



AMERICAN
PUBLIC
TRANSPORTATION
ASSOCIATION

May 6, 2016

Docket Operations Facility,
U.S. Department of Transportation,
1200 New Jersey Avenue S.E., W12-140
Washington, DC 20590

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**ACTING
PRESIDENT & CEO**

Richard A. White

RE: Docket No. FTA-2016-0019

Dear Docket Clerk:

On behalf of the more than 1,500 member organizations of the American Public Transportation Association (APTA), I write to provide comments on the Federal Transit Administration (FTA) request for comments on the Notice of Proposed Policy Statement on the Implementation of the Phased Increase in Domestic Content Under the Buy America Waiver for Rolling Stock published on April 6, 2016 at 81 FR 20049.

About APTA

APTA is a non-profit international trade association of more than 1,500 public and private member organizations, including public transit systems; high-speed intercity passenger rail agencies; planning, design, construction and finance firms; product and service providers; academic institutions; state associations and departments of transportation.

General Comments

We disagree with the proposed means of implementing the increase of domestic content in rolling stock outlined in FTA's proposed policy.

FTA's proposal would define "produced" as the date a vehicle is delivered, and key the domestic content requirements for vehicles delivered to that date.

This is impractical for a number of reasons. Predicting out-year content would be theoretical, at best. An original equipment manufacturer would necessarily look to supply contracts not yet completed or executed, plan to potentially deliver different

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vehicle configurations over the life of a single contract, accept increased pricing risk based on those different configurations, and certify compliance with the increased requirements years in advance.

Those OEMs would, in turn, look to suppliers to certify, also years in advance, the configuration and content of components to be delivered in those out years, and to forecast when a vehicle might be delivered to ascertain what standard will apply.

Given that orders are not necessarily filled in single deliveries, even a single annual exercise of an option could create a need to track, audit, and report completely separate Buy America calculations for buses delivered in the final month of one fiscal year and a few weeks later in the next fiscal year.

Pre and post-delivery audits, under this proposal, would take on a new complexity and likely a new cost. These costs would ultimately be borne by the agencies, reducing the dollars available to actually purchase the very rolling stock at issue.

In short, this proposal is unreasonable and unworkable. Instead, FTA should propose a public interest waiver, much as it has for pre *FAST Act* contracts and those solicited prior to passage of the Act. The waiver would simply apply the standard in effect on the original solicitation date throughout the life of the contract.

We have considered proposing use of the contract date to fix the content requirements but further analysis demonstrates even that would be impractical. Agencies and OEMs cannot always accurately forecast when a contract will be signed. A slip in contract date, when near a transition, could render an entire set of proposals obsolete, at great expense to proposers and delay for agencies. An OEM's suppliers would face even greater uncertainty. In short, we believe fixing the Buy America content at a pre-proposal time certain is the only effective means of ensuring content requirements are not left to chance.

We appreciate the opportunity to assist FTA in this important endeavor. For additional information, please contact James LaRusch, APTA's chief counsel and vice president corporate affairs, at (202) 496-4808 or jlarsch@apta.com.

Sincerely yours,



Richard A. White
Acting President & CEO

RAW/jpl:jr