



# AmericanCoatings

ASSOCIATION<sup>SM</sup>

March 6, 2024

The Honorable Rick Crawford, Chairman  
Committee on Transportation and Infrastructure  
Subcommittee on Highways and Transit  
United States House of Representatives  
Washington, D.C. 20515

The Honorable Elizabeth Holmes Norton, Ranking  
Committee on Transportation and Infrastructure  
Subcommittee on Highways and Transit  
United States House of Representative  
Washington, D.C. 20515

Dear Chairman Crawford and Ranking Member Norton,

On behalf of the almost 310,000 employees of the paint and coatings industry, we write to express our support for the Subcommittee's efforts to better understand the Biden Administration's implementation of Build America, Buy America, including those provisions that were in the *Infrastructure Investment and Jobs Act (IIJA)*. American Coatings Association (ACA)<sup>1</sup> 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.

On November 15, 2021, the Infrastructure Investment and Jobs Act (IIJA) was signed into law. The Build America, Buy America Act ("BABA"), establishing a domestic content procurement requirement for iron and steel products, manufactured products, and construction materials for infrastructure projects receiving Federal financial assistance, was incorporated into IIJA in Sections 70901 to 70927.

In a final rule issued on August 23, 2023, the Office of Management and Budget (OMB) revised its guidance to add a new part 184 to title 2 of the Code of Federal Regulations to implement the requirements of BABA. *Guidance for Grants and Agreements*, 88 Fed. Reg. 57,750 (Dep't Commerce Aug. 23, 2023) (final rule; notification of final guidance). The final rule became effective on October 23, 2023.<sup>2</sup>

### **Application of BABA's Buy America Requirements to Coatings Requires Clarification**

Under BABA's Buy America requirements, "none of the funds made available for a Federal financial assistance program for infrastructure may be obligated for a project unless all of the iron, steel, manufactured products, and

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<sup>1</sup> 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.

<sup>2</sup> On October 25, 2023, OMB issued further BABA implementation guidance that "rescinds and replaces" OMB's initial April 2022 guidance by removing provisions that are in "direct conflict" with the formal rules contained in Part 184. Most notably, OMB's October guidance removes the general standard initially issued by OMB for determining the country of origin for "construction materials" and instead identifies the specific manufacturing processes that must be performed in the United States in order for each particular category of listed construction material to be considered "produced in the U.S." OMB's October guidance also provided additional guidance regarding the waiver process, to supplement the formal rules contained in 2 CFR Part 184.

construction materials used in the project are produced in the United States.” BABA 70914(a). The manufacturing standard that will apply to coatings used on these infrastructure projects will depend on whether the coating is:

- (1) applied to a “construction material;”
- (2) applied to an “iron or steel product;”
- (3) brought to the work site as a coating for incorporation into an infrastructure project (*i.e.*, the coating is the “manufactured product”); or
- (4) applied to a “manufactured product” before the product is brought to the work site (*i.e.*, the coating is a component of the “manufactured product”).

Each of these scenarios is relevant and quite possible for the use of coatings in infrastructure projects. Consequently, each of these scenarios will require manufacturers to undertake a different analysis in order to determine how to classify and treat coatings under BABA. Consider the following scenarios:

- If the coating is applied to the “construction material”, it is not considered a “construction material” and does not need to be domestically sourced.
- The coating may or may not change the classification of the “construction material” that it is being applied to and, if it does, the coating could then be considered a component of the “manufactured product” and subject to other requirements.
- Coatings manufacturers also need to determine if the coating is deemed to be a “minor addition” to the “construction material” as this can change the classification of the “construction material” as well.
- For coatings applied to iron or steel, it must be applied in the United States.
- Coatings brought to the worksite and applied onsite will likely be considered a “manufactured product” but coatings that are shop-applied will likely be treated as a “component” of a “manufactured product”.

Please note that in all of these scenarios, the coatings product at issue could be essentially the same or a similar product. To make this even more complex, there is no clarifying information or guidance on the following terms: “manufactured in the United States” or “minor addition”.

As active and important partners in the infrastructure industry, the coatings industry needs clear guidance on the application of the BABA requirements. We support this committee’s interest in exploring these requirements further and urge the committee to engage OMB and other relevant agencies in order to clarify and streamline the requirements applicable to the coatings industry.

ACA appreciates the opportunity to provide this information. If there is any other information that would be helpful in your review and follow-up activities, please do not hesitate to contact me directly.

Kind regards,

A handwritten signature in blue ink, appearing to read "Heidi K. McAuliffe", enclosed in a rectangular box.

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