

**SUPPORTING STATEMENT (REVISED)**  
**U.S. Department of Commerce**  
**International Trade Administration**  
**Interim Procedures for Considering Requests under the Commercial Availability**  
**Provision of the United States-Peru Trade Promotion Agreement**  
**OMB CONTROL NO. 0625-XXXX**

**A. JUSTIFICATION**

**This is an emergency review request to the Office of Management and Budget for the above titled collection. The requested approval date is August 3, 2009.**

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

The United States and Peru negotiated the US-Peru Trade Promotion Agreement (“the Agreement”), which was implemented into U.S. law pursuant to the United States-Peru Trade Promotion Agreement Implementation Act (“US-PERU TPA”). The Agreement entered into force on February 1, 2009. Under the textile provisions of the US-PERU TPA, fabrics, yarns, and fibers produced in Peru or the United States and traded between the two countries are entitled to duty-free tariff treatment. The Agreement also lists specific fabrics, yarns, and fibers that the two countries agreed are not available in commercial quantities in a timely manner from producers in Peru or the United States.<sup>a</sup> These commercially unavailable fabrics, yarns, and fibers are also entitled to duty-free treatment despite not being produced in Peru or the United States.

The list of commercially unavailable fabrics, yarns, and fibers may be changed pursuant to the commercial availability provision of the US-PERU TPA. Under Section 203(o) of the US-PERU TPA (“the commercial availability provision”), interested entities from Peru or the United States have the right to request that a specific fabric, yarn, or fiber be added to, or removed from, the list of commercially unavailable fabrics, yarns, and fibers. This right became effective when the Agreement entered into force on February 1, 2009.

Section 203(o)(4)(F) of the US-PERU TPA requires that the President establish procedures for parties to follow when exercising the right to make these requests. The President delegated the responsibility for publishing the procedures and administering commercial availability requests to the Committee for the Implementation of Textile Agreements (“CITA”), which issues procedures and acts on requests through the Office of Textiles and Apparel (“OTEXA”).<sup>b</sup>

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<sup>a</sup> Annex 3-B of the Agreement contains the list of fabrics, yarns, and fibers agreed upon as not available in commercial quantities in a timely manner from producers in the United States or Peru.

<sup>b</sup> See Proclamation No. 8341, 73 Fed. Reg. 4105, 4107 (Jan. 22, 2009) (delegating to CITA responsibilities related to textile provisions of the US-PERU TPA).

Thus, as mandated by the US-PERU TPA, these procedures needed to be published by OTEXA promptly after February 1, 2009. However, due to the transition to the current Administration, it was necessary to delay publication of the procedures until such time as the officials appointed by the President were in place and able to review and provide clearance for interim procedures to implement the commercial availability provision.

In accordance with the commercial availability provision, CITA will implement procedures to collect certain information about the technical specifications of certain fabrics, yarns, or fibers and the production capabilities of Peruvian and U.S. textile producers to determine whether certain fabrics, yarns, or fibers are available in commercial quantities in a timely manner in the United States or Peru. The intent of the commercial availability provision is to foster the use of U.S. and regional products by implementing procedures that allow products to be placed on or removed from a product list, on a timely basis, and in a manner that is consistent with normal business practice. The procedures are intended to facilitate the transmission of requests; allow the market to indicate the availability of the supply of products that are the subject of requests; make available promptly, to interested entities and the public, information regarding the requests for products and offers received for those products; ensure wide participation by interested entities and parties; allow for careful review and consideration of information provided to substantiate requests and responses; and provide timely public dissemination of information used by CITA in making commercial availability determinations.

To date, no interested party has exercised its right to request that a fabric, yarn, or fiber be added to, or removed from the list of commercially unavailable fabrics, yarns, and fibers. If an interested party submits a request, however, CITA will be required to make a determination as to whether the fabric, yarn, or fiber should be added to or removed from the list pursuant to the commercial availability provision of the US-PERU TPA. Without published procedures in place, it will make it more difficult for CITA to ensure that all interested parties and the public are aware of the commercial availability determination process afforded by the US-PERU TPA. For example, interested parties may not know the exact nature of the information required for CITA to make such a determination. In addition, the United States is obligated to publish such procedures promptly.

**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.**

For an additional fiber, yarn or fabric to be added to Annex 3-B, an interested entity must submit to CITA a Request for a Commercial Availability Determination (“Request”) which states that the subject product is not commercially available in either the United States or Peru within a commercially reasonable timeframe (i.e., timely). In support of its claim, the requestor must provide information to CITA regarding its attempts to source the subject product in the region, and why it determined that the product is not available in a timely manner. Potential suppliers from the United States or Peru may submit a Response with an Offer to Supply (“Response”),

asserting their capability and capacity to supply the subject product. These Responses must include information supporting the capability and capacity assertion. If the requestor disputes a responder's assertions, the requestor may submit a Rebuttal comment offering its contention, along with supporting information and documentation.

The information collected by CITA from Requests, Responses and Rebuttals will be used to determine whether the subject product is available in commercial quantities in a timely manner in the United States or Peru under the commercial availability provision of the US-PERU TPA. Requests, Responses, and Rebuttals must identify confidential information. Entities submitting confidential information in their Requests, Responses, or Rebuttals to CITA must submit both a public and a confidential version of their submissions. If the submissions are accepted, the public submissions or public versions of submissions will be posted on the dedicated commercial availability section of the Office of Textiles and Apparel (OTEXA)'s website. Business confidential information will not be shared with the public. Requestors and potential suppliers of the product named in the Request may use the public version as a basis for Responses and Rebuttals.

This information collection is not required to comply with the Department's Information Quality Guidelines because the documents that will be made available to the public are public filings by private entities requesting that CITA make a determination as to the commercial availability of a particular fabric, yarn, or fiber in the United States or Peru, or by private entities responding to such a request. These documents are not authored by CITA, nor are they intended to represent CITA's views. Further, the information collected is used solely as the basis for administrative determinations under the US-PERU TPA. These filings will become part of the record of the proceedings, but may not be used to make determinations in any future proceedings.

**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.**

Participants in a commercial availability proceeding must submit public versions of their Requests, Responses or Rebuttals electronically (via email) for posting on OTEXA's website. Confidential versions of those submissions which contain business confidential information must be delivered in hard copy to OTEXA's offices at the Department of Commerce.

**4. Describe efforts to identify duplication.**

The information provided by participants in a commercial availability proceeding is unique in each case in that it relates to the availability of a particular fiber, yarn or fabric from a requestor and U.S. or Peruvian suppliers. No other U.S. government agency collects this information, so there is no chance for duplication.

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

Standardized criteria, instructions, and certifications are utilized to help ensure that the burden on small businesses is minimized. In addition, the amount of information requested has been reduced to the minimum necessary to determine whether or not the subject product is commercially available in a timely manner from suppliers in the United States or Peru.

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

If the collection is not conducted, CITA would be unable to determine if certain textile and apparel goods were commercially available in a timely manner from suppliers in the United States or Peru. In that case, the United States would not be in compliance with its obligations under the Agreement.

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

None.

**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 copy of the Federal Register Notice (FRN) notifying the public of this emergency review submission and requesting comments is in ROCIS; and was processed. The comment period concludes on August 7, 2009. Additionally, when the interim procedures are implemented, CITA will publish a Federal Register notice requesting comments from interested U.S. and Peruvian entities. Any comments received will be addressed when CITA publishes its final procedures.

The basic framework for the commercial availability process was established by the U.S. and Peruvian governments during the negotiation process for the Agreement and was thereafter written into the US-PERU TPA. CITA's procedures follow this framework.

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

None. CITA makes 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.**

Any information provided by participants in a commercial availability proceeding that is marked business confidential will be kept confidential and protected from disclosure to the full extent permitted by law. Specifically, these provisions include 5 U.S.C. § 552(b)(4), which protects confidential information from disclosure under the Freedom of Information Act, and 18 U.S.C. § 1905, which prohibits disclosure of confidential information by U.S. government employees or officers.

When business confidential information is provided, participants must also provide a public version of its submission in which business confidential information is summarized or, if necessary, deleted. The public submissions will be available to the public via OTEXA’s website to allow potential participants in a proceeding to base any subsequent submissions on the information provided.

**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.**

It is estimated that **10 Requests** will be filed per year. The average amount of time required to prepare each Request is estimated at 8 hours. The total annual burden for all Requests is estimated to be 80 hours.

<u>Activity</u>	<u>Time Required</u>
Due Diligence	5 hours
Summarizing Due Diligence and Preparing Request	2 hours
Preparing Supporting Documentation	1 hour
Total Time per Request	8 hours
<b>Total Burden Hours per Year</b>	<b>80 hours</b>

It is estimated that **3 Responses to Requests** will be filed per year. The average amount of time required to prepare each Response is estimated at 2 hours. The total annual burden for all Responses is 6 hours.

<u>Activity</u>	<u>Time Required</u>
Preparing Response	1 hour and 30 minutes
Preparing Supporting Documentation	30 minutes
Total Time per Response	2 hours
<b>Total Burden Hours per Year</b>	<b>6 hours</b>

It is estimated that **3 Rebuttals** will be filed per year. The average amount of time required to prepare each Rebuttal is estimated at 1 hour. The total annual burden for all Rebuttals is 3 hours.

<u>Activity</u>	<u>Time Required</u>
Preparing Rebuttal	1 hour
Total Time per Response	1 hour
<b>Total Burden Hours per Year</b>	<b>3 hours</b>

**TOTAL RESPONSES: 16                      TOTAL BURDEN HOURS: 89**

**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).**

It is nearly impossible to estimate exact cost figures because there is such a wide variation in the number of pages per submission, due diligence methods (i.e., telephone calls vs. emails), and shipping costs. However, some private sector entities may choose to engage legal counsel or other consultants to assist in the due diligence process, which would add an additional cost.

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

The average amount of time to review and process Requests is estimated at an average annual total of 80 hours (8 hours per Request for an average of 10 Requests per year). The estimated average public sector salary for persons processing the Requests is **\$40 per hour**. The total annual cost to the government is estimated at **\$3,440** per year.

<u>Activity</u>	<u>Time Required</u>	<u>Cost</u>
Initial Processing of Request: Review and Ensure Compliance with CITA's Procedures and Sufficiency of Due Diligence, Post to OTEXA's Website	3 hours	\$120

(if accepted), and Notify Interested Parties (if accepted)		
Process Offers to Supply (if applicable)	1 hour	\$40
Draft Memo to CITA and Obtain Proper Clearances	2 hours	\$80
Prepare Federal Register Notice for Publication	1 hour	\$40
Publish Decision on OTEXA's Website and Amend Annex 3-B of the US-PERU TPA	1 hour	\$40
<b>Total Cost per Request</b>	<b>8 hours</b>	<b>\$320</b>
<b>Total Cost to Govt. per Year</b>	<b>80 hours</b>	<b>\$3,200</b>

The average amount of time to review and process Responses is estimated at an average annual total of 3 hours (1 hour per Response for an average of 3 Responses per year). The estimated average public sector salary for persons processing the Requests is \$40 per hour. The total annual cost to the government is estimated at \$120 per year.

<u>Activity</u>	<u>Time Required</u>	<u>Cost</u>
Review Response to Ensure it Follows CITA's Procedures	30 minutes	\$20
Notify Requestor	15 minutes	\$10
Post to OTEXA's Public Website	15 minutes	\$10
<b>Total Cost per Response</b>	<b>1 hour</b>	<b>\$40</b>
<b>Total Cost to Govt. per Year</b>	<b>3 hours</b>	<b>\$120</b>

The average amount of time to review and process Rebuttals is estimated at an average annual total of 3 hours (1 hour per Rebuttal for an average of 3 Rebuttals per year). The estimated average public sector salary for persons processing the Requests is \$40 per hour. The total annual cost to the government is estimated at \$120 per year.

<u>Activity</u>	<u>Time Required</u>	<u>Cost</u>
Review Rebuttal to Ensure it Follows CITA's Procedures	30 minutes	\$20
Notify Responder	15 minutes	\$10
Post to OTEXA's Public Website	15 minutes	\$10
<b>Total Cost per Rebuttal</b>	<b>1 hour</b>	<b>\$40</b>
<b>Total Cost to Govt. per Year</b>	<b>3 hours</b>	<b>\$120</b>

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

This is a new collection related to the implementation of the Agreement.

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

Respondents will provide electronic copies of the public versions of Requests to be posted to OTEXA's website. Determinations to add or remove fabrics, yarns, or fibers from the list of commercially unavailable fabrics, yarns, or fabrics are also published in the Federal Register.

**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.**

Not Applicable.

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

This collection of information does not employ statistical methodologies.