



June 6, 2022

The Honorable Celeste Drake  
Made in America Director  
Office of Management and Budget  
Washington, DC 20500

**Re: Docket No. OMB-2022-0007, Request for Information: Construction Materials Used in Federal Assistance Projects for Infrastructure and End Products Manufactured in the United States Under the Build America, Buy America Act.**

Dear Director Drake:

The American Road & Transportation Builders Association (ARTBA) respectfully provides these comments in response to the request for information (RFI) published by the White House Office of Management and Budget (OMB) on behalf of its Made in America Office (MIAO) on April 21. The RFI relates to implementation of “Build America, Buy America” provisions (Title IX) within the Infrastructure Investment & Jobs Act (IIJA).

#### Expansion of Buy America to Construction Materials

While Buy America coverage has long applied to iron, steel and certain manufactured products permanently incorporated in federal-aid highway and transit projects, the IIJA expands that coverage to “construction materials,” which now must be “produced in the United States.” According to the MIAO, the materials in question include non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber; and drywall. The law explicitly exempts cement and cementitious materials; aggregates such as stone, sand, or gravel; and aggregate binding agents or additives. (ARTBA strongly supported this exclusion during the legislative process.)

On April 18, OMB released guidance to federal agencies for implementation of the “Build America, Buy America” title. The guidance included short-term options for agencies, including use of waivers, to ensure these new provisions are not disruptive to the process of delivering federal-aid projects.

The construction materials provision was to take effect on May 14. Prior to that occurrence, the U.S. Department of Transportation (U.S. DOT) proposed, and eventually finalized, a temporary waiver of 180 days, effectively delaying this new requirement for federal-aid projects within its purview.

The department cited the need to “gather data on domestic sourcing capacity to inform stronger standards” and “implement the requirement in a way that is not overly burdensome.” ARTBA supported the waiver and urged U.S. DOT to further extend it in whole or part if necessary.

ARTBA’s transportation contractor-members currently face a confluence of challenges, both welcome and unwelcome, shaping the environment in which U.S. DOT and its partner transportation agencies will implement the Buy America revisions. They include:

- Record federal transportation investment from the IIJA, with a strong industry commitment to putting that funding to work as soon as possible;
- The industry’s ongoing dedication to delivering projects while maximizing safety, efficiency and cost-effectiveness; and
- Unprecedented cost increases and delayed availability for key commodities used in transportation construction. According to ARTBA’s analysis of national data from the Bureau of Labor Statistics,<sup>1</sup> these costs have increased 21 percent over the past year. Among many other effects, a number of specialty contractors and suppliers – many of which are small businesses or participants in the Disadvantaged Business Enterprise (DBE) program – are confronting financial hardship as a result.

We have been gratified that administration officials – including those at the MIAO – have voiced their own commitment to ramping up “Build America, Buy America” while keeping projects on time and on budget. Moreover, indiscriminate short-term implementation of the new Buy America provisions has the potential of exacerbating the already-difficult market conditions described above. Immediately limiting the contractor's options for materials could further increase costs and scarcity for many of them.

ARTBA believes appropriate use of waivers, such as that just initiated by U.S. DOT, is part of a thoughtful and methodical means of implementing these new requirements. We contemplated this approach in [previous comments](#) to the Made in America Office as they shaped their guidance.

### Construction Materials vs. Manufactured Products

OMB has asked for feedback on distinguishing between these two categories of Buy America coverage. For implementation purposes, a product should fall under one or the other.

Manufactured products have presented a particular challenge for many transportation construction contractors. For many years, the Federal Highway Administration (FHWA) has applied a nationwide waiver relating to their use on federal-aid highway projects. However, the terms of that waiver have been subject to interpretation from state to state, especially the treatment of “commercially-available off-the-shelf” (COTS) products. In some cases, this lack of

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<sup>1</sup> <https://www.artba.org/economics/materials-dashboard/>

clarity has resulted in needless cost increases and delays, as contractors have been instructed to trace and certify the origin of inexpensive components such as nuts, bolts, washers and tie wire, or even filament within light bulbs.

During the Obama administration in 2012, FHWA issued a memorandum<sup>2</sup> seeking clarification between iron and steel products (covered by Buy America) and manufactured products (subject to waiver from Buy America coverage). At that time, the agency stated:

- A manufactured product is not subject to Buy America unless it is “manufactured predominantly of steel or iron.”
- A product is “manufactured predominantly of steel or iron if the product consists of at least 90% steel or iron content when it is delivered to the job site for installation” (including the sites where any precast concrete products are manufactured).
- “Miscellaneous steel or iron components” are not subject to Buy America. Examples included faucets, door hardware, light bulbs, cabinets, covers, shelves, clamps, fittings, sleeves, washers, bolts, nuts, screws, tie wire, spacers, chairs, lifting hooks and door hinges.

Subsequent litigation invalidated the memorandum on procedural grounds, although the policy behind it was not questioned. Nonetheless, as described above, there is still less than ideal clarity about the scope of Buy America coverage in this area.

ARTBA urges MIAO and U.S. DOT to reexamine the content of FHWA’s 2012 memorandum, update it to incorporate the IIJA’s terms (including coverage of construction materials) and use it to clarify the distinctions between covered products on the one hand (iron, steel and construction materials) and those subject to the needed waiver (manufactured products, including COTS) on the other.

We are also cognizant that the IIJA requires periodic review of nationwide waivers such as that applying to manufactured products by FHWA. We believe the circumstances described above will comprise a compelling argument to maintain and improve this waiver when the time is appropriate.

### Specifics on Construction Materials

As part of the Buy America, Build America implementation process, MIAO and U.S. DOT are seeking input on the extent to which the construction materials in question are currently domestically manufactured. The following are sample comments from ARTBA members queried:

- “For each product we considered, there will be ten that we did not. For that, six months is not long enough to figure this out. Current supply chain issues will compound this.”

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<sup>2</sup> “Clarification of Manufactured Products under Buy America,” December 21, 2012.

- “Many of our utility owners have said it will take over a year to change suppliers if it is required, as they do utilize many foreign glass/ceramic and polymer elements.”
- “With PVC having a supply shortage today, this new requirement will compound the issue.”
- “Few, if any, electrical components are manufactured here, or could be. Same with cable – we are now importing copper from out of the USA to meet \$5.00 per pound copper demand.”
- “Many mechanical and electrical sub-components come from abroad. It is similar to the automobile chip manufacturing problem.”
- “We have a hard time getting composite lumber, piling and sheeting. We recently had to buy from Guyana.”
- “Stainless steel hardware is nearly impossible to get in the U.S.”
- “The administration should perform a comprehensive study of the availability of domestically produced products based on the demand for these products instead of placing the burden on industry to ask for exemptions.”
- “It is extremely difficult to know exactly what we will need waivers for right now. This is such a fluid environment; we won’t necessarily know which materials will be problematic until getting into the heart of construction season in the summer and fall. For this reason, I would advocate for a much longer waiver period. The availability of products can and is changing overnight.”
- “The manufacturers/suppliers of many types of materials do not typically worry about where their product is coming from. They do not currently track this and will struggle to track this in the future. If something can be purchased at a local store such as Lowes/Home Depot/etc., then the contractor cannot get a certification.”

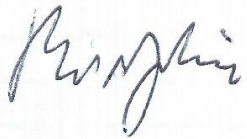
In addition, ARTBA members have provided lists of literally hundreds of products typically used on transportation construction projects, all of which will need to be classified under the various categories for Buy America coverage (or exemption). At the end of these comments, as in our previous submission to the MIAO, we again list products used to build a typical highway rest area project. This illustrates the challenge at hand and underscores the need for heightened clarity, especially regarding manufactured products and COTS, as described above.

### Conclusion

ARTBA appreciates the ongoing dialogue in this critical area of federal policy. We will continue to utilize our members' expertise in this regard and provide their insights to MIAO and other federal agencies. Please call on us any time. I am available as needed at [rjuliano@artba.org](mailto:rjuliano@artba.org) and (202) 683-1004.

Thank you for your consideration.

Sincerely,

A handwritten signature in dark ink, appearing to read "R. Juliano", is centered below the word "Sincerely,".

Richard A. Juliano, CAE  
General Counsel

Sample Listing of Products Needed for Rest Area in Federal-Aid Highway Project

1. Switch Boxes and Covers
2. Conduit Fasteners
3. Conduit & Fittings
4. Fire Alarm Devices - Panel Box, Guts are made with Metal parts, i.e. screws, contacts, termination bars
5. Lightning Protection
6. Panel Boards, Transformer, Breakers / Disconnects
7. Wire / Cable
8. Lighting Package #1
9. Lighting Package #2
10. Electrical Devices (Receptacle & Switches)
11. Generator #1
12. Generator #2
13. Fire Alarm Devices resubmittal on Compatibility
14. Fire Alarm Devices - Panel Box, Guts are made with Metal parts, i.e. screws, contacts, termination bars
15. Type C Fixture Resubmittal #1
16. Lighting Package Resubmittal
17. Type C Fixture Resubmittal #2
18. PLUMBING PACKAGE (ZURN FLUSH VALVE)
19. PLUMBING PACKAGE (ZURN URINAL FLUSH VALVE)
20. PLUMBING PACKAGE (ZURN URINAL FLUSH VALVE CACCUM BREAKER)
21. PLUMBING PACKAGE (ZURN SINGLE BASIN SINK FAUCET)
22. PLUMBING PACKAGE (MCGUIRE OPEN GRID P.O. PLUG)
23. PLUMBING PACKAGE (MCGUIRE CHROME PLATE P TRAP)
24. PLUMBING PACKAGE (SURE GRIP FLANGE)
25. PLUMBING PACKAGE (MECHANICAL MIXING VALVE)
26. PLUMBING PACKAGE (CHICAGO MOP SINK HD FAUCET)
27. PLUMBING PACKAGE (CHICAGO WALL MOUNTED MECAHNICAL ROOM FAUCET)
28. PLUMBING PACKAGE (MOP HANGER)
29. PLUMBING PACKAGE (ELKAY WATER FOUNTAINS)
30. PLUMBING PACKAGE (RHEEM WATER HEATER)
31. PLUMBING PACKAGE (AO SMITH WATER HEATER)
32. PLUMBING PACKAGE (DRAIN PAN 20")
33. PLUMBING PACKAGE (THERMAL EXPANSION TANK)
34. PLUMBING PACKAGE (ZURN FLOOD DRAIN -1)
35. SCOTTOS PLUMBING PACKAGE (ZURN FLOOD DRAIN -1)
36. PLUMBING PACKAGE (ZURN FLOOD DRAIN -2)
37. PLUMBING PACKAGE (ANTI SIOHON WALL FUACETS)
38. WINDOW PACKAGE YKK (YHS50TU Aluminum Frames), Authorized Installer Certification  
Screws are zinc plated steel
39. Hager - Hinges AB8000
40. Hager - Concealed Leaf Hing 780-112HD
41. Hager - inges AB8000
42. Hager - Concealed Leaf Hing 780-112HD
43. Hager - Non Beveled Push Plates 40R

44. Hager - Non Beveled Pull Plate A44
45. Hager - Door Protection Plate 190S
46. Hager - Concave Wall Stop 236W
47. Hager - 5" Panic Threshold 520S
48. Hager - Smoke Seal System 726
49. Falcon (Allegion) M.A. Series Storeroom - MA 581-F07
50. Falcon (Allegion) M.A. Series Class Room - MA 561-F-05
51. Falcon (Allegion) M.A. Series Dormitory / Exit Lock MA 571-F13
52. Falcon (Allegion) M.A. Series Class Room Dead Lock - MA911 F29
53. Falcon (Allegion) M.A. Series Interchangeable Cores MA 911 56221C
54. Falcon (Allegion) M.A. Series Cylinder & Competitor Key Way C607 (7 pin)
55. Falcon (Allegion) M.A. Series Lever / Knob "Dane Gala (DG)
56. MATCON MASONRY SUBMITTAL (Horizontal Joint Reinforcement)
57. MATCON MASONRY SUBMITTAL (GROUT)
58. MATCON MASONRY SUBMITTAL (2) - REMAINING SUBMITTALS (TOPPING SLAB MIX, Revised CMU, Masonry Sand, Joint Reinforcement, Mix Designs for Concrete Masonry & Grout, Rebar Positioner, Ties, Joint Tie, Mesh Chairs)
59. MATCON MASONRY REBAR SUBMITTAL
60. BRITTON AIR HVAC PACKAGE SUBMITTAL (VENTS)
61. BRITTON AIR HVAC PACKAGE SUBMITTAL (ENERGY RECOVER UNITS)
62. BRITTON AIR HVAC PACKAGE SUBMITTAL (DUCTWORK)
63. BRITTON AIR HVAC PACKAGE SUBMITTAL (HVAC SYSTEM)
64. UNITED STEEL TRUSS/ EMBED SHOP DRAWINGS (EMBEDS USED TO CONNECT CMU TO TRUSSES)
65. MATCON MASONRY MISC. ITEMS (TEES, CHAIRS, JOINT POSITIONER, WIRE)
66. UNITED STEEL ADDED TRUSS/ EMBED SHOP DRAWINGS (ADDED DETAIL 8 & 9 - NEEDED ADDITIONAL EMBED)
67. MATCON STAINLESS STEEL FLASHING, TERMINATION BAR, DRIP EDGE, SEALANT
68. TOILET ACCESSORIES (STAINLESS STEEL MIRROR)
69. TOILET ACCESSORIES (STAINLESS STEEL MIRROR)
70. TOILET ACCESSORIES (TOILET PAPER DISPENSER)
71. TOILET ACCESSORIES (TOILET PARTITIONS)
72. TOILET ACCESSORIES (HAND DRYERS)
73. TOILET ACCESSORIES (DOUBLE ROBE / COAT HOOKS)
74. TOILET ACCESSORIES (ADA GRAB BARS)
75. TOILET ACCESSORIES (WALL MOUNTED WASTE RECEPTACLE)
76. TOILET ACCESSORIES (NAPKIN DISPOSAL)
77. TOILET ACCESSORIES (WALL MOUNTED SOAP DISPENSER)
78. TOILET ACCESSORIES (ADULT CHANGING TABLE)
79. TOILET ACCESSORIES (MOP HOLDER)
80. Roof Truss Sections, Details & Calculations (INCLUDED ALL COMMENTS/ CORRECTIONS FROM FDOT & EOR)
81. DRYWALL / INSULATION PACKAGE (DRYWALL, MUD, BATT INSULATION)
82. SITE LIGHTING PACKAGE 52.01, 52.02,52.03,52.04
83. Pull Boxes
84. Light Poles Aluminum
85. Light Poles Bases & Bolts
86. Light Poles & Luminar

87. Cable Distribution Submittal "Cooper"
88. Load Center Meter Socket
89. Load Center Safety Switch
90. Load Center Fuse
91. Load Center Transformer
92. Load Center Enclosure
93. Load Center Neutral Kit
94. Load Center Main Breakers
95. Load Center Contactor
96. Load Center Panelboard
97. Load Center CPT
98. Load Center H-O-A
99. Load Center Photo Cell
100. Load Center SPD
101. Load Center Component Enclosure
102. MADER ELECTRIC MOTORS (LIFT STATION MOTORS, HATCH, TRASH BASKET, ACCESSORIES)
103. ROOFING SUBMITTAL Roof Panels, Underlayment, Fasteners, Tape, & Insulation
104. SITE FURNISHINGS (SMOKERS OUTPOST, TRASH CAN, BIKE RACK, JOB BOARD)
105. SITE FURNISHINGS - ADA PICNIC TABLE & Non-ADA PICNIC TABLE - RESUBMITTAL
106. BRITTON AIR HVAC LOUVER SUBMITTAL
107. Metal Deck Shop Drawing (resubmittal)
108. Metal Decking Accessories (Screws)
109. Plumbing Misc. Items (Hangers, Couplings, Copper Piping)
110. Plumbing Misc. Items - Water Heater Resubmittal
111. BRITTON AIR LG DUCTLESS SPLIT SYSTEM #1
112. BRITTON AIR LG DUCTLESS SPLIT SYSTEM #2
113. SEAWALL FDOT 5500IV NEW CONCRETE MIX
114. RUSTEOLUM TNEMIC LIFT STATION COATING
115. GULF TILE - TILE SELECTION SUBMITTAL
116. ROOFING NOA ENGINEERING
117. ROOFING NOA ENGINEERING RESUBMITTAL INCLUDING SOFFIT
118. ROOFING NOA ENGINEERING WITH SOFFIT
119. CORBELS
120. FDOT INDEX 530 SMALL PAVILION
121. SURE SEAL TRAP PRIMER
122. RESTROOM BUILDING SIGNAGE
123. TILE ANTIFRACTURE MEMBRANE
124. CONDUIT AND LIGHT POLE BASES