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DEPARTMENT OF COMMERCE

International Trade Administration

Docket No.: 180320298-8298-01

RIN No.: 0625-XC038

Swiss-U.S. Privacy Shield; Invitation for Applications for Inclusion on the Supplemental List of Arbitrators

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice; Invitation for applications.

SUMMARY: Under the Swiss-U.S. Privacy Shield Framework, the U.S. Department of Commerce (DOC) and the Swiss Administration have committed to implement an arbitration mechanism as set forth in Annex I, 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 Framework. The DOC and the Swiss Administration will work together to implement the arbitration mechanism, including by jointly developing a list of up to five arbitrators with European or Swiss expertise 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. This notice announces the opportunity to apply for inclusion on the Swiss-U.S. Privacy Shield Supplemental List of Arbitrators developed by the DOC and the Swiss Administration.

DATES: Applications should be received by Friday April 30th, 2018.

ADDRESSES: Please submit applications to David Ritchie at the U.S. Department of Commerce, either by email at david.ritchie@trade.gov, or by fax at: 202-482-5522. More information on the arbitration mechanism may be found at <https://www.trade.gov/td/services/odsi/swiss-us-privacyshield-framework.pdf>.

FOR FURTHER INFORMATION CONTACT: David Ritchie, International Trade Administration, 202-482-4936 or david.ritchie@trade.gov.

SUPPLEMENTARY INFORMATION: The Swiss-U.S. Privacy Shield Framework was designed by the U.S. Department of Commerce (DOC) and the Swiss Administration (Swiss) to provide companies in both Switzerland and the United States with a mechanism to comply with data protection requirements when transferring personal data from Switzerland to the United States in support of transatlantic commerce. On January 12, 2017, the Swiss deemed the Swiss-U.S. Privacy Shield Framework (Swiss Privacy Shield) adequate to enable data transfers under Swiss law, and on April 12, 2017, the DOC began accepting self-certifications from U.S. companies to join the program (82 FR 16375; April 12, 2017). For more information on the Privacy Shield, visit www.privacyshield.gov.

As described in Annex I of the Swiss Privacy Shield, the DOC and the Swiss 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. Organizations voluntarily self-certify to the Swiss Privacy Shield and, upon certification, the commitments the organization has made to comply with the Swiss Privacy Shield become legally enforceable under U.S. law. Organizations that self-certify

to the Swiss Privacy Shield commit to binding arbitration of residual claims if the individual chooses to exercise that option. Under the arbitration option, a Privacy Shield Panel¹ (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 Swiss Privacy Shield only with respect to the individual. The parties will select the arbitrators from the list of arbitrators described below.

The DOC and the Swiss Administration seek to develop a list of up to five arbitrators to supplement the list of arbitrators developed under the EU-U.S. Privacy Shield Framework. To be eligible for inclusion on the supplemental 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.

Eligible individuals will be evaluated on the basis of independence, integrity, and expertise:

Independence:

- Freedom from bias and prejudice.

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.

¹ The Privacy Shield Panel would govern arbitration proceedings brought under either the Swiss-U.S. or EU-U.S. Privacy Shield Frameworks.

Expertise:

Required:

- Admission to practice law in the United States.
- 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.

The DOC selected the International Centre for Dispute Resolution-American Arbitration Association (ICDR-AAA) as administrator for Privacy Shield arbitrations brought under either the Swiss-U.S. or EU-U.S. Privacy Shield Frameworks.² Among other things, the ICDR-AAA will facilitate arbitrator fee arrangements, including the collection and timely payment of arbitrator fees and other expenses. Arbitrators are expected to commit their time and effort when included on the supplemental Swiss-U.S. Privacy Shield List of Arbitrators and to take reasonable steps to minimize the costs or fees of the arbitration.

² For more information about the selection process and the role of the administrator, see <https://www.privacyshield.gov/Arbitration-Fact-Sheet>.

Arbitrators will be subject to a code of conduct consistent with Annex I of the Swiss-U.S. Privacy Shield Framework and generally accepted ethical standards for arbitrators. The DOC and the Swiss Administration agreed to adopt the arbitral procedures adopted under the EU-U.S. Privacy Shield Framework to govern the arbitral proceedings, subject to considerations identified in Annex I of the Swiss-U.S. Privacy Shield Framework, including that materials submitted to arbitrators will be treated confidentially and will only be used in connection with the arbitration. For more information, please visit <https://www.privacyshield.gov/article?id=G-Arbitration-Procedures> where you can find information on the arbitration procedures. *(Please note that the Arbitration procedures apply to both the EU-U.S. Privacy Shield Framework and the Swiss-U.S. Privacy Shield Framework.)*

Applications

Eligible individuals who wish to be considered for inclusion on the Swiss-U.S. Privacy Shield Supplemental List of Arbitrators are invited to submit applications. Applications must be typewritten and should be headed “Application for Inclusion on the Swiss-U.S. Privacy Shield Supplemental List of Arbitrators.” Applications should include the following information, and each section of the application should be numbered as indicated:

- Name of applicant.
- Address, telephone number, and email address.

1. Independence

- Description of the applicant’s affiliations with any organization that has self-certified under either the Swiss-U.S. or EU-U.S. Privacy Shield Frameworks, or the U.S.,

Switzerland, any EU Member State or any other governmental authority, public authority, or enforcement authority.

2. Integrity

- On a separate page, the names, addresses, telephone, and fax numbers of three individuals willing to provide information concerning the applicant's qualifications for service, including the applicant's character, reputation, reliability, and judgment.
- Description of the applicant's willingness and ability to make time commitments necessary to be an arbitrator.

3. Expertise

- Demonstration of admittance to practice law in the United States.
- Relevant academic degrees and professional training and licensing.
- Current employment, including title, description of responsibility, name and address of employer, and name and telephone number of supervisor or other reference.
- Employment history, including the dates and addresses of each prior position and a summary of responsibilities.
- Description of expertise in U.S. privacy law and European or Swiss data protection law.
- Description of training or experience in arbitration or other forms of dispute resolution, if applicable.
- A list of publications, testimony, and speeches, if any, concerning U.S. privacy law and European or Swiss data protection law, with copies appended.

Paperwork Reduction Act

OMB has reviewed and approved this information collection on an emergency basis as of March 26, 2018 under Control Number 0625-0278. The emergency approval is only valid for 180 days. ITA will submit a request for a 3-year approval through OMB's general PRA clearance process. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB control number.

Written comments regarding the burden estimate for this data collection requirement, or any other aspect of this data collection, to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the International Trade Administration via email at oir_submission@omb.eop.gov or via fax at (202) 395-5806 (this is not a toll-free number).

Public Disclosure

Applications will be covered by the Department of Commerce's Privacy Act System of Records Notice 23. Submission of your application will be considered written consent to share your information with the Swiss Administration to enable joint development of the list of arbitrators.

Dated: March 27, 2018.

James M. Sullivan
Deputy Assistant Secretary for Services
International Trade Administration
U.S. Department of Commerce
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