

**SUPPORTING STATEMENT
SWISS-U.S. PRIVACY SHIELD; INVITATION FOR APPLICATIONS FOR
INCLUSION ON THE SUPPLEMENTAL LIST OF ARBITRATORS
OMB CONTROL NO. 0625-0278**

A. JUSTIFICATION

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

The purpose of this request of Paperwork Reduction Act (PRA) clearance is to allow the Department of Commerce (DOC), as represented by the International Trade Administration (ITA), to collect information from individuals applying for inclusion on the list of arbitrators as specified in Annex I of the Swiss-U.S. Privacy Shield Framework.

The arbitral mechanism, outlined in Annex I, is a critical component of the Swiss-U.S. Privacy Shield Framework. More than 3,700 U.S.-based organizations currently rely on the EU-U.S. and Swiss-U.S. Privacy Shield frameworks to transfer the personal data from the EU and Switzerland to the United States necessary to do business across the Atlantic; over 2,300 of which do so under the Swiss-U.S. Privacy Shield. In recognition of the importance of the Framework to transatlantic commerce and data protection, the Privacy Shield Framework reflects commitments made at the highest levels across multiple U.S. Government agencies. The Departments of Commerce, State, Justice, and Transportation as well as the Federal Trade Commission and Office of the Director of National Intelligence are working together to ensure the Framework is fully implemented and functioning as intended. Publishing this notice to collect information from individuals applying for inclusion on the list of arbitrators is a necessary step to put in place the arbitral mechanism.

The DOC and the Swiss Administration will work together to implement the arbitration mechanism, including by jointly developing a list of arbitrators to supplement the list of arbitrators developed under the EU-U.S. Privacy Shield Framework. Parties to a binding arbitration under this Swiss-U.S. Privacy Shield mechanism may only select arbitrators from the list developed under the EU-U.S. Privacy Shield Framework to be supplemented by this list.

The DOC is not currently seeking applications, but may do so in the future as appropriate. OMB reviewed and approved this information collection on an emergency basis as of March 26, 2018 under Control Number 0625-0278. As the emergency approval is only valid for 180 days, the DOC is now submitting a request for a 3-year approval through OMB's full PRA clearance process.

2. 1Explain how, by whom, how frequently, and for what purpose the information will be used. 1If 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.

As described in Annex I of the Privacy Shield, the DOC and the Swiss Administration have committed to implement an arbitration mechanism to provide Swiss individuals with the ability to invoke binding arbitration to determine, for residual claims, whether an organization has violated its obligations under the Privacy Shield. While joining the Privacy Shield is voluntary,

once the organization self-certifies and publicly commit to comply with the framework requirements, the commitment becomes enforceable under U.S. law. Organizations that self-certify to the Privacy Shield commit to binding arbitration of residual claims if the individual chooses to exercise that option. Under the arbitration option, a Privacy Shield Panel (consisting of one or three arbitrators, as agreed by the parties) has the authority to impose individual-specific, non-monetary equitable relief (such as access, correction, deletion, or return of the individual's data in question) necessary to remedy the violation of the Privacy Shield only with respect to the individual. The parties will select the arbitrators from the list of arbitrators developed under the EU-U.S. Privacy Shield Framework to be supplemented by the list developed by DOC and the Swiss Administration.

Eligible individuals who apply to be included on the list of arbitrators will be evaluated on the basis of independence, integrity, and expertise:

Independence:

- Freedom from bias, prejudice, and conflict of interest (i.e., not subject to any instructions from, or be affiliated with, any Privacy Shield organization, or the U.S., Switzerland, EU, or any EU Member State or any other governmental authority, public authority, or enforcement authority).

Integrity:

- Held in the highest regard by peers for integrity, fairness and good judgment.
- Demonstrates high ethical standards and commitment necessary to be an arbitrator.

Expertise:

Required:

- Admission to practice law in the U.S.
- Level of demonstrated expertise in U.S. privacy law and European or Swiss data protection law.

Other expertise that may be considered includes any of the following:

- Relevant educational degrees and professional licenses.
- Relevant professional or academic experience or legal practice.
- Relevant training or experience in arbitration or other forms of dispute resolution

Evaluation of applications for inclusion on the list of arbitrators will be undertaken by the DOC and the Swiss Administration. Selected applicants will remain on the list for a period of 3 years, absent exceptional circumstances, change in eligibility, or for cause, renewable for one additional period of 3 years.

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 DOC had sought approval to publish a PRA Federal Register Notice (FRN) announcing the opportunity to apply for inclusion on the list of arbitrators under the Swiss-U.S. Privacy Shield Framework (Privacy Shield). Eligible individuals who wished to be considered for inclusion on the Swiss-U.S. Privacy Shield Supplemental List of Arbitrators were invited to submit applications. Applications had to be typewritten and should have been headed “Application for Inclusion on the Swiss-U.S. Privacy Shield Supplemental List of Arbitrators.” Applications had to be submitted to David Ritchie at the DOC either by email at David.Ritchie@trade.gov, or by fax at: 202-482-5522.

The DOC is not currently seeking additional applications, but may do so in the future as appropriate.

4. Describe efforts to identify duplication.

There is no duplication. This collection of information is unique and directly related to implementing the arbitration mechanism described in Annex I of the Swiss-U.S. Privacy Shield. Individuals must apply and demonstrate that they meet the specific requirements set forth in Annex I of the Privacy Shield.

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

The collection of information is directed at eligible individuals and does not involve small business or other small entities. To be eligible for inclusion on the list, applicants must be admitted to practice law in the United States and have expertise in both U.S. privacy law and European or Swiss data protection law. Applicants shall not be subject to any instructions from, or be affiliated with, any Privacy Shield organization, or the U.S., Switzerland, EU, or any EU Member State or any other governmental authority, public authority or enforcement authority.

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

Preventing or limiting the collection of information associated with the invitation for application for inclusion on the list of arbitrators under the Swiss-U.S. Privacy Shield would prevent the U.S. Government from implementing the Privacy Shield Framework as agreed between the Swiss Administration and the DOC. As a result, the flow of personal data from Switzerland to the United States could be seriously disrupted, with significant negative effects for U.S. businesses. Currently, over 3,700 U.S.-based organizations rely on EU-U.S. and Swiss-U.S. Privacy Shield frameworks to transfer personal data from the EU and Switzerland to the United States in support of transatlantic commerce; over 2,300 of which do so under the Swiss-U.S. Privacy Shield.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

Collection of information will be made in a manner consistent with OMB guidelines.

8. Provide information on 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 OMB waived the requirement that the DOC submit a PRA Federal Register Notice (FRN) for the emergency approval of this information collection. The OMB reviewed and approved this information collection on an emergency basis as of March 26, 2018 under Control Number 0625-0278.

Although the DOC is not currently seeking additional applications, it may do so in the future as appropriate. As the emergency approval is only valid for 180 days, the DOC is now submitting a request for a 3-year approval through OMB's full PRA clearance process. A PRA FRN soliciting public comments on the information collection, which was published in July 2018, has apparently not generated any such comments.

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.

Information collected through applications for inclusion on the list of arbitrators will not be made publicly available. Evaluation of applications for inclusion on the list of arbitrators will be undertaken by the DOC and the Swiss Administration

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 questions of a sensitive nature are included in this information collection.

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

The total expected number of application for inclusion on the list of arbitrators is approximately 20 applications. DOC estimates an average burden of 4 hours per submission. 20 responses/applications x 4 hours (i.e., 240 minutes) = 80 hours total burden.

Type of Response	Response Time	No. of Respondents	Total Hours
Submission of applications for inclusion on the List	4 hours (i.e., 240 minutes)	20	80

of Arbitrators			
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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).

The estimated annual cost burden to respondents, excluding the value of the burden hours in Question 12, is \$0.

Note:

The DOC’s ITA is implementing the arbitration mechanism under Annex I of the Swiss-U.S. Privacy Shield Framework to support the operation of the Framework, which will require eligible individuals to submit applications for inclusion on the list of arbitrators. Selected applicants will remain on the list for a period of 3 years, absent exceptional circumstances; change in eligibility, or for cause, renewable for one additional period of 3 years.

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

Note: This estimate is calculated by first determining the hourly rate, and the estimated time that it takes to process the form or questionnaire. The hourly rate is calculated by taking the approximate GS rating/step for the type of employee performing the relevant tasks and adding 30% to that rate to account for overhead and other basic costs. For purposes of this calculation \$36.14/hour is assumed to be the approximate GS rating/step; therefore, the rate used is \$46.98 (\$36.14 + \$10.84).

Type of Response	Processing Time	No. of Respondents	Total Hours
Review and processing of applications for inclusion on the list of Arbitrators (via FRN notice)	4 hours (i.e., 240 minutes)	20	80

Cost to Federal government per response: Response Time (4 hours) x Average Salary (\$46.98/hour) = \$187.92

Total cost: Total Hours (80 hours) x Average Salary (\$46.98/hour) = \$3,758.40

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

This is a new information collection.

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

The information collected from respondents will be evaluated by DOC in consultation with the Swiss Administration to select arbitrators and maintain a list of up to 5 arbitrators. The list of arbitrators selected will be made public via website by the Privacy Shield arbitration administrator.

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 employ statistical methods.