




MEMORANDUM FOR: Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget

FROM: Alysha Taylor 
Acting Deputy Assistant Secretary for Services
International Trade Administration
U.S. Department of Commerce

SUBJECT: Request for OMB Emergency Review and
Approval of an Information Collection for Invitation for
Applications for Inclusion on the List of Arbitrators for the
EU-U.S. Privacy Shield Framework

We are seeking approval for an emergency Paperwork Reduction Act (PRA) clearance request to allow the Department of Commerce (DOC), as represented by the International Trade Administration (ITA), to publish a Federal Register Notice (FRN) announcing the Privacy Shield Invitation for Applications for Inclusion on the List of Arbitrators, and to accept applications received from this announcement.

BACKGROUND

Under the Privacy Shield, the U.S. Department of Commerce (DOC) and the European Commission have committed to implement an arbitration mechanism to provide European individuals with the ability to invoke binding arbitration to determine, for residual claims, whether an organization has violated its obligations under the Privacy Shield. The DOC and the European Commission will work together to implement the arbitration mechanism. Consistent with applicable law, DOC and the European Commission will develop a list of at least 20 arbitrators, chosen on the basis of independence, integrity, and expertise. Parties to a binding arbitration under this Privacy Shield mechanism may only select arbitrators from this list.

JUSTIFICATION

The arbitral mechanism is a critical component of the EU-U.S. Privacy Shield Framework and must be implemented as soon as possible to preserve the integrity of the Privacy Shield program. More than 2,000 U.S.-based organizations currently rely on the Privacy Shield to transfer the personal data from Europe to the United States necessary to do business across the Atlantic. Such a data transfer mechanism is critically important, because it underpins almost \$300 billion in digitally deliverable services traded across the Atlantic each year.

In addition the United States Government is moving to intervene in several European court cases to defend the Privacy Shield against challenges that, among other things, it does not provide effective review mechanisms, of which the arbitration mechanism is one. The arbitration





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mechanism is designed to address certain remedial claims, which could be presented at any time. If that happens before it is fully functional, the Privacy Shield effort as a whole could be impacted negatively. The likelihood that such claims are presented increases with each passing week. In addition, the list of arbitrators needs to be in place ahead of the annual review, which will be held in September.

ITA requests expedient approval of the FRN announcing the opportunity to apply for inclusion on the list of arbitrators. Thank you for your consideration.

Please direct any questions to Nasreen Djouini, Office of Digital Services Industries, at (202) 482-6259.

