

700DEPARTMENT OF TRANSPORTATION
FEDERAL TRANSIT ADMINISTRATION
SUPPORTING STATEMENT

Pre-Award, Post-Delivery Requirements Under Buy America
OMB Control No. 2132-0544

Abstract

This is a request for an extension without change of a currently approved information collection, Pre-Award, Post -Delivery Requirements Under Buy America (OMB# 2132-0544). The Build America, Buy America Act (BABA) imposes new requirements, primarily for construction materials which does not impact the collection of information. BABA does not impose a certification requirement. Waiver requirements are the same as under 49 U.S.C. 5323(j).

The Pre-Award, Post Delivery Requirements Under Buy America 49 U.S.C. Section 5323(j) and (m) provision requires that federal tax dollars used to purchase steel, iron, and manufactured goods used in a transit project are produced domestically in the United States. The total number of burden hours associated with this submission and accounted for by FTA is 2,786. This number has not changed from the previous information collection request. There is no change to the number of respondents or responses. The only change associated with this submission is a change in the cost to the respondents and the cost to the federal government. Both areas have been updated to reflect the current Department of Labor wage category and the 2023 OPM Federal salary table.

1. Circumstances that make the collection necessary.

Federal Transit Laws, 49 U.S.C. 5323(j) and (m), require that transit agencies procuring rolling stock (i.e., buses, vans, and rail vehicles) with Federal Transit Administration (FTA) funding comply with certain requirements, including Buy America, certify compliance of these requirements at the pre-award and post-delivery stages of the procurement process when using FTA funds, and maintain on file certifications.

Bidders or offerors must submit to recipients of FTA funding a total of four certifications during the procurement process— one at the pre-award stage and three more at the post-delivery stage (i.e., compliance with Buy America, compliance with Federal Motor Vehicle Safety Standards (FMVSS), and compliance with the purchaser’s specifications) --to meet the requirements of 49 U.S.C. Section 5323(j) and (m). In addition, FTA recipients are required to certify, as part of their annual Certifications and Assurances, that they will comply with pre-award and post-delivery audit requirements for rolling stock under 49 C.F.R. Part 661.

FTA requires three certifications -- a Buy America certification for manufactured products, and the Pre-Award and Post-Delivery Audit certifications which must be completed at each stage of a transit rolling stock purchase by a transit vehicle manufacturer and submitted to the FTA recipient. For manufactured products used in FTA-funded projects, only the Buy America certification is required and must be submitted by the offeror or bidder with its offer or bid on a procurement. 49 C.F.R. 661.13(b). The Buy America certification forms are available at 49 C.F.R. 661.6

(manufactured products) and 49 C.F.R. 661.12 (rolling stock). The Pre-award and Post-delivery audit certification requirements are found at 49 C.F.R. part 663 and sample certifications can be viewed at <https://www.ecfr.gov/current/title-49/subtitle-B/chapter-VI/part-663>. These certifications requirements are authorized by 49 USC 5323(j) and (m), as amended by the Fixing America's Surface Transportation Act (FAST Act), Pub. L. 114-94. Section 5323(j)(1) of 49 U.S.C. provides that, with limited exceptions, all steel, iron, and manufactured products used in FTA-funded contracts must be of U.S. origin. Section 3011 of the FAST Act amended Section 5323(j)(2)(C) of 49 U.S.C. to require that when procuring rolling stock, the cost of the components and subcomponents produced in the United States must be more than 60 percent of the cost of all components of the rolling stock and final assembly of the rolling stock must occur in the United States for rolling stock whose first vehicle is scheduled to be delivered in FY 2016 and 2017, increasing to 65 percent for FYs 2018 and 2019, and 70 percent for vehicles whose first delivery will occur in FY 2020 and beyond.

FTA regulations at 49 CFR part 661 require all bidders or offerors to certify compliance with the applicable Buy America requirements. In addition, 49 U.S.C. 5323(m) directs the Secretary of Transportation to prescribe regulations requiring a pre-award and post-delivery review of rolling stock procured with FTA funds authorized under 49 U.S.C. Chapter 53.

2. How, by whom, and for what purpose the information is to be used.

The certifications that comprise this collection of information are used by FTA grantees and FTA to ensure compliance with statutory requirements. As stated above, FTA requires manufacturers of rolling stock to provide a total of four certifications: 1) a pre-award certification produced by a vendor and given to a grantee that assures the procured rolling stock will comply with Buy America; 2) a post-award certification produced by a vendor and given to a grantee that consists of a summary report detailing the procured rolling stock's compliance with Buy America; 3) a post-award certification that the vehicle complies with FMVSS; and 4) a post-award certification that the vehicle complies with the grantee's procurement specifications. A sample of these certifications can be found in the Appendix B section of the handbook. The handbook has been uploaded under supplementary information section of ROCIS for easier reference and review.

Through the FTA Master Agreement, the recipient certifies to FTA that it will conduct pre-award and post-delivery audits of rolling stock procurements and will retain the records of the vendor's compliance with Buy America, Federal Motor Vehicle Safety Standards (FMVSS), and the purchaser's bid specifications. The Pre-Award and Post-Delivery certification forms and supporting documentation are collected and reviewed by the grantee to assure that the rolling stock complies with the applicable statutory and regulatory requirements.

Any vendor seeking to supply manufactured product(s) to an FTA grantee for a transit project requiring Buy-America compliance must provide a completed Buy America certificate as a part of the proposal for both FTA and the FTA grantee to ensure the manufacturer's compliance with Buy America requirements.

3. To what extent, the collection of information involves information technology and uses information technology to reduce the burden.

FTA provides certification language in its regulations that can be printed in an electronic form and signed. The original certification is kept in the grantee's file. However, the grantee can scan a copy as a pdf as a backup copy.

FTA reviews these certifications during the triennial reviews to ensure compliance. Also, in certain limited circumstances, FTA may investigate or initiate a compliance review, *see, e.g.*, 49 C.F.R. 661.15, in which case, documentation requests may generally be fulfilled electronically.

4. Describe efforts to identify duplication.

There is no duplication because the information requested is not required by any other source.

5. Describe methods used to minimize burden on small business or other small entities.

Certifications are required for all bidders or offerors, including small businesses or other small entities. However, the certification language is provided by FTA in its regulations and additional language to the certification should be unnecessary. Thus, the burden of certification is minimal. Only when evidence of potential Buy America issues or concerns have occurred will FTA recipients (or grantees) and manufacturers, including small businesses or other small entities be expected to verify data to confirm Buy America compliance.

6. Consequences to federal program or policy activities if collection were conducted less frequently.

To comply with the Buy America and Pre-award and Post-Delivery Audit provisions, this information cannot be collected less frequently because the applicable certificates must accompany each procurement.

7. Special circumstances that would cause an information collection to be conducted in a manner inconsistent with the guidelines in 5 CFR 1320.6.

The collection is consistent with 5 CFR 1320.6.

8. Efforts to consult with persons outside the agency to obtain their views.

A 60-day Federal Register notice was published on September 18, 2023 FR 88 Page 64023) soliciting comments prior to submission to the Office of Management and Budget (OMB). No comments were received. A 30-Day Federal Register notice was published on November 17, 2023 Vol.88 No. 221 page 80382-80383.

On October 25, 2022, FTA published a Federal Register notice announcing a two-year waiver of its Buy America domestic content requirement for certain commercially produced vans and minivans used in public transportation, due to the unavailability of compliant vehicles.

The partial waiver applies to procurements of mass-produced, unmodified vans and minivans and is critical to vanpool and public transportation services for passengers that do not require ADA-accessible vehicles.

The waiver maximizes the domestic content in these vans and minivans by requiring U.S. final assembly and U.S. manufacture of engines or motors, as reported pursuant to the American Automotive Labeling Act.

FTA has also conducted outreach following the November 15, 2021, enactment of the Build America, Buy America Act (BABA, Public Law 117–58, div. G 70901–27):

- On November 7, 2022, FTA issued a Dear Colleague Letter providing updates on the Buy America construction materials requirement implemented under BABA; and
- On February 7, 2023, FTA held a public webinar on a January 30, 2023, DOT waiver of Buy America requirements for construction materials for certain contracts and solicitations.

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

No gifts or payments are made to respondents.

10. Describe any assurance of confidentiality provided to respondents.

The certification form does not contain any confidential information. It is a statement that certifies compliance with the requirements. If there are any additional documents that are provided to FTA as part of Buy America that may contain confidential or proprietary information, that information may only be released to the extent permitted by law. See 49 C.F.R. 661.15(j)-(l).

11. Provide additional justification for any questions of a sensitive nature.

There are no questions of a sensitive nature.

12. Provide estimate of the hour burden of the information collection and annualized cost to respondents.

Estimated Annual Number of Respondents: 700

Estimated Total Annual Burden Hours: 2786

Estimated Total Cost: \$182,483

Information Collection Submission Requirements

IC Submission Requirements	Submitted (Annually, Semi-Annually, Quarterly)	Annual Respondents	Total Submissions	Burden Hours Per Submission	Annual Burden Hours
Pre-Award Certification and Signature	Per Procurement	700	700	0.16	112
Pre-Award Document Preparation	Per Procurement	700	700	2.0	1400
Post- Delivery Documentation Review	Per Procurement	700	700	1.66	1162
TOTAL		700	700	3.82	2674

Information Collection Recordkeeping Requirements

IC Recordkeeping Requirement	Submitted	Annual Respondents	Total Submissions	Burden Hours Per Submission	Annual Burden Hours
Review and Retain Certifications	Per Procurement	700	700	0.16	112
TOTAL		700	700	0.16	112

a. The hourly burden

FTA estimates that it will take transit vehicle manufacturers approximately 10 minutes (0.16 hours) to prepare and sign the one pre-award and the three post-delivery certifications. In addition, FTA estimates that it could take vehicle manufacturers up to one hour to prepare the pre-award documents and one hour to prepare the post-award documentation, totaling 2.16 hours (2.16 x 700 procurements = 1,512 hours).

FTA estimates that it will take grantees approximately 10 minutes (0.16 hours x 700 procurements = 112 hours) to review and retain the certifications and approximately 1.66 hours to review the documentation provided for the pre-award and post-delivery audits (1.66 hours x 700 procurements = 1,162 hours). Therefore, the total annual burden is estimated as follows:

1,512 hours (transit manufacturer certifications and documentation) + 112 hours (grantee recordkeeping) + 1,162 hours (grantee Buy America Reviews) = 2,786 hours.

b. Estimated annual cost

FTA estimates that the average salary of the respondent, typically Federal, State, & Local Government General and Operations Managers (occupation code 11-1021; [General and Operations Managers \(bls.gov\)](#)) has a median hourly wage of \$75.61 (hourly salary of \$59.07 weighted with a 28 percent benefits adjustment of \$16.54) according to the Bureau of Labor Statistics.

This rate is estimated because of the potential variances between the various organizations involved. The total annual cost is estimated to be \$210,649 ($\$65.50 \times 2,786$ hours).

13. Estimate of total annual cost burden to respondents or recordkeepers resulting from the collection of information (not including the cost of any hour burden shown in Items 12 and 14).

There are no additional costs beyond that shown in Items 12 and 14.

14. Estimates of annualized cost to the federal government.

FTA has a Buy America compliance review program with an estimated annual cost of **\$330,753** ($\$139,909 + \$15,000 + \$213,408$). The estimated annual cost is calculated as follows:

FTA Labor Costs Total

The estimated average grade level of Buy America compliance reviewers is GS-13 Step 5 according to the 2023 Federal Pay [SALARY TABLE 2023-DCB \(opm.gov\)](#) (average salary, \$60.83 per hour). FTA Buy America compliance reviewers spend approximately 2300 hours a year performing Buy America compliance reviews. The total estimated FTA Labor Costs are as follows: Hourly Rate (average salary, \$60.83 per hour) x Number of Hours Spent on Compliance Reviews (2300 hours/year) = Total for FTA Labor Costs **\$139,909**

FTA Travel Costs Total

\$15,000/year

Contractor Costs Total

The estimated hourly rate for FTA Buy America compliance reviewers is \$103.56 per hour. The estimated number of hours spent on compliance reviews is 1800 hours, or 200 hours per review for an estimated total of 9 reviews. Hourly Rate ($\$103.56/\text{hr}$) x Number of Hours Spent on Compliance Reviews (200 hours/review x 9 reviews = 1800 hours) = 186,408 + Contractor Travel Costs ($\$3,000/\text{project} \times 9$ projects = $\$27,000$) = Total for Contractor Costs of **\$213,408**

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14.

There are no changes to the responses in items 13 or 14 from the previously approved information collection.

16. Plans for tabulation and publication for collections of information whose results will be published.

None of the information collected will be put to statistical use.

17. If seeking approval not to display the expiration date for OMB approval, explain the reasons.

There is no reason not to display the OMB approval.

18. Explain any exception to the certification statement unidentified in Item 19 of OMB Form 83-I.

No exceptions are stated.