

SUPPORTING STATEMENT
U.S. Department of Commerce
Bureau of Industry and Security
Five-Year Records Retention Requirement
for Export Transactions and Boycott Actions
OMB CONTROL NO. 0694-0096

A. JUSTIFICATION

This is an extension, without change, of a currently approved information collection.

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

The collection is necessary under Sections 760 and 762.6(a) of the **Export Administration Regulations** (EAR). The five-year retention requirement corresponds with the statute of limitations for violations and is necessary to preserve potential evidence for investigations.

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 (BIS) through the 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.

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.

Parts 760 and 762.6(a) of the EAR codify the how, who, frequency and purpose of this collection. These sections of the EAR have been uploaded into ROCIS. All parties involved in export transactions, and the U.S. party involved in the boycott action, are required to maintain records of these activities for a period of five years. The frequency depends upon how often each entity is involved in an export transaction or a boycott action.

This five-year retention period for export documents to be retained corresponds with the five year statute of limitations for criminal actions brought under the International Emergency Economic Powers Act (IEEPA), (50 U.S.C. 1701 et seq), the Export Administration Act of 1979 and predecessor acts (18 U.S.C. 3282), and the five-year statute for administrative compliance proceedings (28 U.S.C. 2462).

All anti-boycott enforcement actions depend entirely on a documentary record. Violations of the anti-boycott law involve requests by the boycotting countries requiring U.S. persons to comply with unsanctioned foreign boycotts. These requests are contained exclusively in commercial documents (e.g., letters of credit, contracts, legal tender, invoices, and bills of lading).

Most export control enforcement actions also depend on documentary records. For example, if an exporter states on a shipping document that the shipment is destined for Switzerland and he sends it or diverts it to Iraq, his false statement on that document, as well as on other documents such as letters, faxes, and notes, can provide the evidentiary basis to demonstrate criminal intent.

The information will not be disseminated to the public.

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.

Most firms use electronic systems for record-keeping and retrieval. The additional storage burden of retaining records for five years in automated systems is negligible. Small firms who continue to retain hard copy files are likely to have fewer transactions and consequently fewer records to retain. Hence, the burden of keeping hard copy files for five years for smaller firms should be negligible as well.

4. Describe efforts to identify duplication.

For the vast majority of records retained there is no duplication. Approximately 95% of all exports are shipped under a License Exception (EAR Section 740) or under the "No License Required" provisions (EAR Sections 732.5 and 758.1(a)(3)). These exports do not require any prior approval by the government. The only copies of these records are those maintained by exporters.

With respect to the information contained on the forms filed with the Office of Anti-boycott Compliance (OAC), there is no duplication because this information is not reported to, or collected by, any other agency in the United States Government. Each U.S. person receiving a boycott request must report receipt of that request to OAC either on form BIS 621P titled "Report of Restrictive Trade Practice- Single Transaction" or form BIS 6051P, titled "Report of Restrictive Trade Practice - Multiple Transaction (OMB Control No. 0694-0012)" and this avoids duplication because each experience is exclusive to the respondent.

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

BIS is sensitive to the needs of small businesses; however this collection must be conducted by all affected entities to ensure full compliance with the EAR.

(See also Response to Question 3 concerning the negligible additional storage burden of maintaining electronic and hard copy files for five years.)

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

The current records retention requirement for all documents is five years to correspond with the five-year statute of limitations for both criminal and civil actions. BIS enforcement experience has demonstrated the need for a five-year mandatory requirement. The record retention requirement forces exporters to retain documents that may be needed at a later date to investigate potential violations of the EAR.

It would be more difficult to enforce violations of the EAR if this five-year records retention requirement was no longer in place.

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 OMB guidelines.

8. Provide the 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 January 16, 2014, pages 2817. One comment was received (included in this request); see below for responses to comment. A second notice soliciting public comment was published on April 29, 2014 (Vol. 79, pg. 23930).

The Bureau received the following comments from one exporter:

- (1) The five-year record retention requirement is necessary for the Bureau of Industry and Security to perform its compliance function.

- (2) The current regulatory text defining a 'record' is overly broad and outdated, which creates a significant burden on exporters.
- (3) The regulatory language referenced in Sections I-III (Abstract, Methods of Collection, and Data) do not provide adequate descriptions of what constitutes a record, rationale for why records must be retained, and what matter of retention is acceptable.
- (4) The cost estimations noted in section III do not reflect or capture accurate costs incurred to retain and discard records on an annual basis.

To support comment (4) above, the company provides data from a cost estimate analysis for export control records that was performed in 2008.

BIS offers the following response to each comment:

- (1) BIS concurs that the 5-year records retention is necessary for BIS to perform its compliance duties.
- (2) EAR section 762.2 provides lists of records that must be retained. EAR Section 762.3 provides a list of records that are exempt from recordkeeping requirements. If the commenter has specific recommendations regarding these lists, BIS would be pleased to consider such recommendations.
- (3) BIS appreciates the comments regarding Sections I-III of the 60 Day Notice. BIS will endeavor to provide better descriptions of our recordkeeping requirements in subsequent notices.
- (4) Based on this comment, BIS has substantially increased its estimate for this collection from 528 hours to 30,007 hours. In addition, upon reviewing data provided by the commenter from its 2008 estimate analysis, BIS makes the following general observations:
 - (a) the commenter's costs seem to relate not only to records covered under OMB Control No. 0694-0096 Five-Year Records Retention but also to export licensing records covered by OMB Control No. 0694-0088 Simple Network Application Process and Multipurpose Application Form;
 - (b) BIS continues to believe that most companies would retain these records in the regular course of business for a number of reasons other than the requirements of the Export Administration Regulations. These reasons would include compliance with other Federal regulations such as the IRS and in anticipation of potential legal issues such as contract disputes.
 - (c) BIS mandated electronic submission of most export licensing data in 2008. Any party submitting records to BIS electronically via the SNAP-R system is not required to retain these records, in accordance with EAR section 762.2(a)(1). Most companies now communicate electronically. We continue to believe that although companies

may retain paper records as a backup, most companies utilize electronic storage as their primary mode for electronic communications and records management in order to save on space, cost, and manpower.

(d) As a result of factors (a) through (c), we believe the added cost to most exporters of the five-year records retention required under the EAR is negligible.

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

There are no plans to provide 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.

No assurance of confidentiality is provided. The records which are the subject of this collection are maintained by the exporters and other parties themselves.

Any export licensing information obtained by BIS for license and/or enforcement purposes, is protected from release to the public under article 12(c) of the EAA.

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.

Not applicable.

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

There are **30,007 hours** associated with this recordkeeping requirement with a labor cost of **\$750,175**. This record retention burden is divided into two parts, export records and anti-boycott records.

For **exports**, the number of U.S. exports subject to the EAR recordkeeping requirement is estimated to be 36 million annually. It is estimated that 95 percent of these export records will be stored electronically and therefore incur negligible additional burden. This leaves 5 percent or 1,800,000 that will be stored in paper form. The previous estimated recordkeeping requirement was .01 second. This estimate was reviewed after the public comment and increased to 1 minute to file. This results in an estimated recordkeeping burden: 1,800,000 x 1 minute = **30,000 hours**.

The estimated labor cost of this requirement is \$750,000. This is based on an estimated salary of \$25/hour of the person filing the records.

For **antiboycott**, the total estimated annual public burden for recordkeeping is **7 hours**. There were 412 reports filed in calendar year 2012 and the estimated time for recordkeeping each report is one minute (412 reports x 1 minute = 7 burden hours).

At \$25 per hour, the recordkeeping costs are \$175.

13. Provide an estimate of the total annual cost burden to the respondents or recordkeepers 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.

There is no cost to the Federal Government.

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

Adjustments:

The previous estimated recordkeeping requirement of .01 second was increased to 1 minute to file exports and antiboycott documents (after review of public comment). This results in an estimated recordkeeping burden hours **net increase of 29,479** (from 528 to 30,007).

The number of export transactions subject to the EAR was decreased to 36 million annually based on current Census data. The number of transactions stored in paper form only was estimated to be 5 percent or 1,800,000 (reduced from 184,800,000). The number of antiboycott respondents was decreased from 892 to 412 based on 2012 data. **Net decrease of 183,000,480 responses.**

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

Not applicable.

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 does not utilize statistical methods.