



Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

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Chairman

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Katherine W. Dedrick, Staff Director

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September 28, 2022

The Honorable Nuria Fernandez
Administrator
Federal Transit Administration
1200 New Jersey Avenue SE
Washington, DC 20590

Dear Administrator Fernandez:

As the Biden-Harris Administration works to implement the historic infrastructure funding levels provided by the Infrastructure Investment and Jobs Act (P.L. 117-58), one of the keys to ensuring these investments create jobs and boost U.S. manufacturing will be the strong enforcement of Buy America laws and protections against predatory state-owned enterprises (SOEs). Federal transportation programs have long benefitted from some of the strongest domestic content requirements on the books, ensuring that federal dollars support U.S. manufacturing and family-wage American jobs.

One of the greatest threats to a strong U.S. transportation manufacturing sector is the rise of predatory Chinese state-owned and -supported enterprises, which rely on government-subsidized, below-market pricing to drive legitimate competitors out of business. Through Section 7613 of the National Defense Authorization Act for Fiscal Year 2020 (P.L. 116-92), codified at 49 USC 5323(u), Congress sought to address this concern by prohibiting the use of federal transit funds to purchase rolling stock from SOEs in most cases. Unfortunately, the law also provides four transit agencies with a permanent exemption to those protections.

While I strongly oppose this exemption and have helped pass provisions to eliminate it through the House of Representatives twice, the Senate has not yet acted. As long as the exemption remains codified, it is essential for the Federal Transit Administration (FTA) and transit agencies that continue to procure SOE-built rolling stock to ensure that SOEs comply with all aspects of transit Buy America requirements, to which they are still subject.

The FTA has recently undertaken an enhanced Buy America compliance review of one such rolling stock procurement by an exempted transit agency from a Chinese SOE. I support FTA's proactive steps on this matter, and I urge FTA to undertake enhanced Buy America compliance reviews for all such procurements from SOEs. FTA's thorough use of its enforcement and oversight

authority is necessary to verify SOE compliance with Buy America requirements, and ensure that the playing field is not further tilted against domestic manufacturers.

In addition to strong FTA enforcement, it is also critical that exempt transit agencies conduct robust oversight if they continue to procure SOE-manufactured rolling stock. While a number of oversight best practices for all federal transit recipients are outlined in FTA's "Conducting Pre-Award and Post-Delivery Audits for Rolling Stock Procurements" handbook, FTA could further assist by identifying Buy America oversight standards and reporting requirements specifically targeted to transit agencies that procure rolling stock from SOEs.

Such oversight standards could include recommendations to conduct additional audits beyond the currently mandated pre-award and post-delivery audits, as I understand has been done by one exempt transit agency in the past; practices for deeper vetting and verification of component and subcomponent cost and origin data; and other oversight enhancements as identified by FTA. While thorough Buy America compliance reviews are critical for all federally-funded procurements, they take on even greater significance for transit agencies purchasing rolling stock from entities that are intent on gaming the system and undermining legitimate competition. While transit agencies may be inclined to assume good faith by manufacturers in most of their procurements, this assumption should not be extended to predatory SOEs. FTA issuing a set of targeted oversight standards specifically for SOE procurements could help transit agencies ensure SOE compliance with Buy America until such time as Congress can fully prohibit transit agencies from making such procurements with federal funds.

I also encourage FTA to require robust and publicly-available reporting by exempt transit agencies of all mandatory and voluntary oversight steps they take when procuring rolling stock from SOEs. Such reporting would ensure transit agencies are considering the full suite of oversight tools at their disposal, create more transparency for stakeholders, and allow for better oversight of these procurements at all levels of government.

The Biden-Harris Administration has taken numerous steps to support U.S. workers and promote domestic manufacturing. Conducting enhanced FTA oversight of SOE procurements and helping transit agencies improve the rigor of their own oversight will allow the federal government to more thoroughly track Buy America compliance, and verify whether the benefits of these rules are being realized under these procurements. Information gathered from this more rigorous oversight can support FTA's Buy America work more broadly, and will inform Congress of the true impacts of allowing this loophole to continue.

Thank you for your consideration of this request.

Sincerely,



PETER A. DeFAZIO
Chair