



January 4, 2013

Via Regulations.gov

General Services Administration, Regulatory Secretariat (MVCB)
1275 First Street NE
Washington, DC 20417

Attn: Hada Flowers/ /IC 3090-0246, Packing List Clause

**RE: General Services Administration Regulation; Information Collection
3090-0246, Packing List Clause**

Dear Ms. Flowers:

On behalf of the Technology Association of America, Inc.¹ ("TechAmerica"), I am pleased to submit the following comment to GSAR; Information Collection; Packing List Clause which the Office of Acquisition Policy at the General Services Administration (GSA, "the Agency") published in the *Federal Register* at 77 FR 66466 on November 5, 2012 and requested public comment regarding an extension of a previously approved information collection requirement from the Office of Management and Budget ("OMB"). This comment will address the Agency's estimate of the public burden of performing the information collection requirements. In short, the Agency's estimate does not accurately reflect the public burden because it is based on invalid assumptions and a flawed methodology. Consequently, TechAmerica opposes granting the Agency's requested extension under the Paperwork Reduction Act (the "Act").

A. An Extension of the Information Collection Requirement Would Violate the Fundamental Purposes of the Paperwork Reduction Act.

Granting the Agency's request for an extension would contradict the fundamental purposes of the Act. Congress intended that the Act would "minimize the paperwork burden . . . resulting from the collection of information . . . and ensure the greatest possible public benefit from and maximize the utility of information created, collected, maintained, used, shared and disseminated by or for the Federal Government."² Granting the Agency's request for an extension of its previously approved information collection requirement would contravene these essential purposes by continuing to

¹ The Technology Association of America (TechAmerica) is the leading voice for the U.S. technology industry, the driving force behind productivity growth and jobs creation in the United States and the foundation of the global innovation economy. Representing approximately 1,000 member companies of all sizes serving clients in the public and commercial sectors of the economy, it is the industry's largest advocacy organization and is dedicated to helping members' top and bottom lines. It is also the technology industry's only grassroots-to-global advocacy network, with offices in state capitals around the United States, Washington, D.C., Europe (Brussels) and Asia (Beijing). Learn more at www.TechAmerica.org.

² Paperwork Reduction Act, 44 U.S.C. § 3501.

significantly underestimate the paperwork burden imposed by this requirement. We believe that if an accurate assessment of the reporting burden were conducted, the Office of Management and Budget ("OMB") would recognize that the Agency has not met its high burden under the Act to justify the paperwork requirements. Further, the Act correctly notes that information collection creates a burden not only on the entity submitting the information, but also imposes administrative and cost burdens on the Agency that is collecting the information. The Agency's actions in this request are inconsistent with the Act's intended purpose to "minimize the cost to the Federal Government of the creation, collection, maintenance, use, dissemination, and disposition of information."³ With the Government continuing to face increased budget constraints, it is more important now than ever to minimize these costs. For these reasons, President Obama has issued a number of Executive Orders and memoranda seeking to "get rid of absurd and unnecessary paperwork requirements that waste time and money."⁴ The Agency has expended considerable amounts of its scarce resources in seeking this extension, and if the extension is granted, it would extend and perhaps increase the cost to the Government without sufficient justification. Instead of expanding or retaining information collection requirements, agencies should be seeking to create savings by reducing or eliminating such requirements.

B. The Agency Does Not Accurately Estimate the Public Burden an Extension of the Information Collection Requirement Would Create.

The Act defines the public burden an extension of the information collection would create:

Burden is the time, represented as hours spent by the public responding to Federal information collections. When an agency estimates and seeks to reduce the paperwork burden it imposes on the public, the agency must consider the time that an individual or entity spends reading and understanding a request for information, as well as the time spent

³ *Id.*

⁴ Executive Order 13563; Executive Order 13579 *available at* <http://www.whitehouse.gov/sites/default/files/omb/memoranda/2011/m11-28.pdf>; "Presidential Memoranda – Regulatory Flexibility, Small Business, and Job Creation," January 18, 2011, *available at* <http://www.whitehouse.gov/the-press-office/2011/01/18/presidential-memoranda-regulatory-flexibility-small-business-and-job-cre>; "Presidential Memoranda – Administrative Flexibility," January 18, 2011, *available at* <http://www.whitehouse.gov/the-press-office/2011/02/28/presidential-memorandum-administrative-flexibility>; "Minimizing Paperwork and Reporting Burdens; Data Call for the 2011 Information Collection Budget" *available at* http://www.whitehouse.gov/sites/default/files/omb/infocreg/icb/2011_ICB_Data_Call.pdf; President Barack Obama, "Toward a 21st Century Regulatory System," *Wall Street Journal*, January 18, 2011, *available at* <http://online.wsj.com/article/SB10001424052748703396604576088272112103698.html>; *see also* "Presidential Memoranda – Regulatory Flexibility, Small Business, and Job Creation," January 18, 2011, *available at* <http://www.whitehouse.gov/the-press-office/2011/01/18/presidential-memoranda-regulatory-flexibility-small-business-and-job-cre>; "Presidential Memoranda – Administrative Flexibility," January 18, 2011, *available at* <http://www.whitehouse.gov/the-press-office/2011/02/28/presidential-memorandum-administrative-flexibility>; "Minimizing Paperwork and Reporting Burdens; Data Call for the 2011 Information Collection Budget" *available at* http://www.whitehouse.gov/sites/default/files/omb/infocreg/icb/2011_ICB_Data_Call.pdf.

developing, compiling, recording, reviewing, and providing the information.⁵

We respectfully submit that the Agency has not faithfully applied this definition nor fully complied with its obligations under the Act and the implementing regulations in 5 C.F.R. Part 1320. See 5 C.F.R. § 1320.8 ("This review [of the information collection requirement] shall include ... [a] **specific, objectively supported** estimate of burden, which shall include, in the case of an existing collection of information, an evaluation of the burden that has been imposed by such collection." (emphasis added)). The methodology used by the Agency in this request is insufficient.

Specifically, the Agency estimates that 4,000 respondents will be subject to these requirements annually and that each respondent will submit 233 responses. It is entirely unclear how these estimates were derived. Particularly, the estimate of 233 responses per respondent seems arbitrary. GSAR 552.211-77, Packing List Clause, is required in *all GSA contracts for supplies*. Whether a shipment contains one item of supply or a thousand items, the *shipment* must include a packing list under GSAR 552.211-77. We would expect that there would be far more than 233 shipments, each accompanied by its own packing list, per respondent in a given year. There is no explanation in the Federal Register of how the Agency developed the estimated number of annual responses. We would recommend that OMB insist that the Agency provide the **actual number** of responses that are submitted annually (either the number submitted during the last year fiscal year or an estimate of the last three to five fiscal years). The Agency should be able to provide that data, and an estimate based on actual data would be much more reliable, which would further the purposes of the Act.

Additionally, the hours per response estimate is less than one minute per response. That seems unrealistically low. The total burden per response on the respondents is not merely slipping a packing list in with a shipment, but actually **creating that packing list** in the first place. GSAR 552.211-77 requires the following information:

- (1) Name and address of the consignor;
 - (2) Name and complete address of the consignee;
 - (3) Government order or requisition number;
 - (4) Government bill of lading number covering the shipment (if any); and
 - (5) Description of the material shipped, including item number, quantity, number of containers, and package number (if any).
- (b) When payment will be made by Government commercial credit card, in addition to the information in (a) above, the packing list or shipping document shall include:

⁵ Information Collection Budget of the United States Government for Fiscal Year 2010, Office of Management and Budget, Office of Information and Regulatory Affairs at 1.

- (1) Cardholder name and telephone number and
- (2) The term "Credit Card."

Collecting and verifying all this required information and then generating the list itself would certainly take more than one minute per list. It is entirely unrealistic to expect that companies could comply with all of these information-collection requirements with less than one minute of effort. Because the hours per response estimate is so off base, the total burden hours of 7,757 is entirely unreliable as well.

Also, the total burden hours provided does not actually correspond to the number of respondents (4,000), responses per Respondent (233), and hours per response (0.00833) in the Federal Register. Calculating the total burden hours from the numbers provided, using the decimal places for hours per response, yields total burden hours of almost 7,764. Alternatively, performing the same calculations using just three decimal places (0.008) yields total burden hours of 7,456. Thus it is unclear how the Agency developed the total burden hours published in the Federal Register of 7,757. We are not challenging the propriety of the underlying requirement, but we are questioning the Agency's estimate of the burden associated with that requirement and we respectfully submit that it is inadequate.

Moreover, for this and every information collection exercise the Government imposes, each respondent must not only take time to report the compiled data, but must, on a continual basis, monitor whether or not they have a need to collect data at all. If this threshold analysis indicates that such a need exists, the respondent must establish and update mechanisms to capture that data and, at the requisite reporting intervals or instances, compile the data into a format that complies with the reporting requirement. In other words, each information collection requirement effectively imposes three separate requirements on the public: (1) the need to monitor whether reporting is required; (2) the need to compile and collect the required information; and (3) the need to disclose that information to the Government. Each of these requirements demands time of the respondent, but the Agency's estimate only accounts for the third aspect, which generally is the least time consuming. The Agency should reassess the estimated total burden hours provided as part of this request and revise those estimates to more accurately reflect the total burden noted in the Act and above.

C. The Collective Burden of Compliance with the Information Collection Requirement Greatly Exceeds the Agency's Estimate and Outweighs Any Potential Utility of the Extension.

In addition to the burden the information collection in this request imposes on individual respondents, there is an immense collective burden imposed on all respondents. OMB estimates that, in Fiscal Year 2010, the public spent 8.8 billion hours responding to information collections.⁶ This estimate is ten percent (10 percent), or one billion hours less than the previous fiscal year. While this reduction seems to represent a victory in furthering the purposes of the Act, it is unlikely these estimates provide an accurate picture of the overall burden. In the same report, OMB identifies four causes of the paperwork burden change: (1) adjustments to agency burden estimates; (2) new statutory requirements; (3) discretionary agency actions; and (4) lapses in OMB approval.⁷ OMB found that, of these four causes, adjustments "accounted for most of the overall decrease in Federal paperwork burden in FY 2010."⁸

Based on a review of the acquisition-related Information Collection waiver requests published in the Federal Register between June of 2008 and June of 2011, using the Government's estimates, there are over 30 million total hours, across all respondents, of information collection burden required of the government acquisition community annually.⁹ As noted above and highlighted below, the methodology behind these estimates is woefully inadequate, and consequently, the total burden and the associated costs are far higher than the Agency estimates. Such a burdensome paperwork requirement imposes unnecessary expenses for both the Government and the respondents, without demonstrating a clear value to the taxpayer that would justify the additional cost.

While the Agency is under immense pressure to reduce the number of information collection hours it imposes upon the public, it should not avoid its statutory responsibility by providing an artificially low estimate of the burden. We respectfully submit that assessing the impact in a horizontal fashion as part of a total burden on respondents was the intent, if not the letter, of the Act. The Agency should be responsible for assessing the total information collection burden they create and the need for extending this additional burden in that context. Further, OMB should make a comparable cumulative assessment across the entire Federal Government and objectively consider the need to increase or sustain that burden as part of their review of this request.

⁶ *Supra* note 5 at iv.

⁷ *Supra* note 5 at 2.

⁸ *Id.* at 6.

⁹ See attachment.

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D. The Government's Response to the Paperwork Reduction Act Waiver for FAR Case 2007-006 is Instructive on the Total Burden for Respondents.

As noted above, TechAmerica challenges the methodology behind estimating the burden on each respondent to comply with this information collection requirement. We believe that the Agency's estimated burden hours should be modified in this instance for the same reason that they were modified upward in FAR Case 2007-006. In that case, a final rule contained an information collection requirement that brought it under the authority of the Act. The Government initially estimated a total burden of three hours per response. During the open comment period, only one comment was received; however, that was sufficient to show that a modification of the Government's estimate was necessary. After comment, the Government conceded that the methodology and the resultant estimate did not accurately reflect the total burden, as defined in the Act, imposed upon the company. After modification, the revised burden was sixty hours per response, meaning that the initial annual reporting burden of three hours was off by a factor of twenty.

The Agency has failed in this information collection waiver request to rationalize how it arrived at the estimated burden as required by the Act and the implementing regulations in 5 C.F.R. Part 1320. We submit that the Agency's current estimate has failed to consider the time necessary for collection and review of the information prior to submission. Because the Agency has not effectively measured the burden as defined in the Act under this request nor demonstrated that the burden is justified from the perspective of the taxpayer, Government, the Agency, or the respondents, we respectfully submit that the Agency's request should be denied.

TechAmerica appreciates this opportunity to comment, and would be pleased to respond to any questions the Agency may have on these comments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "A.R. Hodgkins" with a stylized flourish at the end.

A.R. "Trey" Hodgkins, III
Senior Vice President