

SUPPORTING STATEMENT
U.S. Department of Commerce
Bureau of Industry & Security
Voluntary Self-Disclosure of Antiboycott Violations
OMB Control No. 0694-xxxx

This is an emergency request for a new collection. When BIS published the Antiboycott Penalty Guidelines as a proposed rule on June 30, 2006, BIS proposed amending existing collection OMB 0694-0058 “Voluntary Self-Disclosure” and adding 60 burden hours to support this collection activity. Based on public comments, BIS has completely revised its annual burden estimate from 60 hours to 1,280 hours. Since existing collection OMB 0694-0058 has an annual burden of 670 hours, BIS believes it was no longer appropriate to submit the Antiboycott voluntary self-disclosure as an amendment.

BIS requests approval of a new collection for antiboycott voluntary self-disclosure. This collection is modeled after the existing EAR Voluntary Self-Disclosure collection (OMB 0694-0058). Both have the same 7 subsections under “Information to be provided.” Like the existing collection, Antiboycott disclosure information has been provided to BIS in the past under the criminal investigation exemption of the Paperwork Reduction Act. BIS now seeks to publish regulations to provide specific guidance to industry and communicate the criteria BIS will use in the evaluation of an antiboycott voluntary self-disclosure.

A. Justification

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

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.

To strengthen BIS's antiboycott enforcement efforts, BIS is proposing adding a new Section, §764.8 “Voluntary Self-Disclosure of Boycott Violations” to the Export Administration Regulations (EAR).

Both the existing collection and proposed amendment involve voluntary self-disclosure of violations of the Export Administration Regulations. The information collection requirements in the new Antiboycott collection are modeled after those in the existing Self-Disclosure collection, having the same seven sections: (1) General; (2) Initial Notification; (3) Narrative Account; (4) Supporting Documentation; (5) Certification; (6) Oral Presentations and (7) Where to Make Voluntary Self-Disclosure. The corresponding language in each section is very similar with necessary changes (e.g. different address where each type of disclosure should be mailed).

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.

BIS is codifying its Antiboycott voluntary self-disclosure policy to increase public awareness of this policy and to provide the public with a good idea of BIS's likely response to a given disclosure. Voluntary self-disclosures allow BIS to conduct investigations of the disclosed incidents faster than would be the case if BIS had to detect the violations without such disclosures. As a result, BIS is able to devote more of its resources to detecting nondisclosed violations.

BIS evaluates the seriousness of the violation and either (1) informs the person making the disclosure that no action is warranted, (2) issues a warning letter, (3) issues a proposed charging letter and attempts to settle the matter, (4) issues a charging letter if settlement is not reached and/or (5) refers the matter to the U.S. Department of Justice for criminal prosecution. The information obtained through this collection may also provide leads to uncover other violations. In some cases, the information might be shared with other law enforcement agencies investigating suspected violations of the EAA and the EAR or, in appropriate instances, agencies investigating violations of other statutes or with foreign governments.

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.

BIS is not aware of any technology which could be adopted to further reduce the collection burden.

4. Describe efforts to identify duplication.

The information disclosed in connection with each violation of the Act and the EAR is unique and is not duplicated elsewhere. Each collection provides information concerning specified details of individual export or reexport transactions. This information is not available from any source other than from the respondent.

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

The information collected may involve small business. However, the seriousness of a particular violation is not related to the size of the business that commits it. There is, therefore, no way to minimize the burden imposed on these businesses without thwarting the purpose of the collection.

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

There is no prescribed frequency to the collections. However, we believe that most entities that supply information under this collection will do so only once.

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 of information in a manner that is inconsistent with the guidelines set forth in 5 CFR. Section 1320.

8. Provide a copy 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 June 30, 2006, pp. 37517-37525. Comments were received from one company. These comments are addressed in the following paragraphs.

“Complying with OAC rules, and in particular, investigating, compiling, and filing a voluntary disclosure, is a significant costs for large global companies,

We believe that OAC has significantly underestimated the costs associated with voluntary disclosures, both in the cost per hour and the projected number of hours required for a voluntary disclosure. For a company like GE with worldwide operations and decentralized sales and marketing offices, we believe that the total time and expenses associated with a voluntary disclosure, including an audit of the preceding five years, would involve significant legal and compliance professional resources that would put the average cost per disclosure in the range of tens of thousands of dollars.”

BIS agrees that the cost could increase in the instance of a large business that is organized into separate business units, each having its own recordkeeping system and compliance responsibilities. Accordingly, BIS has modified its hourly estimate to reflect a much larger burden estimate of 600 hours for large businesses.

A final rule will be published after OMB approval.

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

There is no plan to provide any payment or gift to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

BIS does not provide specific assurances of confidentiality to any respondent. To the extent that information in a disclosure concerns license applications, Section 12(c) of the EAA [50 U.S.C. app. & 2411(c)] would limit BIS's ability to disclose the information and §748.1(c) of the EAR states BIS's policy of complying with Section 12(c).

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 information of a sensitive nature is being requested.

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

There are 1,280 burden hours associated with this information collection. The cost is estimated to be \$51,200.

This regulation provides a procedure for voluntarily supplying to BIS information that exporters are already required to keep and make available to BIS for inspection when requested.

Each company will require approximately ten hours to locate, organize and submit the information. The work performed will consist of examining existing business records for evidence of violations, copying those records, preparing the requisite narrative and a cover letter. The work will probably be done by technical or professional personnel. We estimate that this phase will take about 9 hours. In addition, approximately 1 hour of management/attorney time will be needed to review the records before submitting them to BIS. We estimate a composite hourly wage of \$40.

For large companies, BIS estimates a burden of 600 hours. In calendar year 2006, BIS received 10 antiboycott voluntary self-disclosures. Two were from large companies. The estimated burden is as follows:

Company Size	Number	Burden	Total
Large	2	600	1,200
Regular	8	10	80
Total	10		1,280

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.

The cost to the Federal Government is approximately \$3,000. An average of 10 staff hours is needed to process each disclosure. Therefore, 10 cases would take 100 hours to process at a cost of \$30 per hour. This figure is significantly lower than the average cost needed to investigate cases that are not the results of voluntary disclosures. The reasons for the difference are that voluntary disclosures eliminate the time that the Government spends investigating just to learn of the existence of a violation. Also, the information in a voluntary self-disclosure is generally more organized than the information that must be analyzed in other investigations.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.

The voluntary disclosure of boycott violations is a new requirement under the Export Administration Regulations thus no programs or adjustments.

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

There is no intention to publish the results of this information collection for statistical purposes.

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

Not applicable.