

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 of this collection OMB Control No. 0694-0088 (Simplified Network Application Processing System). The revisions will support publication of a final rule “**Revisions to the Export Administration Regulations: Initial Implementation of Export Control Reform,**” (RIN 0694-AF65) and other final rules that would be published implementing the USML-to-CCL process being conducted under the Export Control Reform (ECR) Initiative.

The changes included in this final rule and the other final rules that will implement the USML-to-CCL process, will create increased burdens on exporters under the Export Administration Regulations (EAR) by increasing the overall number of license applications received by BIS for the new items which will be moved to the Commerce Control List (CCL), along with some of the other provisions added to the EAR to address the movement of these munitions items from the United States Munitions List (USML) to the CCL. Because this final rule moves the first set of items from the USML to the CCL resulting in the creation of ten new Export Control Classification Numbers (ECCNs), included below are estimates of the increased burden of these items, which is included in the estimates of the overall increase that may be anticipated if all of the items that currently are anticipated to be moved from the USML to the CCL as part of the USML-to-CCL process are moved to the CCL.

However, BIS estimates that the overall “net burden” on exporters, taking into account the overall burden of U.S. export control regulations on exporters, will be reduced because of the reductions in the burden associated with moving munitions items from the more restrictive licensing regime of the International Traffic in Arms Regulations (ITAR) to the more flexible licensing regime of the EAR.

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: 1) Simple Network Application Process (SNAP); 2) BIS's Electronic License Application Information Network (ELAIN); or 3) Multipurpose Application, Form BIS 748P, and its two appendices, the BIS 748P-A (item appendix) and the BIS 748P-B (end-user appendix).

President Obama directed the Administration in August 2009 to conduct a broad-based review of the U.S. export control system in order to identify additional ways to enhance national security. Then-Secretary of Defense Gates described in April 2010 the initial results of that effort and why fundamental reform of the U.S. export control system is necessary to enhance national security. Since then, BIS, and the Directorate of Defense Trade Controls (DDTC), Department of State, have published multiple proposed amendments to the Export Administration Regulations (EAR) and the International Traffic in Arms Regulations (ITAR), respectively, that would implement various aspects of what has become known as the Export Control Reform Initiative.

One aspect of the reform effort would result in the transfer of control to the EAR of items the President determines no longer warrant control under ITAR, once congressional notification requirements and corresponding amendments to the ITAR and the EAR are completed.

The objective of the ECR Initiative is to protect and enhance U.S. national security interests. On July 15, 2011 (76 FR 41958), BIS published a proposed rule, *Proposed Revisions to the Export Administration Regulations (EAR): Control of Items the President Determines No Longer Warrant Control under the United States Munitions List (USML)*. The July 15 rule proposed a regulatory framework to control items on the USML that, in accordance with section 38(f) of the Arms Export Control Act (AECA) (22 U.S.C. 2778(f)(1)), the President determines no longer warrant control under the AECA. These items would be controlled under the EAR once the congressional notification requirements of section 38(f) and corresponding amendments to the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120-130) and its USML and the EAR and its CCL are completed. After the July 15 rule established this regulatory framework, subsequent rules, including the November 7, 2011 (76 FR 68675) proposed rule, proposed specific changes to the USML and the CCL, along with the other three proposed rules identified below.

Once the ITAR and its USML are amended so that they control only the items that provide the United States with a critical military or intelligence advantage or otherwise warrant the controls of the ITAR, and the EAR is amended to control military items that do not warrant USML controls, the U.S. export control system will enhance national security by (i) improving interoperability of U.S. military forces with allied countries, (ii) strengthening the

U.S. industrial base by, among other things, reducing incentives for foreign manufacturers to design out and avoid U.S.-origin content and services, and (iii) allowing export control officials to focus government resources on transactions of more concern.

This final rule implements the Initial Export Control Reform changes by adding the basic control structure and related provisions for the munitions items being moved from the USML to the CCL under the USML-to-CCL process. In addition to adding this regulatory construct for transferring these items into the CCL, this rule creates ten new ECCNs for the movement of an initial tranche of items from the USML to the CCL for aircraft, aircraft engines and related items.

As noted above, BIS anticipates additional final rules will be published moving additional items from the USML to the CCL, once the notification process is completed in accordance with section 38(f) of the Arms Control Act (AECA)(22 U.S.C. 2778(f)(1) and subsequent USML categories and the corresponding “600 series” ECCNs are published in final form.

This final rule creates this new control structure by adding a new control series called the “600 series” to the CCL. The “600 series” would control munitions items on the CCL by consolidating the current munitions entries on the CCL (i.e., ECCNs ending in 018) and controlling the munitions items that would move from the USML to the CCL under the USML-to-CCL process. To appropriately control these munitions items some new provisions and revisions to existing provisions needed to be made to other parts of the EAR in order to impose appropriate controls on these munitions items that would be moved from the USML to the CCL and controlled under the “600 series,” such as adopting licensing review policies specific to the “600 series.”

The items in the “600 series” will generally be controlled for National Security (NS1) and Regional Stability (RS1) reasons, although items classified in .y paragraphs will only be controlled for Anti-terrorism (AT1) reasons and also for PRC Military End-Use control. This means such munitions items, except for the .y items, will be subject to a worldwide license requirement, except for Canada.

As with any license application, BIS may require certain information to be submitted in support of license applications. These “600 series” items would be controlled for NS1 reasons, so the support documents required in support of national security controlled license applications (e.g., Import Certificates and End-User Statements) would also increase as a result of this proposed rule as the overall number of license applications received by BIS increased. However, the “net burden” on exporters would be reduced because even if all 43,000 of the anticipated license applications for these items processed by the Department of State under the ITAR moved over the burden on the public for preparing an EAR license submission is less compared to the estimated burden of applying for a State export license. This means even on an apples to apples basis comparing the burden of applying for a license application under the ITAR and applying for a license under the EAR, the “net burden” on the public would be reduced by moving these munitions items from the USML to the CCL.

In addition, the overall increase in license applications anticipated with the creation of the new “600 series” would be minimized further because certain EAR license exceptions or portions of EAR license exceptions would be available in many cases to authorize the export of these “600 series” items to certain countries. In particular for the thirty-six countries eligible for License Exception STA the overall expected increase in license applications received by BIS would be minimized because most of the “600 series” items will be eligible for STA either automatically or after the submission of a one-time expansion of eligibility request, provided such exports are made in accordance with the terms of License Exception STA, including the requirements included in this final rule, such as the export is destined for ultimate end-use by a government of one of these thirty-six countries eligible for License Exception STA. For end items there would be a process that would be included in the license review process whereby license applicants could request License Exception Strategic Trade Authorization (STA) eligibility pursuant to section 740.20(g).

For these reasons, BIS believes that the movement of these munitions items from the USML to the CCL would reduce processing times and simplify compliance with, and administration of, U.S. export controls. Therefore, BIS proposes to require that all export and reexport of “600 series” items be subject to these additional and revised burden requirements as applicable to the new “600 series” items that would be moved from the USML to the CCL.

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 paper forms is used by BIS 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 the information provided, 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.

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 SNAP system has enhanced security, that supports electronic submissions of supporting documents and provides increased functionality. BIS currently receives approximately 99.7% of all submissions electronically through the SNAP-R system. SNAP-R is located at: <https://snapr.bis.doc.gov/>

4. Describe efforts to identify duplication.

The information received when applying for an export licenses, classifications, advisory opinions and reporting the export of these “600 series” items under the control structure described in this rule is unique to each application. With the movement of these munitions items from the USML to the CCL, the information would not be duplicated anywhere else in Government nor is it available from any other source. As noted above some of the information that will be collected from exporters is already collected under the ITAR for such items that would move from the USML to the CCL, such as the reporting of the export of certain munitions items. However, once such munitions items are moved from the USML to the CCL, the information would not be duplicated anywhere else in Government nor is it available from any other source.

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, classification requests, advisory opinions, Encryption Review Requests, and license exception AGR notification 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: <https://snapr.bis.doc.gov>.

In addition, to ease the transition burden on exporters moving from the ITAR to the EAR, BIS is also developing a targeted outreach program that will help support exporters, reexporters and transferors who may have items that are being moved or will be moved from the USML to the CCL. BIS anticipates this targeted outreach program will include seminars and web resources to assist people in understanding the new “600 series” specific requirements and the EAR overall.

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

If this information were submitted less frequently, it could result in exports to unapproved consignees with the possibility that illegal shipments would be made to countries of concern. In addition, if this information was not collected the control structure in this rule would not be adequate to ensure appropriate controls were going to be put into place to control these munitions items that are being moved in the final rule and that would move from the USML to the CCL in subsequent final rules implementing the USML-to-CCL process. This would undermine the ECR Initiative and all of the larger benefits including the “net reduction” in the burden that will occur with moving these item from the USML to the CCL and that would occur later with moving additional items from the USML to the CCL. In addition if this information was not collected all of the other perceived benefits that will occur in protecting

and enhancing U.S. national security and improving the overall efficiency of the U.S. export control system while minimizing the overall burden placed on exporters would not occur.

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 notices requesting public comment on the paperwork burden and the information collection request for the final regulation (RIN 0694-AF65) were published concurrently in the Federal Register with the five proposed rules noted below.

1. Proposed Revisions to the Export Administration Regulations (EAR): Control of Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML), (07/15/11, 76 FR 41958) (RIN 0694-AF17);
2. Revisions to the Export Administration Regulations (EAR): Control of Aircraft and Related Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML), (11/07/11, 76 FR 68675) (RIN 0694-AF36);
3. Revisions to the Export Administration Regulations (EAR): Control of Gas Turbine Engines and Related Items the President Determines No longer Warrant Control Under the United States Munitions List (USML), (12/06/11, 76 FR 76072) (RIN 0694-AF41);
4. “Specially Designed” Definition, (06/19/12, 77 FR 36409) (RIN 0694-AF66); and
5. Proposed Revisions to the Export Administration Regulations: Implementation of Export Control Reform; Revisions to License Exceptions After Retrospective Regulatory Review, (06/21/12, 37524) (RIN 0694-AF65)

These five proposed rules allowed the public to evaluate the determination made by BIS that the overall burden on exporters will be reduced for these munitions items that are being moved in this final rule and items that would be moved from the USML to the CCL in subsequent final rules implementing the USML-to-CCL process. These five proposed rules also provided the public an opportunity to make any suggestions regarding how to reduce the burden further while still appropriately controlling these munitions items to be moved from the USML to the CCL.

Although the review process is still ongoing, it is estimated that as a result of the movement of these munitions items from the USML to the CCL that approximately 43,000 license applications that the State Department now processes will be transferred to the Commerce Department once the revised, “positive” USML is created and fully implemented under the ECR Initiative. As a result, the licensing load for BIS will increase significantly, though the “net burden” of the export control system on exporters will decrease, as described below in greater detail given the greater flexibility of the EAR licensing regime compared to the ITAR.

No comments were received regarding BIS’s paperwork burden estimates.

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

No payment or gift will be provided 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.

The estimated increase in burden of this collection is **9,500** hours. This estimate is based on an estimated increase of 30,000 individual validated license applications. Each license application will require 15 minutes to input their application-specific data into the SNAP-R system. Two minutes are required to submit supporting documents into SNAP and 2 minutes are required for recordkeeping. The total burden increase is therefore $(30,000 \times (15 + 2 + 2))/60 = 9,500$ hours.

The cost associated with this burden is estimated to be **\$332,500**. This is obtained by multiplying 9,500 hours times \$35 per hour.

BIS has worked with the Department of State to estimate the volume of export related activity for these munitions items that are being moved over to the CCL in this final rule and that may be moved over later in the USML-to-CCL process, but given not all of the proposed rules implementing the remaining USML categories and corresponding “600 series” ECCNs have

been published and there are other steps that are required prior to any munitions items being moved from the USML to the CCL, such as the AECA 38(f) notification process with Congress, these numbers used in this PRA are an estimate and will be revised as subsequent rules are published which continue the process of moving additional munitions items from the USML to the CCL that no longer warrant ITAR control.

However, the general assumptions regarding the “net reduction” in the overall burden on exporters is applicable whether 43,000 potential licenses currently under the ITAR or a smaller number of licenses are moved as a result of a smaller number of munitions items being moved, the assumptions regarding the “net reduction” on the overall burden on exporters under the U.S. export control system would hold true, as described in this document and in the proposed rule.

BIS expects that this increase in burden would be more than offset by a reduction in burden hours associated with approved collections related to the ITAR. The largest impact of the final rule and additional final rules implementing the USML-to-CCL process would likely apply to exporters of replacement parts for military equipment that has been approved under the ITAR for export to allies and regime partners. Because, with few exceptions, the ITAR allows exemptions from license requirements only for exports to Canada, most exports of such parts, even when destined to NATO and other close allies, require specific State Department authorization. Under the EAR, as in this notice and subsequent final rules that will be published implementing the USML-to-CCL process, such parts would become eligible for export to NATO and other multi-regime allies under License Exception STA. Use of License Exception STA imposes a paperwork and compliance burden because, for example, exporters must furnish information about the item being exported to the consignee and obtain from the consignee an acknowledgement and commitment to comply with the EAR. However, the Administration understands that complying with the burdens of STA is likely less burdensome than applying for licenses. For example, under License Exception STA, a single consignee statement can apply to an unlimited number of products, need not have an expiration date, and need not be submitted to the government in advance for approval. Suppliers with regular customers can tailor a single statement and assurance to match their business relationship rather than applying repeatedly for licenses with every purchase order to supply reliable customers in countries that are close allies or members of export control regimes or both. The increased burden under License Exception STA is explained further under the supporting statement for OMB Control No. 0694-0137. Any person may request License Exception STA eligibility for vessels, vehicles, or aircraft described in ECCNs 8A609.a, 0A606.a, or 9A610.a, by submitting a request on line via BIS's Simplified Network Application Processing Redesign System or, if authorized by BIS, on the BIS-748-P Multipurpose Application form, in accordance with the provisions of EAR Section 740.20. BIS believes the burden of these eligibility requests will be about the same or less as submitting an export license application and is therefore adequately covered under this current request.

Even in situations in which a license would be required under the EAR, the burden is likely to be reduced compared to the license requirement of the ITAR. In particular, license applications for exports of technology controlled “600 series” ECCNs in product group E are likely to be less complex and burdensome than the authorizations required to export ITAR-

controlled technology, *i.e.*, Manufacturing License Agreements and Technical Assistance Agreements.

The number of export licenses and commodity classifications received by BIS under this collection have increased since this collection was last renewed. According to the BIS Annual Report to the Congress for Fiscal Year 2011, BIS processed 25,093 export license applications and 6,427 classification requests in FY 2011. Therefore, the current number of work items under this collection is $25,093 + 6,427 = 31,520$. The following table shows both the proposed increase of 30,000 licenses and the adjustment to agency estimate, based on FY 2012 data from the annual report.

Burden Activity	Annual Responses	Minutes per Response	Annual Burden Hours
Commodity Classifications <u>With</u> Supporting Documentation (6,427 x 75%)	4,820	109	8,756
Commodity Classifications <u>Without</u> Supporting Documentation (6,427 x 25%)	1,607	17	455
Other Applications <u>With</u> Significant Supporting Documentation (25,093 x 33.3%)	8,364	49	6,831
Other Applications <u>With</u> Minimal Supporting Documentation (USML to CCL)	30,000	19	9,500
Other Applications <u>Without</u> Supporting Documentation (25,093 x 66.6%)	16,727	17	4,739
EAR Amendments (5%)	3,076	30	1,538
Total	64,594		31,819

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 are no additional burden costs to the respondents or record-keepers resulting from the collection that is not described above. However, one annual cost burden that will be reduced for exporters with the movement of these munitions items from the USML to the CCL will be the elimination of the registration fee that some exporters currently have to pay to the Department of State. Under the EAR, there is a registration process, but no annual fees are imposed on exporters. This will be another “net decrease” in the annual cost on exporters for these items that would be moved from the USML to the CCL, provided that all of their items in question that were subject to the jurisdiction of the ITAR were moved from the USML to the CCL. For those exporters where only some of their munitions items were moved from the USML to the CCL, the ITAR registration fee would still apply because such exporters would still be exporters of munitions items subject to the jurisdiction of the ITAR, so this reduced burden would not be applicable to such exporters.

These registration fees under the ITAR are described in more detail in part 22 CFR part 122 (Registration of Manufacturers and Exports). Specifically § 122.3 (Registration fees) describes the registration fees under the ITAR, which for persons whose items are completely transferred to the CCL will no longer have these additional costs associated with exporting under the EAR.

(a) A person who is required to register must do so on an annual basis upon submission of a completed Form DS-2032, transmittal letter, and payment of a fee as follows:

(1) *Tier 1* : A set fee of \$2,250 per year is required for new registrants or registrants for whom the Directorate of Defense Trade Controls has not reviewed, adjudicated or issued a response to any applications during a 12-month period ending 90 days prior to expiration of the current registration.

(2) *Tier 2* : A set fee of \$2,750 per year is required for registrants for whom the Directorate of Defense Trade Controls has reviewed, adjudicated or issued a response to between one and ten applications during a 12-month period ending 90 days prior to expiration of the current registration.

(3) *Tier 3* : The third tier is for registrants for whom the Directorate of Defense Trade Controls has reviewed, adjudicated or issued a response to more than ten applications during a 12-month period ending 90 days prior to expiration of the current registration. For this tier, registrants will pay a fee of \$2,750 plus an additional fee based on the number of applications for which the Directorate of Defense Trade Controls has reviewed, adjudicated or issued a response. The additional fee will be determined by multiplying \$250 times the number of applications over ten for whom the Directorate of Defense Trade Controls has reviewed, adjudicated or issued a response during a 12-month period ending 90 days prior to expiration of the current registration.

(4) For registrants, including universities, exempt from income taxation pursuant to 26 U.S.C. 501(c)(3), their fee may be reduced to the Tier 1 registration fee provided a copy of their certification letter from the Internal Revenue Service is submitted with their registration package. To be eligible, the registrant and all of its subsidiaries/affiliates must be exempt from income taxation pursuant to 26 U.S.C. 501(c)(3).

(5) The fee for registrants whose total registration fee is greater than 3% of the total value of applications for whom the Directorate of Defense Trade Controls has reviewed, adjudicated or issued a response during the 12-month period ending 90 days prior to expiration of the current registration will be reduced to 3% of such total application value or \$2,750, whichever is greater.

(6) For those renewing a registration, notice of the fee due for the next year's registration will be sent to the registrant of record at least 60 days prior to its expiration date.

(7) For purposes of this subsection, “*applications*” refers to the actions enumerated within parts 123 through 126 of this subchapter that require the Directorate of Defense Trade Controls to review, adjudicate and issue responses. Only those applications that the Department has taken final action on and provided response to will be counted in determining the annual registration fee. Those applications that are “returned without action” or “denied” will not be counted.

(b) *Expiration of registration.* A registrant must submit its request for registration renewal at least 30 days but no earlier than 60 days prior to the expiration date.

(c) *Lapse in registration.* A registrant who fails to renew a registration and, after an intervening period, seeks to register again must pay registration fees for any part of such intervening period during which the registrant engaged in the business of manufacturing or exporting defense articles or defense services.

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

The annual cost to the Federal Government is approximately \$1,845,540. This is based on a licensing officer spending 45 minutes to review 61,518 applications at \$40 per hour.

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

The program changes are associated with the proposed rules, RIN 0694-AF17, 0694-AF36, 0694-AF41, 0694-AF66 and 0694-AF65, and are necessary to implement the President's Export Control Reform Initiative.

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.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.