



**American  
Public Transportation  
Association**

November 19, 2022

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**PRESIDENT AND CEO**

Paul P. Skoutelas

Docket Operations  
U.S. Department of Transportation  
1200 New Jersey Avenue, SE  
West Building, Ground Floor  
Room W12-140  
Washington, DC 20590-0001

Re: DOT-OST-2022-0124

Dear Docket Clerk:

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 Department of Transportation's (DOT) Notice That the Build America, Buy America Requirement for Construction Materials Applies Effective November 10, 2022, and Notice of Proposed Waiver of Buy America Requirements for De Minimis Costs, Small Grants, and Minor Components published in the *Federal Register* at 87 FR 68576 on November 15, 2022.

APTA applauds the Administration's initiative to ensure the use of American materials when building American infrastructure because it is critical to job creation, timely project delivery, quality, and building domestic capacity. APTA's members share this goal and are supportive of the two waivers but would like the Administration to take into account several important points.

First, APTA reminds DOT that the Bipartisan Infrastructure Law (BIL) and the Build America, Buy America Act (BABA) apply to all federally funded infrastructure projects. Thus, APTA members encourage the Administration to take the lead in creating a list or database of domestically produced construction materials and certify that those materials listed are BABA compliant. The Federal Government taking the lead is the best way to move toward building domestic capacity quickly and efficiently and achieving compliance with the Administration's goals under BABA.

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Further, given the Department's recent effort to reform the Disadvantaged Business Enterprise (DBE) program, APTA members are concerned that the Department's insistence on agencies, contractors, and subcontractors certifying compliance could negatively impact a DBE's ability to participate in public transportation projects, which runs counter to DOT's efforts to revise DBE regulations.

Second, DOT seeks comment on the proposed percentage and dollar thresholds for applying the waiver, including whether those thresholds should be higher or lower than the levels in the proposal. APTA recommends a higher threshold and that DOT eliminate the 5 percent threshold and simply utilize the total value of the non-compliant products that is no more than \$1,000,000 of total allowable costs.

Third, while APTA appreciates DOT's attempt to provide this waiver to minimize the impact of BABA's requirement, APTA's members spent a significant amount of time developing comments to the original Requests for Information, and DOT has not responded to a single comment or concern in those submissions. Further, our members are also concerned DOT is moving forward with the BABA requirement and this waiver even though the Office of Management and Budget (OMB) has not provided final guidance, as required by the law. How can our members be assured that the final OMB guidance will be consistent with this waiver?

Finally, APTA again requests that DOT delay the effective date of the BABA construction materials requirement until OMB issues its statutorily required final guidance and provides the industry sufficient time (at least one year) to adjust to the new requirements. If DOT does not delay the effective date to one year from the issuance of OMB's final guidance, APTA requests, at the very least, that DOT adjust the waiver so that it does not apply to any contract solicited prior to issuance of final guidance. Contracts solicited prior to the date OMB issues final guidance would not contain provisions regarding the new BABA construction materials requirements because there is no binding guidance. This approach also will make compliance by APTA's members and contractors easier as they will be able to plan to manage grant funding to minimize the number of contracts using a mix of pre- and post-waiver funds.

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 yours,



Paul P. Skoutelas  
President and CEO