

**2023 SUPPORTING STATEMENT**  
**Build America, Buy America Waiver Data Collection**  
**Common Forms Package**

**OMB NO. 0505-XXXX**

This information collection will be utilized by U.S. Department of Agriculture (USDA) and governmentwide recipients and subrecipients funded under various loan and grant making activities. We are requesting emergency clearance and a 3-year clearance of this package.

**A. Justification**

**1. EXPLAIN THE CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY. IDENTIFY ANY LEGAL OR ADMINISTRATIVE REQUIREMENTS THAT NECESSITATE THE COLLECTION.**

In accordance with section 70914 of the [Build America Buy America Act \(Pub. L. No. 117-58 §§ 70901-70952\)](#) (BABAA), recipients and subrecipients funded under USDA agencies and staff offices Federal financial assistance programs that allow funds to be used for infrastructure projects (infrastructure programs), i.e., construction and broadband infrastructure, may not use their funds for these infrastructure projects unless they comply with the following BABAA sourcing requirements:

1. All iron and steel used in the project are produced in the United States.
2. All manufactured products used in the project are produced in the United States.
3. All construction materials are manufactured in the United States.

USDA agencies and staff offices may, in accordance with sections 70914(b) and (d), 70921(b), and 70935 of BABAA, and the Office of Management and Budget Memorandum [M 22-11](#), *Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure*, approve waivers to BABAA sourcing requirements submitted by recipients and subrecipients under a Federal financial assistance program it has identified as an infrastructure project, regardless of whether infrastructure is the primary purpose of the award. USDA agencies and staff offices may approve, subject to notice and comment requirements and the OMB Made in America Office (MIAO) review, the types of waivers listed below when the following conditions are met:

1. Public Interest Waiver - Applying the BABAA sourcing requirement would be inconsistent with the public interest.
2. Non-availability Waiver - The types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality.

3. Unreasonable Cost Waiver - The inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

This is a new information collection, and it includes the following two documents: 1) the Build America, Buy America (BABA) Waiver Request Data Collection; and 2) a document listing the BABA Waiver Request data elements.

This new information collection is submitted for emergency processing and clearance.

**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 submitted by recipients and subrecipients using the BABA Waiver Request Data Collection will be used by USDA agencies and staff offices to determine if waiver requests are consistent with policy prior to issuing its approval or disapproval. This is a new information collection, so USDA cannot indicate how the information was used in the past. There is no current collection to reference.

**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 information will be collected by accessing the data collection electronically submitted by recipients and subrecipients.

BABA Waiver Request Data Collection and supporting documentation will be submitted via email to the USDA awarding agency point of contact. The information for each recipient and subrecipient is unique and, therefore, cannot take significant advantage of this technology. The BABA Waiver Request Data Collection will be provided to the recipient and subrecipient to submit a waiver request from Build America, Buy America requirements as explained in the [Office of Management and Budget Memorandum 22-11](#) and required by the [Infrastructure, Investments and Jobs Act](#) (IIJA) sections 70901 through 70952.

The General Services Administration (GSA), in accordance with BABAA, is currently working with Federal agencies and OMB to develop a web based BABAA electronic data submission system that USDA anticipates participating in when that system goes live. GSA

has recently begun work on this endeavor and a completion date has not yet been identified.

**4. DESCRIBE EFFORTS TO IDENTIFY DUPLICATION. SHOW SPECIFICALLY WHY ANY SIMILAR INFORMATION ALREADY AVAILABLE CANNOT BE USED OR MODIFIED FOR USE FOR THE PURPOSE(S) DESCRIBED IN ITEM 2 ABOVE.**

As mentioned in Item 1 above, in accordance with sections 70914(b) and (d), 70921(b), and 70935 of BABAA, and the Office of Management and Budget Memorandum [M 22-11](#), USDA agencies and staff offices may approve, subject to notice and comment requirements and the OMB Made in America Office (MIAO) review, a public interest waiver, nonavailability waiver, or an unreasonable waiver. The information submitted within the BABA Waiver Request Data Collection is not at present collected in other USDA information collections; thus, duplicate data submission will not occur as a result of USDA implementing this information collection.

**5. IF THE COLLECTION OF INFORMATION IMPACTS SMALL BUSINESSES OR OTHER SMALL ENTITIES (ITEM 5 OF THE OMB FORM 83-1), DESCRIBE THE METHODS USED TO MINIMIZE BURDEN.**

USDA does not believe that this information collection will adversely impact small businesses or other small entities.

**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.**

USDA agencies and staff offices may, in accordance with sections 70914(b) and (d), 70921(b), and 70935 of BABAA, approve waivers to BABAA sourcing requirements submitted by recipients and subrecipients under programs it has identified as infrastructure programs, regardless of whether infrastructure is the primary purpose of the award. If USDA agencies and staff offices are not permitted to implement this information collection, it will not be able to comply with the waiver authority established in BABAA. This will impede infrastructure projects that should be granted waivers from moving forward, thus, resulting in delays to critically important projects.

**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;**
- **requiring respondents to prepare a written response to a collection of information**

- **in fewer than 30 days after receipt of it;**
- **requiring respondents to submit more than an original and two copies of any document;**
- **requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than 3 years;**
- **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;**
- **requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
- **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; 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.**

There are no special circumstances. The collection of information is conducted in a manner consistent with the provisions found in 5 CFR § 1320.

**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 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.**

This is a new information collection package request. USDA is requesting an emergency clearance of the BABA Waiver Request Data Collection from OMB by January 31, 2023. USDA has not solicited comments. USDA will solicit 60 days of public comment for the regular information collection as required by 5 CFR 1320.8(d).

At this time, USDA does not know the number of responses from USDA recipients and subrecipients across USDA financial assistance programs. In the 60-day Federal Register Notice, USDA will account for the data collection to have 1 respondent and a 6-hour place holder for the amount of time it takes to complete the data collection. The actual burden hours will be calculated when USDA agencies and staff offices and governmentwide agencies that utilize this data collection account for the burden of the data collection in their individual information collection package request for common forms submission.

**9. EXPLAIN ANY DECISION TO PROVIDE ANY PAYMENT OR GIFT TO**

**RESPONDENTS, OTHER THAN REMUNERATION OF CONTRACTORS OR GRANTEES.**

No payments or gifts are provided to respondents.

**10. DESCRIBE ANY ASSURANCE OF CONFIDENTIALITY PROVIDED TO RESPONDENTS AND THE BASIS FOR THE ASSURANCE IN STATUTE, REGULATION, OR AGENCY POLICY.**

No additional assurance of confidentiality is provided with this information collection. No information obtained in this information collection shall be disclosed except in accordance with the Privacy Act of 1974 (5 USC §522a). Requests for information must be made under the Freedom of Information Act and will be processed in the usual procedure to protect the confidentiality of any person.

**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 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.**

Questions of sensitive nature including any of those identified in item 11. are not found in this information collection.

**12. PROVIDE ESTIMATES OF THE HOUR BURDEN OF THE COLLECTION OF INFORMATION.**

At this time, USDA does not know the number of responses from USDA recipients and subrecipients across USDA financial assistance programs. As discussed in item 8, the burden for the data collection will be accounted for within the individual USDA agency and staff office information collection packages using this data collection. USDA is requesting approval for 1 respondent and a 6-hour place holder. The time per data collection includes the time for reviewing instructions, searching data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The respondents to this information collection are recipients and subrecipients of USDA programs from agencies and staff offices. The estimated annual costs to respondents cover a wide range of professions including, but not limited to applicants/borrowers, constructors, contractors, project engineer/architect, recipients, subcontractors, and

subrecipients. USDA used an estimated hourly wage of \$36.38/hour per respondent (including benefits as a percentage of total compensation for private trades of 29.9 percent) from the “all occupations category”, U.S. Department of Labor mean hourly rates in the United States in May 2021 ([https://www.bls.gov/oes/current/oes\\_nat.htm](https://www.bls.gov/oes/current/oes_nat.htm)).

- 13. PROVIDE AN ESTIMATE OF THE TOTAL ANNUAL COST BURDEN TO RESPONDENTS OR RECORDKEEPERS RESULTING FROM THE COLLECTION OF INFORMATION. (DO NOT INCLUDE THE COST OF ANY HOUR BURDEN SHOWN IN ITEMS 12 AND 14).**

There are no capital/start-up or ongoing operation/maintenance costs associated with this information collection.

- 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, OPERATION 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 ALSO MAY AGGREGATE COST ESTIMATES FROM ITEMS 12, 13, AND 14 IN A SINGLE TABLE.**

Government costs will be covered under information collections by each program using this data collection.

- 15. EXPLAIN THE REASON FOR ANY PROGRAM CHANGES OR ADJUSTMENTS REPORTED IN ITEMS 13 OR 14 OF THE OMB FORM 83-1.**

This is a new information collection. The burden estimate for this collection is solely attributed to the fact that the data collection will be used throughout USDA.

- 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.**

The results of this information collection will not be published, so no plans will be implemented.

- 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.**

USDA plans to display the new OMB control number and expiration date for the information collection on the data collection after approval.

**18. EXPLAIN EACH EXCEPTION TO THE CERTIFICATION STATEMENT IDENTIFIED IN ITEM 19, "CERTIFICATION FOR PAPERWORK REDUCTION ACT SUBMISSIONS," OF OMB FORM 83-1.**

USDA is able to certify compliance with all provisions under Item 19 of OMB Form 83-I.