

SUPPORTING STATEMENT
U.S. Department of Commerce
Bureau of Industry & Security
Voluntary Self-Disclosure of Violations
of the Export Administration Regulations
OMB Control No. 0694-0058

A. JUSTIFICATION

This is a request to extend 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 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.

Voluntary Self-Disclosure of EAR violations strengthens BIS's enforcement efforts by allowing BIS to conduct investigations of the disclosed incidents faster than would be the case if BIS had to detect the violations without such disclosures. The notification should be in writing, and should include the name of the person making the disclosure, a brief description of the suspected violations, and describe the general nature and extent of the violations.

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 self-disclosure provisions are described in EAR Sections 764.5, and 764.7. BIS codified its voluntary self-disclosure policy to increase public awareness of this policy and to provide the public with a better understanding of BIS's likely response to a given disclosure. Voluntary self-disclosures allow BIS to conduct investigations of the

disclosed incidents faster than would be the case if BIS had to detect the violations without such disclosures. As a result, BIS is able to devote more of its resources to detecting non-disclosed violations.

BIS evaluates the seriousness of the violation and either (1) informs the person making the disclosure that no action is warranted; (2) issues a warning letter; (3) issues a proposed charging letter and attempts to settle the matter; (4) issues a charging letter if settlement is not reached; and/or (5) refers the matter to the U.S. Department of Justice for criminal prosecution.

The information obtained through this collection may also provide leads to uncover other violations. In some cases, the information might be shared with other law enforcement agencies investigating suspected violations of the EAA and the EAR or, in appropriate instances, agencies investigating violations of other statutes or with foreign governments.

Since the time the policy was codified and published in the Code of Federal Regulations, the number of self disclosures has increased and as a result, BIS is able to enforce the Act and the Regulations more effectively.

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.

This information collection does not involve any information technology. BIS is not aware of any technology which could be adopted to further reduce the collection burden.

4. Describe efforts to identify duplication.

The information disclosed in connection with each violation of the Act and the EAR is unique and is not duplicated elsewhere. Each collection provides information concerning specified details of individual export or reexport transactions. This information is not available from any source other than from the respondent.

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

The information collected may involve small business. However, the seriousness of a particular violation is not related to the size of the business that commits it. There is,

therefore, no way to minimize the burden imposed on these businesses without thwarting the purpose of the collection.

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 is not conducted, BIS would be unable to devote more of its resources to detecting non-disclosed violations.

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 of information in a manner that is inconsistent with the guidelines set forth in 5 CFR, Section 1320.

8. Provide information 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 May 24, 2010 (Vol. 75, pages 28780-28781).

Comments were received from one trade association. The commenter stated that rather than asking for specific description, quantity, value and ECCN of unlawfully exported commodities as is currently required for making a Voluntary Self-Disclosure (VSD), that only reasonable estimates of quantity and value be required.

BIS Office of Export Enforcement requires such specific information in order to make an accurate and fair assessment of the self-disclosed violations.

The same commenter stated that BIS should not require parties making VSDs to submit documentation that can be found in BIS internal files and databases due to the costs and burdens providing such information puts upon the self disclosing parties.

BIS Office of Export Enforcement believes that it is necessary to require exporters to provide such documentation. Although the commenter's constituents are familiar with the internal practices and procedures, many exporters making VSDs have had no previous interaction with BIS. Allowing exporters to make their own interpretation of

what is contained in BIS internal files and databases is likely to produce many VSDs with incomplete information and documentation.

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

Not applicable.

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

Although we do not provide specific assurances of confidentiality to any respondent, Section 12(c) of the EAA [50 U.S.C. app. & 2411(c)] and '748.1(c) of the EAR provide that information ... concerning ... license applications under this Act shall be withheld from public disclosure unless the release of such information is determined by the Secretary to be in the national interest.@ The type of information collected under this rule would generally fall within the provisions of Section 12(c).

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 information of a sensitive nature is being requested.

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

There are 2,220 burden hours associated with this collection of information.

During calendar year 2009 BIS received a total of 222 voluntary self-disclosures at Headquarters and the Field. The magnitude of the burden on exporters making disclosures varies according to their size, number of export transactions and the degree of ease with which they can retrieve existing documents relating to export transactions. The burden to make a disclosure can be as low as 1 staff hour in some firms and as high as 50 staff hours in others. Generally, the burden will also vary according to the number and complexity of the firm's export transactions. Therefore, BIS is using 10 hours as an average submission time.

The labor cost to the public is approximately \$93,240.

This collection merely provides a procedure for voluntarily supplying to BIS information that exporters are already required to keep and make available to BIS for inspection when requested. Each exporter will require approximately ten hours to locate, organize

and submit the information. The work performed will consist of examining existing business records for evidence of violations, copying those records, preparing the requisite narrative and a cover letter.

The work will probably be done by technical or professional personnel. We estimate that this phase will take about 9 hours. In addition, approximately 1 hour of management/attorney time will be needed to review the records before submitting them to BIS. We estimate a composite hourly wage of \$42.

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).

Not applicable.

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

The cost to the Federal Government is approximately \$77,700. An average of 10 staff hours is needed to process each disclosure. Therefore, 222 cases would take 2,220 hours to process at a cost of \$35 per hour. This figure is significantly lower than the average cost needed to investigate cases that are not the results of voluntary disclosures. The reasons for the difference are that voluntary disclosures eliminate the time that the Government spends investigating just to learn of the existence of a violation. Also, the information in a voluntary self-disclosure is generally more organized than the information that must be analyzed in other investigations.

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

There is an increase in number of respondents and burden hours, based upon actual calendar year 2009 data. This increase is an adjustment.

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

There is no intention to publish the results of this information collection 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.

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.