

Supporting Statement: Request for Waiver of the Recovery Act Buy American Provision Domestic Nonavailability Exception

OMB Control Number 1910-NEW

This supporting statement provides additional information regarding the Department of Energy, Office of Energy Efficiency and Renewable Energy (EERE) request for processing of the proposed information collection, (Request for Waiver of the Recovery Act Buy American Provision: Domestic Nonavailability Exception). The numbered questions correspond to the order shown on the Office of Management and Budget (OMB) Form 83-I, "Instructions for Completing OMB Form 83-I."

A.

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 information collection.

Section 1605(a) of the American Recovery and Reinvestment Act ("Recovery Act"; Pub. L. 111-5) includes a mandate to buy "iron, steel, and manufactured goods" that were "produced in the United States" for the "construction, alteration, maintenance, or repair of a public building or public work[.]" This *Buy American* provision includes three exceptions, including when the goods "are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality[.]" This is referred to as the *Domestic Nonavailability Exception*.

The Office of Management and Budget promulgated interim final guidance implementing Section 1605 of the Recovery Act on April 23, 2009 (74 FR 18449 *et seq.*). 2 CFR Part 176.140(c) includes the requirements for requesting a waiver of Section 1605(a).

The Secretary of Energy has delegated the authority to make all inapplicability determinations to the Assistant Secretary for Energy Efficiency and Renewable Energy, for EERE projects funded under the Recovery Act.

This information collection provides a standardized and streamlined way for EERE Recovery Act grant recipients to apply for the Domestic Nonavailability Exception waiver, which will allow EERE to expedite Recovery Act funding into our communities.

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 collected by EERE will be used solely to determine whether specific manufactured goods and categories of manufactured goods qualify for the Domestic Nonavailability Exception. The

information will be stored in DOE files or in the agency's computers and reviewed by DOE personnel to make the necessary determinations.

EERE may share only the technical information related to the specific manufactured good with other Federal agencies in order to process the incoming waivers quickly and thoroughly. No personally identifiable information will ever be shared outside EERE.

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.

DOE has requested that waiver applications be submitted by email to the following address: buyamerican@ee.doe.gov . Respondents also have the option of submitting information by mail, or hand delivery/courier. X

4.

Describe efforts to identify duplication.

DOE is tracking responses to its original information collection (see Question 8, below) and will combine that information with waiver requests that are submitted using the form provided for here. The purpose of this information collection is to streamline processes and increase efficiency; therefore, efforts to eliminate duplication are central to this strategy. The information being collected here, however, is not available in any other form or determinable through other information already in possession of DOE. Furthermore, each submission is unique to the individual grantee and project so duplication is highly unlikely.

5.

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

This collection will not have a significant impact on small business entities. While some small government bodies will likely submit waiver requests, the effort to prepare these will be minimal. Moreover, by submitting a waiver request, it will allow these entities to spend their Recovery Act funds on critical energy efficiency and renewable energy projects in their communities while ensuring compliance with the special terms and conditions of the Recovery Act.

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 one-time collection is not conducted, the major impact will be preventing efficiency gains and

maintaining a confusing and burdensome status quo for EERE Recovery Act grantees that wish to submit Buy American Provision Domestic Nonavailability Exception waiver requests. Without these waivers, many DOE grantees cannot spend their funding allocations due to potential non-compliance with the Recovery Act's Buy American provision.

The only technical or legal obstacle to reducing this burden is the ordinary 30 and 60 day notices required for Information Collection Requests. This current Paperwork Reduction Act request is being made on an emergency basis because the advance notice requirements will cause unnecessary delays for DOE Recovery Act grantees who need to apply for the Domestic Nonavailability Exception waiver in order to proceed with their desired projects.

7.

Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines. (a) requiring respondents to report information to the agency more often than quarterly; (b) requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it; (c) requiring respondents to submit more than an original and two copies of any document; (d) requiring respondents to retain records, other than health, medical government contract, grant-in-aid, or tax records, for more than three years; (e) in connection with a statistical survey, that is not designed to product valid and reliable results that can be generalized to the universe of study; (f) requiring the use of statistical data classification that has not been reviewed and approved by OMB; (g) that includes a pledge of confidentiality that is not supported by authority established in stature of 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; (h) requiring respondents to submit proprietary trade secrets, 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.

There are no special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines. There is no requirement that waiver requests be submitted in fewer than 30 days, although DOE expects many grantees to submit information within that period.

8.

If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5CFR 320.8(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 in response to the comments. Specifically address comments received on cost and hour burden. Describe efforts to consult with persons outside DOE 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 report.

This is an emergency; therefore, a waiver from the requirement of publishing a 60-day and 30-day Federal Register notice is requested.

DOE previously published a Request for Information (RFI) at 75 Fed. Reg. 5783-5784 (February 4, 2010), seeking suggestions for products that may be good candidates for a waiver. DOE received a

number of responses citing individual products that are not or may not be manufactured in the United States. DOE also received general questions about the Buy American provision and its applicability and implementation, as requested in the second part of the RFI.

DOE did not solicit information about the estimated cost and burden hours, as these are expected to be minimal.

DOE consults with the Manufacturing Extension Partnership, within the Department of Commerce's National Institute of Standards and Technology, to help determine whether products submitted for waivers are manufactured in the United States. This is the extent of consultation with parties outside the DOE.

9.

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

There are no payments or gifts to respondents, aside from already-allocated grant funds under the various DOE Recovery Act funded programs. This question is, therefore, not applicable.

10.

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

When submitting project information to the Manufacturing Extension Partnership, DOE removes all recipient personal information from the applications. There are no other assurances of confidentiality for the information submitted to DOE under this collection request. Disclosure is governed by the Privacy Act and the Freedom of Information Act.

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. This justification should include the reasons why DOE 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.

There are no questions of a sensitive nature being collected; the information collected focuses on specifications of manufactured goods. This question is, therefore, not applicable.

12.

Provide estimates of the hour burden of the collection of information. The statement should indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, DOE should not conduct

special surveys to obtain information on which to base hour burden estimates. Consultation with a sample fewer than 10 potential respondents is desirable.

The estimate of hour burden of the information collection is as follows:

Total number of unduplicated respondents: 200

Reports filed per person: 1

Total annual responses: The responses are one-time only responses. The estimated total of one-time only responses is: 200

Total annual burden hours: 200

Average Burden Per Collection: 1

Per applicant: 1

13.

Provide an estimate for the total annual cost burden to respondents or recordkeepers resulting from the collection of information.

There is not expected to be an ongoing cost burden associated with this one-time information collection.

14.

Provide estimates of annualized cost to the Federal government.

There are no costs associated with this collection that will impact the Federal government. This collection will, in fact, streamline the process of handling a type of requests the government already receives, so the net result will be less government time than is spent under the status quo.

15.

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

This question is not applicable. This information collection is a new collection of information.

16.

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

The information collected is not intended to be published. No complex analytical techniques will be employed. There will not be a report on the information collected, although waivers that are approved will be published on the DOE website.

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. DOE is not seeking approval to not display the expiration date for OMB approval of this information collection.

18.

Explain each exception to the certification statement identified in Item 19 of OMB Form 83-I.

Not applicable. There are no exceptions to the certification statements.