



United States
Department of
Agriculture

Office of the
Chief
Financial Officer

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TO: Brenda Aguilar
Branch Chief
Office of Information and Regulatory Affairs
Office of Management and Budget

THROUGH: Levi Harrell
USDA Information Collection Officer

FROM: Lynn Moaney
Deputy Chief Financial Officer

SUBJECT: Request for Emergency Approval for a New Information Collection
Request—Build America, Buy America Waiver Request Data
Collection Common Form

The U.S. Department of Agriculture’s (USDA) Office of the Chief Financial Officer (OCFO) requests the Office of Management and Budget (OMB) consider an emergency approval of a new information collection *Build America, Buy America (BABA) Waiver Request Data Collection* common form. This new information collection is essential to USDA agencies and government wide agencies. This common form will provide the ability to effectively approve waiver requests for recipients and subrecipients in accordance with the Infrastructure Investment and Jobs Act (“IIJA”), Pub. L. No. 117-58, which includes the [Build America Buy America Act](#) (Pub. L. No. 117-58 §§ 70901-52) and OMB Memorandum [M-22-11](#) “Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure.”

OMB Memorandum M-22-11 was issued guidance on April 18, 2022 and established that Buy America Build America provisions should be included in all new or modified financial assistance awards by May 14, 2022. That timeframe was very challenging to meet. USDA has processes in place to collect Buy America waivers, but not one to accommodate this newly imposed data collection. The new data collection will allow USDA agencies and government wide agencies comply with the Infrastructure, Investment s and Jobs Act, specifically with the Buy America, Build American Act provisions and OMB Memorandum M-22-11. This information collection will be used by all impacted USDA financial assistance-making agencies and staff offices and is designed for adoption by other governmentwide agencies.

USDA is requesting emergency approval by January 31, 2023, to start accepting the BABA Waiver Request Data Collection from recipients and subrecipients. This information collection will assist recipients who need a waiver from the Buy America requirements to be able to execute their awards. This information collection is needed quickly as there are projects that have not been obligated, pending this collection. This information collection will keep projects moving and prevent immediate delays to critically important infrastructure projects. USDA seeks to

employ a standard waiver data collection to ensure uniformity across programs and improve the customer experience by standardizing the USDA waiver request process.

This is a new information collection. At this time, USDA does not know the number of responses from USDA recipients and subrecipients across USDA financial assistance programs.

USDA agencies, staff offices and governmentwide agencies need to collect the following information listed in OMB M-22-11 and additional data elements for additional information from recipients and subrecipients:

1. Submitter Type
2. Submitter Contact Information
3. Submitter First and Last Name
4. Submitter Email
5. Submitter Phone Number
6. Infrastructure project description and location to the extent known.
7. Total Funding, including Federal and non-Federal shares.
8. Total estimated infrastructure expenditures, including all Federal and non-Federal shares (to the extent known).
9. Is this a waiver for a specific product or category of products?
10. Listing of Materials, Technical Specifications, and Quantity.
 - 10.1 Technical specifications description of the items to be waived, if applicable
 - 10.2 Quantity required
11. Waiver Type Choose one of the three waiver types listed in this section and only answer the questions applicable to the chosen waiver type.
 - 11.1 Nonavailability Waiver
 - 11.1.1 A description of the due diligence performed by the applicant, engineer/architect, or contractor, including names and contact information of the manufacturers, distributors, or suppliers contacted for quotes (minimum 3), and the responses provided.
 - 11.1.2 If one or more respondent indicated that they could provide a Build America Buy America (BABA) compliant item, but you are requesting the non-availability waiver because the lead time to obtain the BABA compliant item is excessive, indicate below how the difference in lead time between a BABA compliant and non-compliant item is going to cause the project to miss a significant milestone or deadline.
 - 11.2 Unreasonable Cost Waiver
 - 11.2.1 What is the additional cost of the BABA compliant items, compared to using iron and steel, manufactured products, and construction materials of non-domestic or unknown origin? Attach documentation of prices for BABA compliant and non-compliant items for items to be included in the cost comparison. Attach an additional PDF file if needed.
 - 11.2.2 What is the additional administrative cost for compliance with the BABA requirements? Attach a certification from the engineer or architect attesting to the actual or expected additional administrative cost. Attach an additional PDF file if needed.

- 11.2.3 The BABA requirements will be waived for individual items until the total additional cost of BABA compliance is less than 25 percent of the total project costs. Which items is the applicant requesting to be waived from the BABA requirements to reduce costs below the 25 percent cost threshold?
- 11.3 Public Interest Waiver
12. Waiver Additional Information
13. Anticipated Impacts
14. Certifying Official Name
15. Certifying Official Signature
16. Date of Certification

USDA agencies, staff offices and governmentwide agencies need to collect the following information listed in OMB M-22-11 and additional data elements:

- 1A. Federal awarding agency
- 2A. Federal financial assistance program listing number
- 3A. Federal financial assistance program title
- 4A. Federal awarding agency point of contact
- 5A. FAIN and Federal awarding agency organizational
- 6A. Waiver level
- 7A. Is this a general applicability waiver?
- 8A. Agency summary and determination
- 9A. Agency Waiver
- 10A. Public Comments
- 11A. Waiver timeline

USDA is requesting to have emergency clearance of the Build America, Buy America Waiver Request Data Collection available to recipients and subrecipients prior to the 3 months or more required for the normal Paperwork Reduction Act (PRA) clearance procedures under 5 CFR part 1320 because:

- This information collection needs to be implemented quickly to avoid having further delays in existing awards or delays in issuing new awards; and
- Public harm is reasonably likely to result if normal PRA clearance procedures are followed. The public harm would be that projects would be delayed or stopped while USDA waits to have an approved form for waivers. Much needed IIJA and other awards that have waivers would be placed on hold until the Build America, Buy America Waiver Request Data Collection became available and is collected by USDA.

As indicated this memorandum, USDA is requesting an emergency clearance of the attached Build America, Buy America Waiver Request Data Collection common form from OMB as soon as possible. Given the inability to seek public comment in advance of OMB approval, as part of the emergency notice in the Federal Register, USDA will simultaneously solicit 60-days of public comment for the regular information collection as required by 5 CFR 1320.8(d).

If there are any questions or concerns, please contact Tyson Whitney, Director, Transparency and Accountability Reporting Division at Tyson.whitney@usda.gov or (202) 720-8978.

Attachment:

- Build America, Buy America Waiver Request Data Collection