

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

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 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.

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 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 antiboycott enforcement actions depend entirely on a documentary record. Violations of the

antiboycott 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, tenders, invoices, and bills of lading).

Most export control enforcement actions also depend on a documentary record. 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 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.

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.

(See also Response to Question 12).

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 ('732.5 and '758.1(a)(3)) of the EAR. 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 Antiboycott 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 (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. 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 12/27/2016 pages 95108. No comments were received.

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.

Not applicable. 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.

There are no questions of a sensitive nature.

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

There are **248 burden hours** associated with this record keeping requirement with a cost of \$4,960. This record retention burden is divided into two parts, export records and antiboycott records.

For exports, the number of U.S. and foreign parties required to keep records is estimated at 100,000. There were an estimated 10.5 million U.S. exports subject to the EAR recordkeeping requirement and correspondingly, 10.5 million foreign imports subject to the regulations (21 million transactions total). There are typically four documents or records for each shipment (Census forms--Shipper's Export Declaration, Automated Export System record, bill of lading or Customs Form 7512, or similar documents). This results in an estimated 84 million documents annually. The estimated time requirement is 0.01 second to save each record electronically or in hard copy (840,000 seconds or 233.3 burden hours) – **233 hours**.

The estimated cost of this requirement is \$4,660. This is based on an estimated salary of \$20/hour of the person completing the changes.

For antiboycott, the total estimated annual public burden for recordkeeping is **18 hours**. There were 892 reports filed in calendar year 2016 and the estimated time for record-keeping each report is one minute (892 reports at 1 minute equates to 14.9 burden hours) – **15 hours**.

At \$20 per hour, the record-keeping costs are \$300.

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).

Since no special equipment is required for this activity, there are no capitalized costs associated

with this collection of information.

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 reported in Items 13 or 14 of the OMB 83-I.

No program changes to report.

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 identified in Item 19 of the OMB 83-I.

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not utilize statistical methods.