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PUBLIC  
TRANSPORTATION  
ASSOCIATION**

June 6, 2022

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**APTA.COM**

Ms. Celeste Drake

Director, Made in America Office

Office of Management and Budget

MBX.OMB.MadeInAmerica@omb.eop.gov

Subject: Docket No. 2022-08491

Dear Ms. Drake:

The American Public Transportation Association (APTA) represents an \$80 billion industry that directly employs 450,000 people and supports millions of private-sector jobs. We are pleased to offer comments regarding the Office of Management and Budget's (OMB) Request for Information (RFI) published in the *Federal Register* at 87 FR 23888 on April 21, 2022. The comment period for the RFI ended on May 23, 2022, but was extended to June 6, 2022, in a notice published in the *Federal Register* at 87 FR 32063 on May 26, 2022. OMB posed several questions to the public regarding the Infrastructure Investment and Jobs Act (IIJA) requirements that "any infrastructure projects funded with Federal financial assistance use only construction materials produced in the United States". APTA members have much experience working with the Department of Transportation's (DOT) Buy America(n) requirements and offer comments to OMB for its consideration as it moves forward with government-wide guidance on this topic.

APTA members appreciate that OMB is faced with a daunting task of defining construction materials consistent with the IIJA's mandate. The potential scope of the definition is broad and is project specific. For example, the Federal Railroad Administration (FRA) and the Federal Transit Administration (FTA) might review where miscellaneous hardware is sourced, but the Federal Highway Administration (FHWA) does not look at the source of those materials. Further, some materials used in safety sensitive alternative energy products (e.g., natural gas energy) are not available in the United States.

Our members strongly encourage OMB to ensure that whatever definition it settles on for construction materials be clear and consistent and consider how it will impact other, more mature Buy America requirements, especially those administered by DOT.

In order to level the playing field for all bidders/contractors, it is imperative for OMB to coordinate with Federal recipients and construction industry primes/general contractors to standardize end products and components so that all parties can find common ground for which specific materials must be U.S.-manufactured.

In addition, OMB should recognize that all manufacturing processes are different. For example, the manufacturing process for steel is more complicated than a manufacturing process for lumber or glass. Different Federal agencies consider manufacturing processes for different materials at different stages. There is no consistency, and, therefore, it would be difficult to provide information on this question without further, extensive research into industry practices and Federal approaches.

OMB asks whether “final assembly” should be considered a manufacturing process. In our members’ experience, final assembly relates to products arriving on site to be installed on site. If lumber and hardware arrive on site and can be used to build a facility without further processing, then final assembly is not relevant. If the lumber must be processed further with other elements for it to be included in the facility, then final assembly could be considered a manufacturing process. If so, it is incumbent upon OMB to be clear and consistent when final assembly is considered part of the manufacturing process.

OMB asks whether U.S. manufacturers will be able to supply construction materials to meet the IJA requirements in sufficient and reasonably available quantities. Our members believe this question cannot be answered without a consideration of cost. Given the current supply chain constraints, moving to all U.S. sourced construction materials will inevitably lead to project sponsors paying a premium to meet the Act’s requirements. The question then becomes whether the market/industry can absorb a doubling, tripling, or even a quadrupling of costs for construction materials. Material cost determines winners and losers in the bid process as they may equal 50-80 percent of total bid/contract price. If a manufacturer has a global platform, it will need to determine whether there are enough incentives in the U.S. supply chain to justify setting up shop in the U.S. to meet IJA requirements. OMB should consider exceptions that allow a U.S. supplier to partner with a foreign supplier to provide construction materials, especially for high-tech products eligible for a general public interest waiver similar to FTA’s 49 CFR Part 661.7 for microprocessors, computers, microcomputers, or software microprocessors.

Regarding waiver transparency and supplier scouting programs to identify gaps in domestic sourcing, our members are very familiar with the market research process as part of transit project planning. This market research is used to determine if multiple agencies have need for certain materials for a project, and whether a shortage will result if the projects occur simultaneously. Our members suggest developing a federal approach to identifying projects, construction materials needed, gaps, and research available domestic and foreign sources to meet the need. Often, market research can fall short because it does not take a broad enough view. In other words, the shortage can look like it will impact a handful of agencies, when, in fact, it is a

national problem. We recognize the NIST Hollings Manufacturing Extension Project was designed to address this issue, but for the past several years it has not met this need.

Finally, OMB should focus on developing national supplier guidelines for construction materials to allow project sponsors to quickly and easily identify a supplier who meets the guidelines and then choose which one to use for their project. This would help our members meet the IJA mandate and put these historic investments to work.

APTA appreciates the opportunity to comment on this RFI and if there are any questions regarding this letter, please contact APTA's General Counsel, Linda Ford at [lford@apta.com](mailto:lford@apta.com).

Sincerely,

A handwritten signature in black ink that reads "Paul P. Skoutelas". The signature is written in a cursive style with a prominent "P" and "S".

Paul P. Skoutelas  
President and CEO