



# AmericanCoatings

ASSOCIATION<sup>SM</sup>

May 13, 2023

Shailen P. Bhatt  
Administrator  
Federal Highway Administration  
U.S Department of Transportation  
1200 New Jersey Avenue SE  
Washington, DC 20500  
Submitted electronically to [www.regulations.gov](http://www.regulations.gov)

**RE: American Coatings Association's Comment on FHWA Notice of Proposed Rulemaking RIN 2125-AG13, Docket No. FHWA – 2023-0037**

Dear Administrator Bhatt,

The American Coatings Association (ACA)<sup>1</sup> is pleased to provide comments on the proposed rule to discontinue the general waiver of Buy America requirements for manufactured products and require FHWA recipients to apply Buy America requirements to manufactured products. In addition, FHWA has indicated that it proposes to amend its current regulations to mirror the standards OMB has established for Build America, Buy America's (BABA) domestic content procurement preference for manufactured products. 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 urges FHWA to continue to operate under the General Waiver of Buy America requirements for manufactured products as it has since 1983. ACA does not recommend application of BABA requirements to manufactured products at this time.

Application of the BABA requirements to coatings used in infrastructure projects is complex and confusing. ACA has consistently sought clarification of these requirements from OMB and, as recently as March 6, 2024, has asked Congress to address this topic. Analysis of the requirements indicates that the same or very similar coatings products could be classified differently depending on whether the coating is field applied or applied to a specific substrate prior to being brought to the worksite. Questions on classification of a coating product is only the beginning of the analysis for coatings manufacturers. Only after a coating product being used in an infrastructure project being funded with federal funds is correctly classified can questions regarding the cost of components be considered. Both of these issues are complex and require clarification before coatings companies can begin to consider the impact.

---

<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.

FHWA seems to indicate that they are considering issuing targeted waivers in order to ensure that manufactured products needed for highway construction projects are available when necessary. However, ACA believes that the current General Waiver remains the most prudent and efficient method of ensuring that manufactured products are available. Targeted waivers, issued project by project, will only further complicate the current situation for manufacturers.

As active and important partners in the infrastructure industry, the coatings industry needs clear guidance on the application of BABA requirements before FHWA takes any action to revoke its General Waiver for manufactured products.

Consequently, ACA urges FHWA to retain the General Waiver for manufactured products.

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\*\**