

Comment from Alliance for American Manufacturing (AAM)

Comment from Paul Hastings LLP

November 4, 2022



The Honorable Janet Yellen  
Secretary of the Treasury  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue NW  
Washington, DC 20220

Re: Request for Comments on Prevailing Wage, Apprenticeship, Domestic Content, and Energy Communities Requirements Under the Act Commonly Known as the Inflation Reduction Act of 2022 ([Notice 2022-51](#))

Dear Secretary Yellen:

The Alliance for American Manufacturing (AAM) appreciates the opportunity to provide public comments in response to the Department of the Treasury's (Treasury) Request for Comments on Prevailing Wage, Apprenticeship, Domestic Content, and Energy Communities Requirements Under the Act Commonly Known as the Inflation Reduction Act of 2022 (Notice 2022-51).

These comments focus on the Domestic Content aspects of the Request for Comments.

**About the Alliance for American Manufacturing (AAM)**

AAM is a non-profit, non-partisan partnership formed in 2007 by some of America's leading manufacturers and the United Steelworkers. Our mission is to strengthen American manufacturing and create new private-sector jobs through smart public policies. We believe that an innovative and growing manufacturing base is vital to America's economic and national security, as well as to providing good jobs for future generations. AAM achieves its mission through research, public education, advocacy, strategic communications, and coalition building around the issues that matter most to America's manufacturers and workers.

**Introduction**

The recently enacted Inflation Reduction Act (IRA) (Pub. L. 117-169) extends and modifies existing renewable energy tax credits (i.e., the Production Tax Credit (PTC) and the Investment Tax Credit (ITC)), in addition to creating several new clean energy tax credits.<sup>1</sup> Notably, the new law incentivizes the use of domestically produced iron, steel, and manufactured products in energy related projects with an additional "Bonus Credit" available to qualifying tax credit recipients. If "the taxpayer certifies... that any steel, iron, or manufactured product...was produced in the United States..." the amount of the credit is increased by 10 percent.

As the Treasury develops guidance regarding domestic content requirements for Bonus Credit amounts, it must adopt robust origin standards that recognize upstream material inputs and supply chain components and subcomponents that are produced in the United States. The adoption of permissive origin standards or loopholes, on the other hand, would not be appropriate as doing so would

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<sup>1</sup> New tax credits to which domestic content provisions apply include: the Technology Neutral Clean Electricity Production Credit (which will replace the PTC beginning in 2025); the Clean Electricity Investment Credit (which will replace the ITC beginning in 2025); and the Advanced Manufacturing Production Credit.

undermine the entire policy – making the Bonus Credit attainable without the use of domestically produced iron, steel, and manufactured products. Permissive origin standards and loopholes would eliminate the intended outcome of the Bonus Credit incentive, which is for developers of clean energy projects to use iron, steel, and manufactured products that were produced by American workers throughout the domestic supply chain.

As Treasury seeks to further clarify the IRA statutory text, it should respond to any ambiguities in a manner that adheres to the clear intent of Congress, the directives of President Biden, and the expectations of the taxpayer. Accordingly, Treasury should implement the Bonus Credit in a manner that applies broadly to iron, steel, and manufactured products with a clear requirement that domestically produced upstream components, subcomponents, and material inputs be used – ensuring that the economic benefits of this Bonus Credit are accrued by an entire supply chain of American workers and not merely at the final stage of manufacturing or assembly.

### **Congress Imposed “Strict Domestic Content Standards” Requiring “American Materials”**

The authors of the provision and committee where the language originated have made it abundantly clear that the intent of the provision is for the Bonus Credit to be attainable only if the taxpayer can certify that a robust origin standard for “produced in the United States” is met:

- The Senate Finance Committee – the committee where the Bonus Credit provision originated – released a summary stating that “the taxpayer must ensure that *any* steel, iron, or manufactured product *that is part of the project* at the time of completion was produced in the United States”; and, that “steel and iron must be *100 percent* produced in the United States.”<sup>2</sup> (Emphasis added)
- Senator Bob Casey – a member of the Senate Finance Committee and the author of the Bonus Credit provision – issued a press release stating that the purpose is “to give a bonus to new clean energy investments *made with American materials*.” Moreover, the press release adds that the law “includes Senator Casey’s amendments that will require some clean energy projects to meet *strict domestic content standards* to receive tax credits...[to] ensure that the U.S. is developing and manufacturing clean energy here at home.”<sup>3</sup> (Emphasis added)
- Senator Sherrod Brown – a member of the Senate Finance Committee and instrumental in the enactment of the Bonus Credit provision – issued a press release stating that the IRA includes

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<sup>2</sup> Senate Finance Committee Summary of Subtitle D – Energy Security. Link: <https://www.finance.senate.gov/imo/media/doc/Summary%20of%20Subtitle%20D%20-%20Energy%20Security.pdf>

<sup>3</sup> “Casey Applauds Senate Passage of Inflation Reduction Act, Historic Bill to Lower Costs for Families and Tackle Climate Crisis,” Senator Bob Casey News Release. Aug. 7, 2022. Link: <https://www.casey.senate.gov/news/releases/casey-applauds-senate-passage-of-inflation-reduction-act-historic-bill-to-lower-costs-for-families-and-tackle-climate-crisis>

“Buy America/domestic content *requirements for the steel, iron, and manufactured products that go into the construction.*”<sup>4</sup> (Emphasis added)

### **White House Touts “Made in America” Provisions**

Similarly, the Biden-Harris administration has consistently advocated for policies that incentivize and leverage the build out of our clean energy and other critical infrastructure to rebuild U.S. industrial capabilities and supply chains – both for economic and national security purposes:

- A White House Fact Sheet echoes the clear intent outlined by the Senate Finance Committee and its members responsible for authoring the Bonus Credit language, saying that the IRA “establishes Make it in America provisions for the use of American-made equipment for clean energy production.” The Fact Sheet touts the intent to “strengthen America’s manufacturing base” whereby “clean energy tax credits are increased if the amount of *American steel* used in wind projects meets the domestic content threshold.”<sup>5</sup> (Emphasis added)
- President Biden has been consistent since running for the Office of the President in his aspirations to create millions of good union jobs as the nation moves “ambitiously to generate clean, American-made electricity, while building the infrastructure to electrify major sectors of our economy, meet the existential threat of climate change,”<sup>6</sup> and, at the same time, “power new demand for American products, materials, and services.”<sup>7</sup>
- According to a July 28, 2021, White House Fact Sheet, “At his first Cabinet meeting, the President made it clear that supporting U.S.-based manufacturing through procurement was a top priority”; and, “In his first week in office, President Biden signed Executive Order 14005, *Ensuring the Future is Made in All of America by All of America’s Workers*, launching a whole-of-government initiative to strengthen the use of federal procurement to support American manufacturing.”<sup>8</sup>
- This emphasis on domestic supply chains is further reflected in Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad*. In E.O. 14008, the President affirmed that “[b]y providing...*robust standards for the market*” it is the policy of the United States to

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<sup>4</sup> “SENATE PASSES INFLATION REDUCTION ACT: Senate Measure will Lower Drug Prices for Older Ohioans, Reduce Health Care Costs, Grow Ohio’s Renewable Energy Industries, Hold Wall Street Accountable,” Senator Sherrod Brown Press Release. Aug. 7, 2022. Link: <https://www.brown.senate.gov/newsroom/press/release/sherrod-brown-senate-passes-inflation-reduction-act>

<sup>5</sup> “FACT SHEET: The Inflation Reduction Act Supports Workers and Families,” White House Statements and Releases. Aug. 19, 2022. Link: <https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/19/fact-sheet-the-inflation-reduction-act-supports-workers-and-families/>

<sup>6</sup> <https://joebiden.com/clean-energy/>

<sup>7</sup> <https://joebiden.com/made-in-america/>

<sup>8</sup> “FACT SHEET: Biden-Harris Administration Issues Proposed Buy American Rule, Advancing the President’s Commitment to Ensuring the Future of America is Made in America by All of America’s Workers,” White House Statements and Releases. July 28, 2021. <https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/28/fact-sheet-biden-harris-administration-issues-proposed-buy-american-rule-advancing-the-presidents-commitment-to-ensuring-the-future-of-america-is-made-in-america-by-all-of-americas/>

“catalyze private sector investment into, and accelerate the advancement of America’s industrial capacity to supply, domestic clean energy, buildings, vehicles, and other necessary products and materials.” (Emphasis added)

### **American Voters Demand Strong Domestic Sourcing Requirements**

American taxpayers strongly support domestic sourcing requirements. According to a public opinion survey of likely 2020 general election voters:<sup>9</sup>

- American voters overwhelmingly support Buy America policies. In fact, 80 percent support “requiring that all taxpayer-funded infrastructure projects use American-made goods and materials.”
- 84 percent favor “[making] sure all types of these infrastructure projects are held to the same Buy America standard: including pipelines and energy infrastructure...” Ensuring that America’s clean energy infrastructure adheres to domestic sourcing enjoyed large majority support across all political affiliations, including 81 percent of Democrats, 78 percent of Independents, and 92 percent of Republicans.
- With respect to origin standards, 79 percent favor “[ensuring] products marked as ‘American-made’ are not just assembled here with foreign parts and components.” Again, large majorities across party affiliation supported origin standards that are backed by domestically produced inputs.
- When presented with the option of choosing between the “lowest bidder” or a project “built by American workers, using American-made products,” the choice was clear with 75 percent believing that American-made infrastructure was preferable.

Congress, President Biden, and the taxpayer all understand that benefits of domestic content policies are maximized when strong standards are set for determining a product’s origin. Treasury must reject any implementing policies and loopholes that would result in a weak origin standard. A policy misstep would eviscerate the multiplier effect of the Bonus Credit policy, resulting in lost opportunity, forsaken economic return for the nation, and fewer jobs for American workers.

### **Responses to Treasury RFI Questions**

***.03(1)(a) What regulations, if any, under 49 C.F.R. 661 (such as 49 C.F.R. 661.5 or 661.6) should apply in determining whether the requirements of section §§ 45(b)(9)(B) and 45Y(g)(11)(B) are satisfied? Why?***

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<sup>9</sup> *National Survey of 1,200 Likely 2020 Voters General Election*, The Mellman Group & Public Opinion Strategies. Conducted Mar. 20-28, 2019. Link: [https://s3-us-west-2.amazonaws.com/aamweb/2019\\_Slide\\_Deck\\_-\\_Infrastructure\\_and\\_Buy\\_America\\_FINAL.pdf](https://s3-us-west-2.amazonaws.com/aamweb/2019_Slide_Deck_-_Infrastructure_and_Buy_America_FINAL.pdf)

*Congress Did Not Leave Much Discretion for Treasury to Construe Origin Standards Under Sections 45(b) and 45Y*

Congress directs Treasury's construction of the § 45(b) domestic content requirements for Bonus Credit eligibility to be administered in a manner consistent with the Federal Transit Administration's (FTA) regulations implementing the Buy America law applied to federal assistance for public transportation infrastructure (49 C.F.R. Part 661). Specifically, as enacted, Congress requires that in order to be eligible for the Bonus Credit for domestic content that the taxpayer certify to Treasury with respect to any qualified facility "that any steel, iron, or manufactured product which is a component of a such a facility (upon completion of construction) was produced in the United States (as determined under section 661 of title 49, Code of Federal Regulations)."

Congress did not, however, afford Treasury much discretion to construe the basic origin standards for "iron and steel," "manufactured products" that "are components of a qualified facility," or the domestic component content standards necessary for a qualified facility to be eligible for the applicable Bonus Credits. Rather, Congress legislated the domestic content origin requirements of credit eligible qualified facilities and the domestic origin components thereof. Moreover, Congress incorporates by reference a regulatory origin standard for iron and steel that is well-defined and well-established, further limiting Treasury's discretion to interpret the applicable statutory language.

*Origin Under FTA's Buy America Regulation*

As background, the FTA's Buy America regulation at 49 CFR § 661.5 includes origin standards for "iron and steel," for "manufactured products," and for components of manufactured products. For iron and steel, the FTA's regulations require that "[a]ll steel and iron manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives." 49 CFR § 661.5(b). This is colloquially known as the "melting" or "melt and pour" standard, which requires that steel and iron be melted and further processed in the United States for domestic origin treatment.

For a manufactured product to be considered "produced in the United States" under FTA's regulations, "(1) [a]ll of the manufacturing processes for that product must take place in the United States; and (2) [a]ll of the components of the product must be of U.S. origin." Additionally, "[a] component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents." 49 CFR § 661.5(d).

*Steel or Iron*

As to "steel or iron," Congress specifically directed Treasury to apply the Bonus Credit eligibility in a manner consistent with section 661.5 of the FTA's Buy America regulations. Congress references 49 C.F.R. 661 in the Bonus Credit statute as a means of imposing the robust origin standard for iron and steel products in 49 C.F.R. 661.5(b), which states that "[a]ll steel and iron manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives." As noted above, this standard generally requires melting and further processing and fabrication of the steel or iron casting to occur in the United States. Congress chose this optimal "melt and pour" standard because it ensures that the jobs and investment associated with steelmaking occur in the United States.

It should be noted that while the reference to 49 C.F.R. 661 is included in subparagraph “(i) IN GENERAL” it is only subsequently referenced in (ii) for “STEEL AND IRON” but not in subparagraph “(iii) for “MANUFACTURED PRODUCT.” This is an important distinction and a clear indication of Congress’s intent. A plain reading of the legislative language makes clear Congress’s intent that all steel or iron incorporated into a qualified facility must meet the “all manufacturing processes” (aka “melting” and all subsequent processing) standard consistent with FTA’s regulations.

Congress is consistent in directing application of the “melted and poured” standard for iron and steel in qualifying for the Bonus Credit as in other recent laws. FTA’s iron and steel origin standard is effectively to that which Congress legislated in Section 70912(6) of the “Build America, Buy America” Act (BABA) requirements, enacted as part of the Bipartisan Infrastructure Law (BIL). Section 70912(6) states that “[t]he term ‘produced in the United States’ means in the case of iron or steel products...that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States”

Furthermore, a comparable “melted and poured” origin standard for iron and steel was adopted in regulation in January 2020 for direct government procurements covered by the Buy American Act (BAA) and was subsequently codified by Congress in November 2021 in Section 70922(a) of the BIL, which states that “[f]or purposes of this section, manufactured articles, materials, and supplies of iron and steel are deemed manufactured in the United States only if all manufacturing processes involved in the production of such iron and steel, from the initial melting stage through the application of coatings, occurs in the United States.”

#### *The IRA and FTA Regulations Disparate Approach to “Manufactured Products”*

Beyond steel or iron, it is likely impossible to implement the Bonus Credit provisions in a manner consistent with FTA’s regulations without departing from the nomenclature used in §§ 45(b) and 45Y. Although Congress directed Treasury to construe the term “produced in the United States” in manners consistent with FTA’s Buy America regulations’ origin standards for “iron and steel” and for “manufactured products,” the legislation’s specificity as to the origin requirements for the qualified facility and for “manufactured products *which are components of a qualified facility*” renders those references as irreconcilable with FTA’s Buy America regulatory origin standards. (Emphasis added).

As noted above, under the FTA’s Buy America regulations, a *manufactured product* is considered “produced in the United States” if (1) all of the manufacturing processes for that product take place in the United States; and (2) all of the components of the product are of U.S. origin. Furthermore, under FTA’s regulations, a component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents. 49 CFR § 661.5(d). By contrast, in legislating the Bonus Credit provisions, Congress treats as “domestic,” for purposes of the Bonus Credit eligibility, those “manufactured products” that were “mined, produced or manufactured” in the United States.

The clause “mined, produced and manufactured” has interpretive precedent in existing federal domestic procurement preference laws. Specifically, the Federal Buy American Act (BAA) requires generally that the Federal government procure only unmanufactured articles that have been “mined or produced in

the United States” or manufactured articles that have been “manufactured in the United States” from articles, materials, or supplies *mined, produced, or manufactured* in the United States. 41 U.S.C. Ch. 83. (Emphasis added).

FTA’s regulatory origin standard for “manufactured products” (manufacture in the United States AND 100% domestic component content) is inconsistent with the origin standard Congress applies to the § 45 Bonus Credit provision (*mined, produced or manufactured*). There is a stark contrast between a regulatory standard that requires both manufacture in the United States and 100% domestic component content and a statutory standard that merely requires products to be “mined, produced or manufactured” in the United States. Such an approach is more in line with the FTA’s regulatory origin standard for “components” of “manufactured products.”

Moreover, because it requires (a) construction in the United States; and (b) minimum adjusted percentages content of domestic origin manufactured product (read: *component*),<sup>10</sup> the §§ 45 and 45Y Bonus Credit statute applies an overall origin standard to “qualified facilities” that is more analogous to, and certainly more evocative of, the origin standard for “manufactured products” as they are treated under FTA’s Buy America regulations.

Further underscoring Treasury’s limited discretion to interpret §§ 45(b) and 45Y with FTA’s Buy America regulations, the IRA Bonus Credit provision’s domestic content requirements for qualified facilities substantially departs from the FTA’s regulatory origin standard for “manufactured products.” Whereas FTA’s Buy America regulations require for domestic origin that manufactured products have 100 percent domestic component content, the IRA permits Bonus Credit eligibility for qualified facilities that merely meet 20 percent or 40 percent domestic component content.

In the aggregate, these disparities between the §§ 45(b) and 45Y and FTA’s Buy America regulations and Congress’s pinpoint reference to 49 CFR 661.5(b) for steel or iron – but not for “manufactured products” – illustrate that the only manner to construe the Bonus Credit requirements consistent with the standard for “produced in the United States” under Part 661 of FTA’s regulations is relative to the “melting” standard for iron and steel.

***.03(1)(c) Should the definitions of “steel” and “iron” under 49 C.F.R. 661.3, 661.5(b) and (c) be used for purposes of defining those terms under §§ 45(b)(9)(B) and 45Y(g)(11)(B)? If not, what alternative definitions should be used?***

Congress references 49 C.F.R. 661 in the Bonus Credit statute as a means of imposing the robust origin standard for iron and steel products in 49 C.F.R. 661.5(b), which states that “[a]ll steel and iron manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives.” Congress made clear its intent that the domestic steel and iron conditions for Bonus Credit eligibility are robust and broadly applicable: “the taxpayer must ensure that *any* steel, iron, or manufactured product *that is part of the project* at the time of completion was

<sup>10</sup> Congress set the adjusted percentages for the bonus credit eligibility to be 40 percent generally and 20 percent for offshore wind facilities.



produced in the United States”; and that “steel and iron must be 100 percent produced in the United States.”<sup>11</sup> (Emphasis added.)

In further construing “steel” and “iron” under §§ 45(b)(9)(B) and 45Y(g)(11)(B), Treasury would be wrong to use the FTA’s Buy America regulatory definitions, which, because of their scope and applicability, are narrowly tailored to materials more typically incorporated into public transit infrastructure. For instance, in its appendix to § 661.3 – which provides an illustrative list of “end products” in supplement to the regulatory definition for that term, Congress includes a list of “steel and iron end products” that is largely limited to transit infrastructure items (i.e., “track work, including running rail, contact rail and turnouts”). Treasury would arbitrarily narrow the scope of iron and steel under §§ 45 and 45Y if it improperly hews to a similar scope of iron or steel materials.

Moreover, the FTA’s Buy America requirements for steel and iron are expressly and broadly applied to “all construction materials made primarily of iron or steel” but also qualified by language that limits the construction materials to those used in “infrastructure projects such as transit and maintenance facilities, rail lines, and bridges.” Clearly Congress did not intend to limit the Bonus Credit’s steel and iron requirements to those iron or steel construction materials used in public transit infrastructure projects.

Treasury should broadly apply iron and steel origin requirements analogous of 49 CFR § 661.5(b) to all iron and steel construction materials in a qualified facility and should be careful to avoid a construction of the legislative language that would render the Bonus Credits’ inducements as superficial.

***.03(1)(d) What records or documentation do taxpayers maintain or could they create to substantiate a taxpayer’s certification that they have satisfied the domestic content requirements?***

The FTA’s regulations at § 661.6, which Treasury references in its Request for Comments, require certifications of compliance with the underlying Buy America requirement. The FTA’s regulations at § 661.6 also provide sample certification language. Congress calls for an analogous certification regime in §§ 45(b) and 45Y, which requires taxpayers to certify compliance with the domestic content Bonus Credit eligibility requirements. Treasury should model a certification regime on FTA’s Buy America certification regime consistent with its legislative directive, allowing a qualified facility owner to certify that it meets the required adjusted percentage for eligibility of the Bonus Credit.

The absence of robust documentation would be shortsighted and, in the absence of some mechanism for substantiating credit eligibility, invite malfeasance resulting in improper and foregone revenues to and outlays by the U.S. Treasury. To demonstrate compliance with the domestic content requirements for iron, steel, and manufactured products in a taxpayer’s certification, robust recordkeeping and documentation procedures must be required. It would be an egregious error to merely require a “good faith estimate” certification on the part of the tax credit recipient.

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<sup>11</sup> Senate Finance Committee Summary of Subtitle D – Energy Security. Link: <https://www.finance.senate.gov/imo/media/doc/Summary%20of%20Subtitle%20D%20-%20Energy%20Security.pdf>

AAM struggles to understand how a taxpayer would substantiate compliance with the domestic origin of the iron or steel end products and manufactured products they supply when arriving at a “good faith estimate” if they are unaware of the component content of these products and materials.

AAM also recommends that Treasury implement audits or review procedures for purposes of validating certifications.

AAM supports the use of manufacturers’ materials certifications and adequate recordkeeping requirements for facility owners, which would allow a facility owner to substantiate credit eligibility.

There are many existing enforcement mechanisms that serve as adequate tools to encourage compliance and discourage malfeasance. Penalties for contractual breach, including nonpayment, failure to reimburse, contract termination, contractor suspension and contractor debarment are already contemplated by agencies administering federal-aid infrastructure spending and are typically codified in agency regulations. Civil remedies are also available to the Federal Government (False Claims Act) and private sector competitors.

OMB’s guidance implementing § 1605 of the ARRA is found at 2 C.F.R. § 176.130 and contemplates the contractual remedies noted above.

Simply put, every manufacturer who wants to supply these markets will willingly provide a certification attesting to the domestic manufacture of its steel, iron or manufactured products.

Beyond FTA, other agencies administering “Buy America-type” laws have instituted certification regimes to facilitate compliance. For example, to document compliance with the “American Iron and Steel” laws, the Environmental Protection Agency (EPA):

“.. recommends the use of a step certification process, similar to one used by the Federal Highway Administration. The step certification process is a method to ensure that producers adhere to the AIS requirement and assistance recipients can verify that products comply with the AIS requirement. The process also establishes accountability and better enables States to take enforcement actions against violators.”<sup>12</sup>

Step certification creates a paper trail which documents the location of the manufacturing process involved with the production of steel and iron materials. A step certification is a process under which each handler (supplier, fabricator, manufacturer, processor, etc) of the iron and steel products certifies that their step in the process was domestically performed. Each time a step in the manufacturing process takes place, the manufacturer delivers its work along with a certification of its origin. A certification can be quite simple.”

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<sup>12</sup> “Implementation of American Iron and Steel provisions of P.L. 113-76 Consolidated Appropriations Act” at #25 (Mar. 2014) available at <https://www.epa.gov/sites/default/files/2015-09/documents/ais-final-guidance-3-20-14.pdf> .

Agencies have also released certification templates in guidance and regulations implementing various Buy America laws.

***.03(2)(a) Does the term “component of a qualified facility” need further clarification? If so, what should be clarified and is any clarification needed for specific types of property, such as qualified interconnection property?***

For the reasons discussed above, Treasury should clarify the scope of the term “manufactured product” to which the adjusted percentage applies. Even more importantly, Treasury should provide explicit guidance on what may be treated as a “qualified facility” (aka “end product”) for purposes of the Bonus Credit. The adoption of permissive origin standards or loopholes would undermine the entire policy – making the Bonus Credit attainable without the use of domestically produced iron, steel, and manufactured products.

***.03(2)(b) Does the determination of “total costs” with regard to all manufactured products of a qualified facility that are attributable to manufactured products (including components) that are mined, produced, or manufactured in the United States need further clarification? If so, what should be clarified? Is guidance needed to clarify the term “mined, produced, or manufactured”?***

The IRA conditions Bonus Credit eligibility upon whether a qualified facility meets the applicable adjusted percentages of manufactured products mined, produced or manufactured in the United States. Specifically, the 45(b) and 45Y require for credit eligibility that the qualified facility will be deemed to have been produced in the United States and eligible for the Bonus Credit if the facility meets the applicable adjusted percentage “of the costs of all such manufactured products” that are components “of such facility are attributable to manufactured components ... mined, produced or manufactured in the United States.”

By its very language, Congress established a domestic content threshold for Bonus Credit eligibility that is based upon the ratio of domestic manufactured products, which are components of the qualified facility, in relation to *all* of the manufactured components, which are all the components of the qualified facility. Like comparable federal domestic procurement preference laws, the statute’s clear terms require an analysis of the manufactured products’ costs – only - but not other overhead, such as labor and profit.

Such a reading is consistent with interpretations of other federal procurement preference laws, including the Buy American Act, but also with the FTA’s Buy America regulations, incorporated by reference in §§ 45(b) and 45Y. For example, the FTA’s Buy America regulations closest analogous origin standard requiring a specified minimum percentage of domestic component content is the origin standards applied to rolling stock transit vehicles and components thereto found at 49 C.F.R. § 661.11. Such rolling stock and rolling stock components are deemed domestic in origin if they (i) are produced in the United States and (ii) more than 60 percent of all components “by cost” are of United States origin. “Labor costs involved in final assembly are not included in calculating component costs.” 49 C.F.R.

§661.11. Rather, consistent with the Buy American Act and its interpretive precedent, component costs under FTA's Buy America regulations are determined as:

For purchased components: The price that a bidder or offeror must pay to a supplier for the component including transportation costs;

For components manufactured by the bidder or offer: the cost of labor and materials incorporated into the component or subcomponent, an allowance for profit, and the administrative and overhead costs attributable to that component under normal accounting principles. 49 C.F.R. § 661.11(m).

Consistent with the express terms of the underlying statutes, Treasury must treat the adjusted percentages standards as requiring analyses of facilities' domestic manufactured products costs in relation to the facilities' overall costs of manufactured products – only. Other costs associated with construction of the qualified facilities, including labor costs, must be excluded from the “total costs” analysis. Moreover, the statutory language makes clear that the adjusted percentages are a measure of domestic manufactured products – only. Iron and steel inputs are not contemplated in the adjusted percentage and should not be double counted by qualified facilities seeking to meet the adjusted percentage.

***.03(2)(e) Does the treatment of subcomponents with regard to manufactured products need further clarification? If so, what should be clarified?***

AAM appreciates that Treasury is seeking to provide clarification of the IRA text with regard to subcomponents. This is an indication that Treasury recognizes that Congress has made it abundantly clear that it is both an economic and national security imperative that the materials and products that are inputs to America's clean energy infrastructure be produced in the United States.

### **Conclusion**

AAM appreciates the administration's continued promise to strengthen of domestic manufacturing and support American factory workers. We look forward to working with the administration as it continues to implement policies that grow U.S. manufacturing capabilities and address climate goals.

Thank you for the opportunity to share our views. AAM reserves the opportunity to provide additional comments as needed.

### **Alliance for American Manufacturing**

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