disposition of the items under applicable licensing policies.

(e) Return or Unloading at Direction of U.S. Dept. of Commerce (758.8 of the EAR):
Background: Where there are reasonable grounds to believe that a violation of the EAR has occurred or will occur with respect to a particular export from the U.S., BIS or any U.S. Customs officer may order any person in possession or control of such shipment to return or unload the shipment. Such person shall, as ordered, either:

- (1) Return the shipment to the U.S., or
- (2) Unload the shipment at a port of call and take steps to assure that it is placed in custody under bond or other guaranty not to enter the commerce of any foreign country without prior approval of BIS.

Notification: Upon discovery that a violation of the EAR has occurred or will occur with respect to a shipment on board, or otherwise in the possession or control of the carrier, such person shall immediately notify by any means both:

- (1) Office of Export Enforcement
U.S. Department of Commerce
Room 4520
14th Street and Constitution Ave. N.W.
Washington, D.C. 20230
Telephone (202) 482-0694
Facsimile (202) 482 0964; and
- (2) The person in actual possession or control of the shipment.

This collection is necessary to allow the Office of Export Enforcement to evaluate the facts in a

timely manner to determine the appropriate disposition of the items involved.

(f) Destination Control Statement (758.6 of the EAR): The Destination Control Statement (DCS) must be entered on the invoice and on the bill of lading, air waybill, or other export control document that accompanies the shipment from its point of origin in the United States to the ultimate consignee or end-user abroad. The person responsible for preparation of those documents is responsible for entry of the DCS. The DCS is required for all exports from the United States of items on the Commerce Control List that are not classified as EAR99, unless the export may be made under License Exception BAG or GFT (see part 740 of the EAR). At a minimum, the DCS must state: “These commodities, technology or software were exported from the United States in accordance with the Export Administration Regulations. Diversion contrary to U.S. law is prohibited.”

The DCS is a preventive enforcement measure to remind the public that the goods covered by a document that contains the DCS are controlled for export by the U.S. Government and if they plan to export or reexport it they should look at the EAR to make sure they are in compliance.

(g) Notation on Export Documents for Exports Exempt from SED Requirements. (758.1(d) of the EAR): When an exemption from filing the Shipper’s Export Declaration applies, the forwarding or other agent must include on the bill of lading, air waybill, or other loading document the export authority of the items, i.e., either the number of and expiration date of a license issued by BIS, the appropriate License Exception symbol, or NLR “No License Required” designator. This notation applies to any bill of lading or other loading document, including one issued by a consolidator (indirect carrier) for an export included in a consolidated shipment. However, this requirement does not apply to a “master” bill of lading or other loading document issued by a carrier to cover a consolidated shipment. The bill of lading or other loading document must be available for inspection along with the items prior to lading on the carrier.

This notation provides an indication to the U.S. Government that the shipper of the items is aware of the Export Administration Regulations and the requirements of the regulations, and provides a preliminary indication of whether the export is being made in compliance with the regulations.

(h) Exports by U.S. Mail.(758.1(i) of the EAR): Whenever a person export items subject to the EAR by mail that meets one of the exemptions for submission of an SED, you must enter the appropriate export authority on the parcel, i.e., either the number of and expiration date of a license issued by BIS, the appropriate License Exception symbol, or NLR “No License Required” designator.

This notation provides an indication to the U.S. Government that the shipper of the items is aware of the Export Administration Regulations and the requirements of the regulations, and

provides a preliminary indication of whether the export is being made in compliance with the regulations.

(i) Issuance of License, Responsibility of the Licensee. (750.7(d) of the EAR): It is the licensee's responsibility to communicate the specific license conditions to the parties to whom those conditions apply. In addition, when required by the license, the licensee is responsible for obtaining written acknowledgment(s) of receipt of the conditions from the parties to whom those conditions apply.

This requirement is needed to document that the consignees and end users of exports made pursuant to licenses are informed of any conditions. Typically, the government has dealt directly with the licensee, but not the consignee or end user. In addition, because the timing of the shipment is not up to the government, the licensee is in a better position than the government to convey this information to the consignee.

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 following collections involve the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology:

a) Assumption of Responsibilities in Writing. This writing may be transmitted via fax or e-mail from the foreign principal party in interest to the U.S. principal party in interest. This decision was made to accommodate the fast pace of the business community to process orders.

b) Information sharing requirements. This writing may be transmitted electronically via fax, or e-mail. This decision was made to accommodate the fast pace of the business community to process orders.

c) Power of attorney or other written authorization. This writing may be transmitted via fax, or e-mail. This decision was made to accommodate the fast pace of the business community to process orders.

d) Procedures for unscheduled unloading. This writing may be transmitted via fax, or e-mail. This decision was made to accommodate the fast pace of the business community to process orders.

e) Return or Unloading at Direction of U.S. Department of Commerce. This writing may be transmitted via fax. This decision was made to accommodate the fast pace of the business community to process orders.

f) Destination Control Statement. Completion of the DCS can be done through automation. The DCS can also be preprinted on documents requiring the information.

(g) Notation on export documents for exports exempt from SED requirements. (758.1(d) of the EAR): This must appear on paper documents that accompany the shipment and cannot be provided electronically

(h) Exports by U.S. Mail.(758.1(i) of the EAR): This must appear on paper documents that accompany the shipment and cannot be provided electronically

i) Issuance of License, Responsibility of the licensee. This writing may be transmitted via fax, or e-mail. This decision was made to accommodate the fast pace of the business community to process orders.

4. Describe efforts to identify duplication.

This information is not duplicated elsewhere. Each collection provides information concerning specified details of individual export transactions. This information is not available from any source other than from the respondents.

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

This recordkeeping requirement must be adhered to by all affected parties regardless of the size of the business. The failure to keep this writing would not assure the necessary control of exports as required by export regulations.

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

The consequences to Export Enforcement and Compliance if the collection is not conducted or conducted less frequently, are as follows:

a) Assumption of responsibilities in writing. If the assumption of responsibilities in writing were not required then the likelihood of illegal exports would increase, as a result of not requiring the parties to confirm who is responsible for determining license requirements and obtaining the license. The frequency of the writing is decided between the principal parties in interest, which satisfies the regulatory requirement as long as it covers all routed transactions where the foreign principal party in interest has taken on these responsibilities.

b) Information sharing requirements. Without this collection forwarding and other agents would be forced to either delay exports, guess, research to obtain the information, or leave the information blocks empty. This information is necessary to enable the foreign principal or its forwarding or other agents to make correct license determinations, apply for licenses, and correctly and completely prepare and file export documents. Compliance with export regulations is impossible without having the Export Control Classification Number (ECCN) of the item being exported. The ECCN must be known for each item being exported. The frequency is dependent upon the how often the foreign principal or its agent makes the request of this information to the U.S. principal. To alleviate some of the burden ~~to~~ on the U.S. principal in having to provide this information for every transaction, the requirement triggered upon request of the foreign principal or its agent, because the foreign principal or its agent may already have the ECCN from previous transactions or being very familiar with the product.

c) Power of attorney or other written authorization. The consequences of not requiring this collection is lack of communication between parties, confusion about who is responsible for obtaining a license, increased violations of the EAR, and lack of evidence to prosecute violators. The power of attorney or other written authorization assures that the principal has communicated to the agent that it is being hired and authorized to apply for a license on behalf of the principal. Since a foreign person cannot apply for a license, the need to establish who is responsible for this task in the United States is essential to export enforcement. One authorization may cover many transactions, as long as all transactions for which an agent acts on behalf of another party is covered. Therefore, frequency is determined by the parties.

d) Procedures for unscheduled unloading. The consequences of not requiring the public to notify BIS and the exporter of the unscheduled unloading of sensitive items that are controlled for export on the Commerce Control List of the EAR, is that the items could be diverted, presenting a national security risk to the United States. It is important that BIS be notified quickly so that acceptable permanent disposition of the items may be arranged as soon as possible. The longer the delay, the higher the risk of theft or erroneous movement of the items. This notification and reporting requirement could not be done less frequently, as it would pose a high risk of diversion of national security or foreign policy controlled items.

e) Return or unloading at direction of U.S. Department of Commerce – notification of violation: It is important that BIS be notified by an “exporting carrier” of a violation so that acceptable disposition of the items may be arranged as soon as possible. This notification and reporting requirement could not be done less frequently, as it would pose a high risk of diversion of national security or foreign policy controlled items.

f) Destination Control Statement (DCS). The DCS is a reminder to all parties that are involved in a transaction that includes items controlled for export by the EAR, that the transaction must be in compliance to the EAR. If it were required less frequently or not at all, then more items would be subject to higher risk of diversion and an increase in illegal exports and reexports would take place.

g) Notation on export documents for exports exempt from SED requirements. This notation must be required for all exports exempt from SED requirements to ensure that the exporter has determined the appropriate authority for the export or that no authorization is required. If this notation were required less frequently or not at all, then more items would be subject to higher risk of diversion and an increase in illegal exports could result.

h) Exports by U.S. Mail: This notation must be required for all exports exempt from SED requirements to ensure that the exporter has determined the appropriate authority for the export or that no authorization is required. If this notation were required less frequently or not at all, then more items would be subject to higher risk of diversion and an increase in illegal exports could result.

i) Issuance of License, Responsibility of the licensee. If the receipt of conditions by the parties were required less frequently, it could result in violations of the EAR. The licenses are approved contingent on the fulfillment of the conditions. If the conditions are not communicated to the parties, then adherence to them would be at risk. Adherence of the conditions is one of the basic General Prohibitions in part 736 of the EAR. Violations of the conditions could result in a National Security threat to the United States.

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 January 30, 2009, pp 5637. 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.

Section 12(c) of the EAA provides for the confidentiality of export licensing 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.

There are no questions of a sensitive nature.

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

This collection has a total of **78,576 burden hours**, as listed below.

- a) Assumption of Responsibility in Writing: This collection affects approximately 144,444 routed exports annually. This is based on the figure from the Census Bureau of 13 million exports annually, with an estimate of 1/3 of the exports being routed, an estimate of 1/10 transactions in which the foreign principal party in interest assumes responsibility, and approximately 3 exports per project covered by a single writing. The total annual public burden for respondents is **36,111** hours. This is based on an average time of 15 minutes to prepare the writing.
- b) Information sharing requirements. This collection affects approximately 144,444 routed exports annually. The total annual public burden for respondents is **36,111** hours. This is based on an average time of 15 minutes to communicate the ECCN or technical information, and any other pertinent information that would affect license determination.
- c) Power of attorney or other written authorization. This collection affects approximately 5,000 routed exports annually. BIS receives approximately 15,000 applications per year. Approximately 1/3 of these are for routed exports. The total annual public burden for respondents is **1,250** hours. This is based on an average time of 15 minutes to prepare the power of attorney or other written authorization.
- d) Procedures for unscheduled unloading. This collection of information consists of approximately 1 respondent annually. The total annual public burden for respondents is estimated to be **2** hours. This is based on an average time of one hour to prepare one report of unscheduled unloading, and one hour to prepare one report of an incident requiring the return or

unloading of cargo at the direction of U.S. Dept. of Commerce.

e) Return or unloading at direction of U.S. Department of Commerce. This collection of information consists of approximately 2 respondents annually. The total annual public burden for respondents is **4** hours. This is based on an average time of one hour to prepare one report of unscheduled unloading, and one hour to prepare one report of an incident requiring the return or unloading of cargo at the direction of U.S. Dept. of Commerce.

f) Destination Control Statement (DCS). The estimated yearly total burden placed on the exporting public required to use the DCS is **1,806** hours. This is based on the figure from the Census Bureau of 13 million exports annually, an estimate of 5% of the exports subject to the EAR, 2 documents for each export requiring use of the DCS and 5 seconds required to complete each document ($13,000,000 \times .05 \times 2 \times 5/3600 = 1,805$ hours)

g) Notation on export documents for exports exempt from SED requirements. The estimated yearly total burden placed on respondents/forwarders is approximately **181** total hours. This is based on the figure from the Census Bureau of 13 million exports annually, an estimate of 5% of the exports subject to the EAR, an estimated 20% of these controlled exports will meet SED exemptions ($13,000,000 \times .05 \times 0.2 = 130,000$). Therefore, there are 130,000 shipments for which the forwarder is required to insert on the bill of lading the license number and expiration date, License Exception, or No License Required (NLR) symbol, requiring approximately 5 seconds to complete. This results in an annual burden of 180 hours ($130,000 \times 5/3600 = 180$ hours).

h) Exports by U.S. Mail. The estimated yearly total burden placed on those members of the private sector who export parcels is **111** total hours. This is based on an estimated 8 million parcels mailed internationally on an annual basis. Of these packages, an estimated 5% are controlled by the EAR and 80% of these are eligible for an exemption. This leaves only 1% that require inscription. It takes about 5 seconds per package. Therefore the total time required is $8,000,000 \times .01 \times 5/3600 = 111$ hours.

i) Responsibility of the Licensee. The estimated annual burden of communicating licensing conditions is estimated to be **3,000** hours. There were approximately 18,000 license applications approved with conditions in calendar year 2008. It is estimated to take a total of about 10 minutes to communicate conditions to and from the licensee and the parties to whom they apply.

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 Question 12 above).

There will be no cost burden to the respondents resulting from this collection, as all

notifications, reports, and information exchange requirements do not require any special form or format, therefore may be produced or accomplished using standard business equipment and supplies.

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

Items a) through f) and i) are not applicable since these items are not received by the government.

g) Notation on export documents for exports exempt from SED requirements. The estimated yearly cost to the Federal Government is \$211,000. This is based on a spot check of bills of lading covering one-third of the approximately 13 million exports annually. Each spot check takes roughly 5 seconds. The total amount of time is $13,000,000 \times 1/3 \times 5/3600 = 6,018$ hours. The cost is estimated to be $6,018 \times \$35 = \$211,000$.

h) Exports by U.S. Mail. The estimated yearly cost to the Federal Government is \$111,000. This estimate is based on a spot check of one-third of the approximately 8 million international mail exports annually. Each spot check takes roughly 5 seconds. The total amount of time is $8,000,000 \times 1/3 \times 5/3600 = 3,704$ hours. The cost is estimated to be $3,704 \times \$30 = \$111,000$.

The total estimated cost to the USG is $\$211,000 + 111,000 = \$322,000$.

15. Explain the reasons for any program changes or adjustments.

The number of responses and burden hours has been adjusted as a result of dividing the previous collection's information collections into multiple collections, and to reflect calendar year 2008 data obtained from the ECASS system.

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.

This reporting request involves a "trade sensitive" activity under the OMB memorandum of March 15, 1983 which outlines requirements for agencies that are subject to provisions of the Paperwork Reduction Act of 1980 and Executive Order 12291.

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.