

SUPPORTING STATEMENT
U.S. Department of Commerce
Bureau of Industry and Security
Simple Network Application Process and Multipurpose Application Form
OMB Control No. 0694-0088

The Bureau of Industry and Security (BIS) is requesting a revision to existing collection OMB Control No. 0694-0088. This revision will support publication of a final rule “Revisions to the Export Administration Regulations to Enhance U.S. Homeland Security: Addition of Three Export Control Classification Numbers (ECCNs) and License Review Policy” (RIN 0694-AE64). This rule adds a supporting document requirement for license applications to export or reexport certain items to Austria, Cyprus, Finland, Ireland, Israel, Malta, Mexico, Singapore or Sweden to persons designated by a government end-user pursuant to contract, as a requirement for more favorable licensing treatment. The inclusion of these persons (i.e., government contractors) was recommended by U.S. industry members of the Department's Regulations and Procedures Technical Advisory Committee (RPTAC) to facilitate exports of homeland security technology to contractors working for the governments of these trusted nations.

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.

BIS administers a system of export and reexport controls in accordance with the EAR. In doing so, BIS requires that parties wishing to engage in certain transactions apply for licenses, submit encryption review requests or submit notifications to BIS. BIS also reviews, upon request, specifications of various items and determines their proper classification under the EAR. Currently members of the public submit these applications, requests and notifications to BIS in one of three ways: via SNAP, via BIS's Electronic License Application Information Network (ELAIN) or via the paper BIS Multipurpose Application Form BIS 748P and its two appendices,

BIS 748P-A (item appendix) and BIS 748P-B (end user appendix). In many instances, BIS needs additional documents to act on the submission. All of these documents are covered under this information collection, OMB Control No. 0694-0088.

The Export Administration Regulations (EAR) protect the national security and foreign policy interests of the United States, which includes protecting the homeland security interests of the United States. An interagency working group on homeland security export control issues, composed of representatives from the Departments of Commerce, Defense, Homeland Security, and State, has identified additional areas where changes should be made to the EAR. This rule implements the first set of changes identified by the interagency working group. These changes to the EAR are also in the foreign policy interests of the United States.

The Department of Homeland Security (DHS) has research and development (R&D) and procurement programs that are used to develop, produce and procure items for homeland security. These R&D and procurement activities include the use of various government agencies, both within DHS and outside of DHS, along with various private sector contractors. The U.S. Government also maintains international cooperative homeland security agreements with certain countries. These agreements facilitate collaborative efforts with partner countries to develop, produce and deploy homeland security items.

The U.S. Government has agreements with the following nine countries: Australia, Canada, France, Germany, Israel, Mexico, Singapore, Sweden, and the United Kingdom. The U.S. Government has pending agreements with the European Union (nonbinding implementing arrangement only), the Netherlands, New Zealand and Japan.

The CCL-based controls need to evolve to keep pace with homeland security innovations. In order to achieve this objective, the interagency working group on homeland security-related export control issues is working to identify any areas in which CCL-based controls may not address DHS-related innovations at an appropriate level. This rule addresses one such area by making the following changes to the EAR:

In Supplement No. 1 to part 774, the Commerce Control List (CCL), this rule adds three new Export Control Classification Number (ECCN) 2A984, 2D984 and 2E984 to control certain concealed object detection equipment operating in the frequency range from 30 GHz to 3000 GHz and related software and technology. These three new ECCN entries will be subject to Regional Stability (RS 2) and Anti-terrorism (AT 1) controls on the CCL.

In part 742 (Control Policy – CCL Based Controls), this rule adds a new license review policy in §742.6 (Regional Stability), to facilitate the export of the new ECCNs 2A984, 2D984 and 2E984 when these items are being exported or reexported to certain trusted destinations and end-users. Specifically, this new license review policy states that applications to export and reexport items controlled under ECCNs 2A984, 2D984 and 2E984 will be reviewed under a presumption of approval when exported or reexported to Austria, Cyprus, Finland, Ireland, Israel, Malta, Mexico, Singapore or Sweden, provided the items are being made to a

government end-user or to a person designated by the government end-user pursuant to contract. License applications to export to a designated person must include a statement from the government end-user that the person is so designated. A responsible official representing the designated end-user must sign the statement. “Responsible official” is defined as someone with personal knowledge of the information included in the statement, and authority to bind the designated end-user for whom they sign, and who has the power and authority to control the use and disposition of the licensed items.

Statements from government end-users that the person is so designated must address the following three criteria for a license application to be reviewed in accordance with the more permissive license review policy in §742.6(b)(2)(ii): (1) U.S. Department of Homeland Security (DHS) Customer Contract Number or agreement reference number, End-user name (company), complete address (including street address, city, state, country and postal code), end-user point of contact (POC); (2) Brief contract description, including DHS Project information and projected outcome; and (3) the statement shall include a certification stating “We certify that all of the representations in this statement are true and correct to the best of our knowledge and we do not know of any additional representations which are inconsistent with the above statement.”

BIS believes that including persons designated by the government end-user pursuant to contract will help to facilitate the use of the new ECCNs 2A984, 2D984 and 2E984 for trusted end-users and destinations. However, in order for BIS to quickly and accurately confirm whether these persons are in fact eligible for this more permissive license review policy an additional support document must be submitted with the BIS license application submitted through SNAP-R.

Therefore, BIS requires that all export and reexport license applications (other than Special Comprehensive License applications), include in the “attached” related documents a support document indicating the bona fides of the person acting under government contract (i.e., indicating whether the person is designated by the government end-user pursuant to contract). This additional support document will be submitted to the Bureau of Industry and Security (BIS) via its Simplified Network Application Process Redesign (SNAP-R) system unless BIS authorizes paper submissions.

This rule also adds ECCNs 2A984, 2D984 and 2E984 to the restrictions on all license exceptions in §740.2 (Restrictions on all License Exceptions), and adds special recordkeeping requirements for two of the limited EAR License Exceptions that these new ECCNs 2A984, 2D984 and 2E984 may be eligible for under part 740. Specifically, this rule adds ECCNs 2A984, 2D984 and 2E984 to the Special Recordkeeping Requirements in §740.10 (Servicing and replacement of parts and equipment (RPL)) and in §740.13 (Technology and software —unrestricted (TSU)). These records need to be kept in accordance with part 762 (Recordkeeping of the EAR) and may be requested may be requested at any time by an appropriate BIS official as set forth in §762.7 (Producing and Inspecting Records).

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.

Export information collected either electronically or from the Multipurpose Application form BIS-748P, 748P-A and 748P-B is used by the Bureau of Industry and Security as the basis for decisions to grant licenses for export, reexport, for national security reviews of encryption items, and for classifications of items that are controlled for reasons of national security, short supply or foreign policy. These decisions are typically made on a case-by-case basis and are dependent upon both the information provided in either electronic or manual form data submission and the policies in effect at the time of the transaction. In many cases, this information is shared with other Federal agencies such as the Department of Defense, State Department, and Department of Energy, to obtain their recommendations on these decisions.

Both the paper and electronic versions of the Multipurpose Application form contained in SNAP-R provide detailed instructions and explanations of what data is required in each field. In addition, the SNAP-R system includes a large number of software validations to insure high data quality.

For this final rule, this support document being added to Supplement No. 2 to part 748 under paragraph (k)(2) will be provided by certain specified persons (i.e., a person designated by a government end-user pursuant to contract) who are eligible for the more permissive license review policy for ECCNs 2A984, 2D984 and 2E984 under §742.6(b)(2)(ii). Specifically, this new paragraph (k)(2) states that, if you are submitting a license application for the export or reexport to Austria, Cyprus, Finland, Ireland, Israel, Malta, Mexico, Singapore, or Sweden of ECCN 2A984, 2D984 or 2E984 items to a person designated by a government end-user pursuant to contract, your license application to export to such designated person must include a statement from the government end-user that the person is so designated.

BIS estimates that BIS will receive annually 24 license applications that will be supported by one of these statements from a government. BIS expects these persons to be a select group of government contractors with close working relationships with the governments they are developing ECCN 2A984, 2D984 and 2E984 items, so obtaining such a letter from the government should not be difficult for such contractors given their preexisting relationship with these governments.

BIS believes including these persons within the more permissive license review policy under §742.6(b)(2)(ii) is important to help facilitate the export and reexport of ECCN 2A984, 2D984 and 2E984 items to these trusted end-users and destinations, provided BIS is able to confirm these persons are persons designated by the government end-user pursuant to contract, as described in § 742.6(b)(2)(ii). This support document being added with this rule will enable BIS to better evaluate whether these persons are eligible government contractors under this final rule.

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 has redesigned the SNAP system to enhance security, support electronic submission of supporting documents and provide increased functionality. In October 2008, BIS made use of the SNAP-R system mandatory except under five specified circumstances. BIS currently receives approximately 99.7% of all submissions electronically through the SNAP-R system. During the period from January 1, 2009 through May 31, 2009, BIS received 11,580 submissions via SNAP-R and 36 submissions via the paper application forms.

4. Describe efforts to identify duplication.

The information received when applying for an export license, Classifications and advisory opinions, Encryption Review request, or License Exception AGR is unique to each application. The information is not duplicated anywhere else in Government nor is it available from any other source. In addition, this specific support document being added to this rule is the most efficient way for BIS to quickly and accurately determine whether such persons are a person designated by a government end-user pursuant to contract that should be eligible for the more permissive license review policy.

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

The information required when applying for an export license must be submitted by exporters or their designated agents, regardless of size. This procedure, as part of the EAR, is governed by national security, foreign policy and proliferation of weapons of mass destruction requirements. BIS maintains an active seminar and counseling program to help all businesses understand and comply with BIS requirements. BIS also maintains an informative web site that provides detailed instructions on how to comply with our paperwork requirements. This web site is located at: www.bis.doc.gov.

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

If the information was not submitted, BIS would likely have had to limit the more permissive license review policy included in this rule to those nine governments - meaning government contractors of these nine governments would not be able to receive these ECCN 2A984, 2D984 and 2E984 items under the more permissive license review policy. This could potentially undermine the effectiveness of U.S. Government collaboration with these nine countries that currently maintain international cooperative homeland security agreements with the United States

or have pending agreements with the United States. Alternatively, if BIS retained the more permissive license review policy for these persons (i.e., a person designated by a government end-user pursuant to contract), but did not require this additional support document, it could result in exports to unapproved consignees with the possibility that illegal shipments would be made to countries of concern.

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 record keeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

The notice requesting public comment for the paperwork burden will be published in the in the Federal Register with the final rule.

The additional supporting information requirement was included to facilitate addition of government contractors (i.e., persons designated by the government end-user pursuant to contract), as requested by U.S. industry members of the Commerce RPTAC.

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 revision will result in a net increase of **24.5** burden hours. For the purpose of estimating the impact of this revision, the number of responses will be assumed to increase by 30 responses.

BIS estimates that exporters will require 15 minutes to input their application-specific data into the SNAP-R system. Two additional minutes are required to submit supporting documents into SNAP-R for those applications that require supporting documentation.

Burden Activity	Annual Responses	Minutes per Response	Annual Burden Hours
Submit SNAP-R Work <u>With</u> Supporting Documentation	30	17	8.5
Gather Supporting Documents for Other Applications	30	30	15
Annual record keeping burden	30	2	1.0
Total			24.5

The cost associated with this burden is estimated to be **\$735**. This is obtained by multiplying 24.5 hours times \$30 per 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).

There are no startup or capitol equipment costs associated with this revision.

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

The annual cost to the Federal Government is approximately \$787. This is based on a licensing officer spending 45 minutes to review 30 applications at \$35 per hour.

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

A net increase of 24.5 annual burden hours is requested with this revision. This increase is the result of a regulatory change that involved adding three new ECCN entries to CCL as well as a new license review policy for this new ECCN, as described in this document.

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

BIS publishes information based on aggregate data from export license applications. It does not publish information that would identify the details of specific applications or requests. Section 12(c) of the EAA restricts release of such detailed data to Congress, the GAO, or to situations in which the Secretary (authority delegated to the Under Secretary for Industry and Security) determines that release is in the national interest.

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.