



AmericanCoatings

ASSOCIATIONSM

March 13, 2023

Deidre A. Harrison
Deputy Controller
Office of Federal Financial Management
Office of Management and Budget (OMB)
Submitted electronically to www.regulations.gov

Re: American Coatings Association’s Comment on OMB Proposed Rulemaking: Guidance for Grants and Agreements

Dear Deputy Controller Harrison,

The American Coatings Association (ACA)¹ is pleased to provide comments on the proposed rule to revise Office of Management and Budget (OMB) Guidance for Grants and Agreements (OMB Guidance) supporting the implementation of the Build America, Buy America Act (BABA) provisions of the Infrastructure Investment and Jobs Act. The OMB Guidance, issued in April 2022, provided guidance to Federal agencies on the domestic preference provisions for specific infrastructure projects as well as a waiver process that could be implemented under certain criteria. ACA members manufacture paint and coatings used extensively throughout infrastructure projects across the nation, including coatings for steel structures, coatings used in traffic marking, coatings used for corrosion prevention, and many, many other coatings categories.

ACA appreciates OMB’s efforts to clarify and revise M-22-11 *Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure*, issued on April 18, 2022. The OMB Guidance, though preliminary and nonbinding, advised federal agencies that the domestic content procurement preference requires that all iron, steel, manufactured products, and construction materials used in covered infrastructure projects are produced in the United States, as quantified by criteria specified in the act. Because of the restricted definition of “construction materials,” paints and coatings fell within the requirements for “manufactured products”, making paints and coatings subject to the “cost of components” threshold of 55%.

Paints and Coatings are Construction Materials and Should be Considered as Such Under BABA

ACA urges the Office of Federal Financial Management (OFFM) to include paint and coatings as construction materials specifically enumerated in Section 184.3. The proposed rule indicates that the

¹ ACA represents the more than \$28 billion paint and coatings manufacturing industry in the United States, operating in all 50 states and employing over 60,000 people in the manufacture and distribution of its products.

definition of “construction material” includes those materials listed in paragraph 1. ACA asks that “paint and coatings” be included in this list along with non-ferrous metals, plastic and polymer-based products, glass, fiber optic cable, optical fiber, lumber, and drywall.

The Manufacturing Standard for Paint and Coatings to Determine Whether the Materials are Produced in the United States Should Include the Process of Initial Mixing to Final Packaging

The standards for determining whether paints and coatings are manufactured in America should include the process from the initial mixing of raw materials through the packaging process. ACA is supportive of the concept proposed in the rulemaking “All manufacturing processes, from initial mixing of pigments, resins, solvents and additives through final canning or packaging, occurred in the United States.” However, ACA is concerned that the requirement of the mixing of pigments, resins, solvents and additives in every coatings formula will eliminate coatings that do not contain pigments, for example. There are coatings products used in infrastructure projects that do not require all four of these raw materials. For example, water repellent coatings for concrete and wood products, utilized on many historic buildings, do not contain pigments. Some anti-graffiti coatings for concrete and stone do not incorporate materials that would typically be classified as “resins” and anti-graffiti coatings are a standard specification for the first floor of many public buildings. Consequently, ACA recommends that the manufacturing standard be modified to reflect that coatings formulas may contain some of these elements but is not required to contain all of them. ACA recommends the following: “All manufacturing processes, from the initial mixing of pigments, resins, solvents *or* additives through final canning or packaging, occurred in the United States.”

The Manufacturing Standard for Paint and Coatings Should Include Field-Applied and As Well As Shop-Applied Coatings

Paints and coatings should not be limited to those coating products applied in the field. It is not uncommon for structural steel parts, precast concrete, and manufactured stone for infrastructure projects to require several different types of coatings including a primer, an intermediate coating, and a topcoat. Some or all of these coatings could be applied in a shop prior to the steel being shipped to the project site. Alternatively, these coatings could be field-applied as well. The only difference between this pre-applied coating and one applied in the field is the location where application occurred. Regardless of the location of application, all of these coatings are construction materials.

Limiting construction materials to paint and coatings applied in the field could significantly hamper efforts to upgrade infrastructure projects with new, innovative coatings technology. New, technology-driven coating materials can make our public works safer, more resilient and sustainable, and respond better to extreme weather (like rising sea levels and significant temperature swings), and other 21st century challenges (like chemical damage from pollutants). Unprotected steel structures in harsh environments can lose as much as 1 mm in thickness in as little as five years, which quick leads to structural weakness. But a thin protective coating applied to the steel, whether in the shop or in the field, can slow or delay the corrosion process and significantly extend the life of the steel. Another example of a shop-applied coating are protective pipe coatings used for water transmission. These internal coatings are shop-applied while the corrosion-resistant external coating

may be field-applied. All of these coatings are essential construction materials and should be considered as such under BABA.

As active partners in the infrastructure industry, ACA appreciates the opportunity to provide information about our coatings products and engage in the development of guidance for the application of the domestic preference standards of the Buy America provisions. ACA urges OFFM to include paints and coatings as specified construction materials in the final rule and provide our industry with clear guidance on this issue.

If you have any questions on these issues, please do not hesitate to contact me.

Best regards,

//s//

Heidi K. McAuliffe, Esq.
Vice President, Government Affairs

Submitted via Regulations.gov