

SUPPORTING STATEMENT
U.S. Department of Commerce
International Trade Administration
Application for an Export Trade Certificate of Review
OMB Control No. 0625-0125

Abstract

The Export Trade Certificate of Review Program, offered through Title III of the Export Trading Company Act, provides federal antitrust protection and procedural benefits to U.S. firms interested in collaborating on export activities. By coordinating with one another under the legal protection of this program, U.S. firms can reduce their shipping costs, boost their negotiating power, and fill large export orders, among other benefits. This is a voluntary program, and any U.S. person may apply. Data collection relates to information required to review an application, or to maintain a Certificate, pursuant to the Regulations cited hereinafter. The benefits of the data collection are outlined within the Regulations and Guidelines for the Export Trading Company Act.

Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

Title III of the Export Trading Company Act (hereinafter “the Act”) of 1982 (P.L. No. 97-290, 15 U.S.C. §§ 4001 et seq), authorizes the Secretary of Commerce to issue, with the concurrence of the Attorney General, an Export Trade Certificate of Review to any person that establishes that its proposed export trade, export trade activities, and methods of operation meet the four standards found in Section 303 (a) of the Act, 15 U.S.C. §§ 4001 et seq. An Export Trade Certificate of Review provides the certificate holder and its members with limited antitrust preclearance for specified export-related activities. The information to be collected is found at 15 C.F.R. part 325--Export Trade Certificates of Review. The collection of information is necessary for both the Department of Commerce and the Department of Justice (Departments) to conduct an antitrust analysis, in order to determine whether the applicant’s proposed export-related conduct meets the four standards found in Section 303(a) of the Act. The collection of information constitutes the essential basis of the statutory determinations to be made by the Secretary of Commerce and the Attorney General. This information is collected via the Export Trade Certificate of Review Application Form (ITA-4093P). Prior to the one year anniversary of when the original certificate is issued, the applicant is provided a list of questions which is the annual report and is due within 45 days after the anniversary date of the issuance. This reporting requirement updates the information under which the certificate was granted. If the applicant does not comply with this requirement, the certificate can be revoked. Authority: Title III of the Export Trading Company Act of 1982, 15 U.S.C. § §4011-4021

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

The information contained in the application will be used by the Departments in performing the antitrust analysis required by Title III of the Act. The application includes descriptive information about companies relevant to the application and the industry. Applicants have the option to respond if any question is especially burdensome to them, but information is typically readily available internally, if not publicly. Applicants can be submitted by mail or electronically. In the Department of Commerce, the economic and legal analysis will be

performed by the Office of Trade and Economic Analysis (“OTEA”) and the Office of the General Counsel, respectively. The Department of Justice analysis will be conducted by its Antitrust Division. The purpose of such analysis is to make a determination as to whether or not to issue the certificate. A certificate provides its holder and members named in the certificate: (a) protection from government actions under state and Federal antitrust laws for the export conduct specified in the certificate; (b) some protection from frivolous private suits by limiting their liability in private actions to actual damages when the challenged activities are covered by an Export Certificate of Review. Title III was enacted to reduce uncertainty regarding application of U.S. antitrust laws to export activities – especially those involving actions by domestic competitors.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also, describe any consideration of using information technology to reduce burden.

The subject application form is available via the Internet and via email from Export Trade Certificate of Review staff, and the form can be printed by the applicant. The application form and annual report can be submitted to Export Trade Certificate of Review staff via mail or email communication to etca@trade.gov. Each item requires the applicant’s signature.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Question 2

No duplication was identified. The information is available only from the applicants and is unique to their trade activities.

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

The collection of information often involves small businesses. The application is restricted to information, which is both required for the antitrust analysis and exclusively in the possession of the applicant and its members. The requested information is needed no matter the size of the business.

It may not be necessary for every applicant to respond to every question on the application form. If an applicant believes that certain information requested is not necessary for a determination on the application, the applicant may request a waiver prior to submitting the application by contacting the Office of Trade and Economic Analysis at telephone (202) 482-5131 or via email at etca@trade.gov.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

If this information is not collected, the antitrust analysis cannot be performed and without that analysis no certificate can be issued.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

requiring respondents to report information to the agency more often than quarterly; No, it will not

requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it; No, it will not

requiring respondents to submit more than an original and two copies of any document; While more than one copy of a public comment is requested by paper mail as the document goes to analysts in both the Department of Commerce and the Department of Justice, we do allow electronic submission, which omits the

need for multiple paper copies.

requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years; No, it will not

in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study; No, it will not

requiring the use of a statistical data classification that has not been reviewed and approved by OMB; No, it will not

that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; No, it will not - or

requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law. No, it will not.

The information will be collected consistent with OMB guidelines.

8. If applicable, provide a copy and identify the date and page number of publications in the Federal Register of the agency's notice, required by 5 CFR 1320.8 (d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

A 60-day request for comments from the public was announced in the Federal Register on June 11, 2024 (Volume 86, Number 113, pg. 49157). No comments were generated from this announcement.

The OTEA staff regularly consults with respondents and prospective clients to determine areas where improvements to the application and application process can be made. The OTEA staff provides confidential counseling to persons and firms interested in seeking Title III certification. These counseling sessions involve a detailed discussion of the application process and the information required to be included in the application. These counseling sessions have been a valuable means of consultation about the collection of information. Because these counseling sessions are confidential and were conducted on that basis, the names of those counseled cannot be revealed. There are no unresolved or material issues stemming from these consultation efforts.

In addition to respondents and prospective clients, ETCA staff routinely consults with the Chief Counsel for International Commerce to determine areas of improvement for the application and application process.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

This is not applicable.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy. If the collection requires a systems of records notice (SORN) or privacy impact assessment (PIA), those should be cited and described here.

Information submitted by any person in connection with the issuance, amendment, or revocation of a certificate

of review is exempt from disclosure under the Freedom of Information Act, Section 552, Title 5, United States Code. Except as provided under Section 309(b)(2) of the Export Trading Company Act (“Act”) and 15 CFR 325.16(b)(3), no officer or employee of the United States shall disclose commercial or financial information submitted pursuant to the Act if the information is privileged or confidential and if disclosure of the information would cause harm to the person who submitted the information.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior or attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

No questions of a sensitive nature are asked.

12. Provide estimates of the hour burden of the collection of information.

It is estimated that OTEA will receive approximately 9 applications per year. It is also estimated that an applicant will expend 32 hours in preparing an application for submission. Therefore, the total estimated hours of the burden are **288**.

Each existing Certificate holder is required to file an annual report to fulfill the conditions outlined in Section 325.14 of the Act. At the time of submission there are 69 existing Certificate holders. It is estimated that the report will take 2 hours to complete, for a total of **138** hours. **TOTAL BURDEN HOURS = 426**

Estimated Respondent Burden Hours

Information Collection Instrument (i.e., Type of Response)	Type of Respondent / Occupational Title	Number of Respondents (a)	Number of Responses Per Respondent (b)	Total Number of Responses (c) = (a) x (b)	Burden Hours Per Response (d)	Total Burden Hours (e) = (c) x (d)
Application for Export Trade Certificate of Review		9	1	9	32	288
Annual Report		69	1	69	2	138
Total				78		426

13. Provide an estimate for the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected on the burden worksheet).

Not applicable.

14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of

information.

Agencies may also aggregate cost estimates from Question 12, 13, and 14 in a single table.

OTEA staff salaries allocated to the program total approximately \$90 thousand. An additional estimated \$10,000 in related costs, such as publication in the Federal Register, computer time, travel, and supplies, are attributed to the statutory review of applications for an Export Trade Certificate of Review.

15. Explain the reasons for any program changes or adjustments reported in ROCIS.

Changes made to the Annual Report Questions reflect updated program administrator contact information, formatting changes, clarifications to language and an updated form expiration date.

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

Not applicable

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

The agency plans to display the expiration date for OMB approval of the information collection on all instruments.

18. Explain each exception to the certification statement identified in "Certification for Paperwork Reduction Act Submissions."

The agency certifies compliance with [5 CFR 1320.9](#) and the related provisions of [5 CFR 1320.8\(b\)\(3\)](#).

B. Collections of Information Employing Statistical Methods

This collection does not employ statistical methods.