



September 30, 2013

Via email

Jasmeet Seehra
Desk Officer for DoD
OMB, Room 10236, NEOB
Washington, DC 20503

Attn: Jasmeet Seehra // IC 0704-0489

**RE: Defense Industrial Base Cyber Security/Information Assurance (DIB CS/IA)
Cyber Incident Reporting; OMB Control Number 0704-0489**

Dear Ms. Seehra:

On behalf of the Technology Association of America, Inc.¹ (“TechAmerica”), I am pleased to submit the following comment on Defense Industrial Base Cyber Security/Information Assurance (DIB CS/IA) Points of Contact (POC) Information; OMB Control Number 0704-0490, which the Department of Defense (DOD) (the “Agency”) published in the *Federal Register* at 78 FR 53736 on August 30, 2013 and requested public comment regarding an extension of a previously approved information collection requirement from the Office of Management and Budget (“OMB”).

This comment will address the Agency’s estimate of the public burden of performing the information collection requirements. In short, the Agency’s estimate does not accurately reflect the public burden because it fails to explain methodology and, based on the information available, is most likely understated. Consequently, TechAmerica opposes granting this extension under the Paperwork Reduction Act (the “Act”).

A. The Agency Does Not Accurately Estimate the Public Burden an Extension of the Information Collection Requirement Would Create.

The Act defines the public burden an extension of the information collection would create:

Burden is the time, represented as hours spent by the public responding to Federal information collections. When an agency estimates and seeks to reduce the paperwork burden it imposes on the public, the agency must consider the time that

¹ The Technology Association of America (TechAmerica) is the leading voice for the U.S. technology industry, the driving force behind productivity growth and jobs creation in the United States and the foundation of the global innovation economy. Representing approximately 1,000 member companies of all sizes serving clients in the public and commercial sectors of the economy, it is the industry’s largest advocacy organization and is dedicated to helping members’ top and bottom lines. It is also the technology industry’s only grassroots-to-global advocacy network, with offices in state capitals around the United States, Washington, D.C., Europe (Brussels) and Asia (Beijing). Learn more at www.TechAmerica.org.

an individual or entity spends reading and understanding a request for information, as well as the time spent developing, compiling, recording, reviewing, and providing the information.²

We respectfully submit that the Agency has not faithfully applied this definition nor fully complied with its obligations under the Act and the implementing regulations in 5 C.F.R. Part 1320. *See* 5 C.F.R. § 1320.8 (“This review [of the information collection requirement] shall include ... [a] ***specific, objectively supported*** estimate of burden, which shall include, in the case of an existing collection of information, an evaluation of the burden that has been imposed by such collection.” (emphasis added)). The methodology used by the Agency in this request is insufficient.

Specifically, we believe the Agency's estimates that 750 respondents will be subject to this requirement annually, that they will submit an average of 5 responses each at an average of 7 hours per response are understated. We note that this information collection relates to an important and growing cybersecurity program, the Defense Industrial Base Cyber Security/Information Assurance (DIB CS/IA) program.

As a threshold matter, we believe the Agency's respondent's obligation, “voluntary,” is potentially misleading. While the DIB CS/IA program is voluntary to join, once in the program, entities are responsible for reporting the information in this request. They must leave the program completely to excuse themselves from the obligations under this information collection request. A better, more accurate estimate of the public's burden would make this distinction.

We commend the Agency for using 750 respondents to craft the total public burden estimate. The Agency's Supporting Statement for this information collection request explains that the program will grow by 250 participants annually and that by the third year, 750 entities will respond under the DID CS/IA program.³ We believe an estimate of 750 respondents better estimates the public burden and clearly indicates that this program will grow.

The Agency should increase its estimate of the average number of responses an entity will file per year. Cyber attacks are increasing rapidly, as are the community's efforts to fight and mitigate against those attacks. We believe the Agency's average number of responses per respondent should also grow annually and a larger number would more accurately describe the public burden.

Finally, for this and every information collection exercise the Government imposes, each respondent must not only take time to report the compiled data, but must, on a continual

² Information Collection Budget of the United States Government for Fiscal Year 2010, Office of Management and Budget, Office of Information and Regulatory Affairs at 1.

³ Agency Supporting Statement DIB CS/IA Cyber Incident Reporting Information Collection, at 4; document can be downloaded at <http://www.reginfo.gov/public/do/DownloadDocument?documentID=420264&version=0>.

basis, monitor whether or not they have a need to collect data at all. If this threshold analysis indicates that such a need exists, the respondent must establish and update mechanisms to capture that data and, at the requisite reporting intervals or instances, compile the data into a format that complies with the reporting requirement. In other words, each information collection requirement effectively imposes three separate requirements on the public: (1) the need to monitor whether reporting is required; (2) the need to compile and collect the required information; and (3) the need to disclose that information to the Government. Each of these requirements demands time of the respondent. This three-stage process is particularly appropriate to this information collection. In addition, responses to the Government will involve detailed back-and-forth and follow-up information (i.e. questions regarding activity, packet captures, IDS/Firewall logs, malware samples, system images, etc.) We believe twenty to thirty hours is a much more realistic estimate of the response time to cyber incident reporting, i.e., responses under this information collection beyond the official program setup and certification.

In short, the Agency should reassess the estimated total burden hours provided as part of this request and revise those estimates to more accurately reflect the total burden noted in the Act and above.

B. The Collective Burden of Compliance with the Information Collection Requirement Greatly Exceeds the Agency's Estimate and Outweighs Any Potential Utility of the Extension.

In addition to the burden the information collection in this request imposes on individual respondents, there is an immense collective burden imposed on all respondents. OMB estimates that, in Fiscal Year 2010, the public spent 8.8 billion hours responding to information collections.⁴ This estimate is ten percent (10 percent), or one billion hours less than the previous fiscal year. While this reduction seems to represent a victory in furthering the purposes of the Act, it is unlikely these estimates provide an accurate picture of the overall burden. In the same report, OMB identifies four causes of the paperwork burden change: (1) adjustments to agency burden estimates; (2) new statutory requirements; (3) discretionary agency actions; and (4) lapses in OMB approval.”⁵ OMB found that, of these four causes, adjustments “accounted for most of the overall decrease in Federal paperwork burden in FY 2010.”⁶

Based on a review of the acquisition-related Information Collection waiver requests published in the Federal Register between June of 2008 and June of 2011, using the Government's estimates, there are over 30 million total hours, across all respondents, of

⁴ *Supra* note 5 at iv. The current total is well above 10 billion hours. “Government-Wide Totals for Active Information Collections,” Inventory of Currently Approved Information Collections, September 30, 2013, Office of Information and Regulatory Affairs available at <http://www.reginfo.gov/public/do/PRAReport?operation=11>.

⁵ *Supra* note 5 at 2.

⁶ *Id.* at 6.

information collection burden required of the government acquisition community annually.⁷ As noted above and highlighted below, the methodology behind these estimates is woefully inadequate, and consequently, the total burden and the associated costs are far higher than the Agency estimates. Such a burdensome paperwork requirement imposes unnecessary expenses for both the Government and the respondents, without demonstrating a clear value to the taxpayer that would justify the additional cost.

While the Agency is under immense pressure to reduce the number of information collection hours it imposes upon the public, it should not avoid its statutory responsibility by providing an artificially low estimate of the burden. We respectfully submit that assessing the impact in a horizontal fashion as part of a total burden on respondents was the intent, if not the letter, of the Act. The Agency should be responsible for assessing the total information collection burden they create and the need for extending this additional burden in that context. Further, OMB should make a comparable cumulative assessment across the entire Federal Government and objectively consider the need to increase or sustain that burden as part of their review of this request.

C. The Government's Response to the Paperwork Reduction Act Waiver for FAR Case 2007-006 is Instructive on the Total Burden for Respondents.

As noted above, TechAmerica challenges the methodology behind estimating the burden on each respondent to comply with this information collection requirement. We believe that the Agency's estimated burden hours should be modified in this instance for the same reason that they were modified upward in FAR Case 2007-006. In that case, a final rule contained an information collection requirement that brought it under the authority of the Act. The Government initially estimated a total burden of three hours per response. During the open comment period, only one comment was received; however, that was sufficient to show that a modification of the Government's estimate was necessary. After comment, the Government conceded that the methodology and the resultant estimate did not accurately reflect the total burden, as defined in the Act, imposed upon the company. After modification, the revised burden was sixty hours per response, meaning that the initial annual reporting burden of three hours was off by a factor of twenty. More recently, the Agency adjusted their estimate on OMB Control No. 9000-0091, again by a factor of twenty, when they reexamined the burden, conferred with subject matter experts, and took into account the time to review submissions before a company actually submits under an information collection.⁸

The Agency has failed in this information collection waiver request to rationalize how it arrived at the estimated burden as required by the Act and the implementing regulations in 5 C.F.R. Part 1320. We submit that the Agency's current estimate has failed to consider the time necessary for collection and review of the information prior to submission. Because the Agency has not effectively measured the burden as defined in the Act under this request nor demonstrated that

⁷ See attachment.

⁸ Federal Acquisition Regulation; Submission for OMB Review; Anti-Kickback Procedures Notice, 78 FED. REG. 45198 (July 26, 2013).

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the burden is justified from the perspective of the taxpayer, Government, the Agency, or the respondents, we respectfully submit that the Agency's request should be denied.

TechAmerica appreciates this opportunity to comment, and would be pleased to respond to any questions the Agency may have on these comments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "A.R. Hodgkins" with a stylized flourish at the end.

A.R. "Trey" Hodgkins, III
Senior Vice President