

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 an extension request of OMB approval.

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 reduce further 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 re-export 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 August 8, 2013, page 48413. Comments were received from one exporter (letter is included in this request). A notice requesting public comment was also published on January 28, 2014 (Vol. 79, page 4441). No comments were received.

BAE Systems, Inc. concurs the proposed collection of information is essential for the proper performance and utility of the BIS enforcement functions; to include, BIS decisions on reportable actions provides the submitter of disclosure with critical information for continued business operations.

BAE Systems, Inc. concurs with the accuracy of the agency's estimate of the burden (Including hours and cost) of the proposed collection of information.

BAE Systems, Inc. recommends BIS generate generic examples and/or

templates, via its *dot.gov website*, for industry as a “Gold Standard” for Initial Disclosures and VSDs. This would serve as a means to establish submission consistency across the varying industries.

BAE Systems, Inc. recommend BIS accept electronic disclosure submissions to reduce paperwork and respondent burden in accordance with (IAW) the Paperwork Reduction Act of 1995. Strong consideration should be given to allow the submission of disclosures through a dedicated BIS automated tool (portal). The electronic submission process could be based on the same structure (platform) of the Simplified Network Application Process (SNAP-R) for the processing of export licensing applications, commodity classification requests, encryption registration, re-export license applications, and license exception AGR notifications. Most companies wanting to disclose would have a Company Identification Number (CIN) and an active user SNAP-R account. Both BIS and account users would have a transparent view of the submission and associated processing timelines. Associated documentation would be submitted via the dedicated BIS portal (module).

BIS agrees that the collection of information is essential for the proper performance and utility of the BIS enforcement functions. BIS further agrees that the manner in which it adjudicates disclosures provides some guidance to the submitter and to the exporting community as a whole regarding proper and complete compliance with the Act and the EAR.

BIS does not agree with the commentator regarding the recommendation that “BIS generate generic examples and/or templates, via its *dot.gov website*, for industry as a “Gold Standard” for Initial Disclosures and VSDs.” BIS believes that the EAR provides sufficient guidance to the exporting community to allow for complete and accurate disclosure of violations to BIS. The Regulations speak for themselves. BIS is not in the business of interpreting the Regulations for the export community regarding how to disclose violations. Furthermore, there are too many variables possible in the sorts of businesses and violations that occur to provide templates or generic examples for Industry or the exporting community.

BIS concurs in part with the commentator’s suggestion that BIS/OEE electronic disclosure submissions to reduce paperwork and respondent burden IAW the Paperwork Reduction Act of 1995. However, current fiscal and budgetary constraints have limited the resources for BIS/OEE to integrate such a system. BIS concurs that the proposed system would provide some assurances regarding the authentication and authorization. However, BIS/OEE would also want to verify that submission of such a disclosure via electronic means satisfies all evidentiary requirements necessary to support any form of action OEE or any other part of the US government chooses to take.

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 **1,800** burden hours associated with this collection of information.

During Fiscal year 2013 BIS received a total of 180 voluntary self-disclosures cases at Headquarters. The magnitude of the burden on exporters making disclosures varies according to the size of the exporter, the number of export transactions, and the degree of ease with which the entity making the disclosure 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 which those making disclosures make as an aggregate is approximately \$90,000.

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 (10) 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 nine (9) hours. In addition, approximately one (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 \$50.

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 \$87,030. An average of 10 staff hours is needed to process each disclosure. Therefore, 180 cases would take 1,800 hours to process at a cost of \$48.35 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 adjustment decrease in the number of respondents and burden hours, based upon number of responses received during Fiscal Year 2013.

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.