

## Comment from American Iron and Steel Institute (AISI)

See attached file(s)The American Iron and Steel Institute (AISI) submits the following comments in response to the Department of Treasury's and the Internal Revenue Service's (collectively "Treasury") request for comments on the Prevailing Wage, Apprenticeship, Domestic Content, and Energy Communities Requirements Under the Act Commonly Known as the Inflation Reduction Act of 2022, published on October 5, 2022. In particular, the below comments are submitted in response to the request for comments on the domestic content provisions for clean electricity production of the Inflation Reduction Act (the "IRA").



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**Kevin M. Dempsey**  
President and Chief Executive Officer

November 4, 2022

Submitted via [www.regulations.gov](http://www.regulations.gov)

Ms. Holly Porter  
Associate Chief Counsel (Passthroughs & Special Industries)  
U.S. Internal Revenue Service  
1111 Constitution Avenue NW  
Washington, DC 20224

**Re: Docket No. IRS-2022-0025, 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 Ms. Porter,

The American Iron and Steel Institute (AISI) submits the following comments in response to the Department of Treasury's and the Internal Revenue Service's (collectively "Treasury") request for comments on the *Prevailing Wage, Apprenticeship, Domestic Content, and Energy Communities Requirements Under the Act Commonly Known as the Inflation Reduction Act of 2022*, published on October 5, 2022. In particular, the below comments are submitted in response to the request for comments on the domestic content provisions for clean electricity production of the Inflation Reduction Act (the "IRA").<sup>1</sup>

Treasury should issue guidance for the implementation of these content provisions that maximizes the inclusion of domestically-made iron, steel and manufactured products under the statute. Specifically, Treasury should require that all manufacturing processes for steel products, and manufacturing products made primarily of steel, should occur in the United States. Doing so will promote the legislation's goals of addressing global climate challenges, given that the steel industry in the United States leads the world in clean steel production.

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<sup>1</sup> See Inflation Reduction Act, H.R. 5376 (2022) at §§ 13101(g) of the IRA and 13701(a) of the IRA.

## **Background on the American Steel Industry**

AISI serves as the voice of the American steel industry in the public policy arena and advances the case for steel in the marketplace as the preferred material of choice. AISI's membership is comprised of integrated and electric arc furnace steelmakers, and associate members who are suppliers to or customers of the steel industry.

The American steel industry supports nearly two million jobs and contributes \$520 billion to the economy. The industry is essential to our national and economic security and our critical infrastructure, including critical aspects of electricity generation and the electric grid. Further, the American steel industry is the cleanest and most energy efficient of the leading steel industries in the world. Of the major steel producing countries, the U.S. has the lowest CO<sub>2</sub> emissions per ton of steel produced and the lowest energy intensity.<sup>2</sup> By contrast, Chinese steel production creates carbon emissions that are almost double that in the U.S per ton of steel produced.

AISI and its member companies in the American steel industry have long taken the position that all iron and steel items procured by federal agencies with taxpayer dollars should be produced in the United States. Specifically, domestic preference provisions should require that all manufacturing processes for iron and steel occur in the United States, consistent with the longstanding application of the Buy America statutory requirements for federal infrastructure procurement by the Department of Transportation.

## **Domestic Content Bonus Credits**

Sections 45(b)(9)(B) and 45Y(g)(11)(B) of the IRA provide that a taxpayer is eligible for a bonus credit amount if it certifies that any steel, iron, or manufactured product that is a component of a qualified facility (upon completion of construction) was produced in the United States. The statute uses the Federal Transit Administration's ("FTA") Buy America requirements (49 C.F.R. 661.5) to specify that domestically produced iron, steel and manufactured products must be utilized to receive the bonus credits. AISI believes that every stage in the steelmaking process should occur in the United States, from the initial melting stage to final rolling and finishing operations, to be eligible for the domestic content bonus credit. This "melted and poured" standard has been successfully applied since 1983 for highway, transit, water, and other federal assistance infrastructure projects. Such guidance from Treasury would not only be consistent with the law, but also with Congressional intent and Biden administration public procurement and climate-related policies.

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<sup>2</sup> Hasanbeigi, A., *Steel Climate Impact - An International Benchmarking of Energy and CO<sub>2</sub> Intensities*, Global Efficiency Intelligence, April 2022.

In the case of iron and steel, § 45(b)(9)(B)(ii) states that FTA's Buy America regulations at 49 C.F.R. § 661.5 apply in determining whether the iron or steel is produced in the United States. Moreover, the "steel and iron requirements" in 49 C.F.R. § 661.5(b) require that "[a]ll steel and iron manufacturing processes [] take place in the United States, except metallurgical processes involving refinement of steel additives," which effectively ensures that all stages of the steelmaking process occur in the U.S. FTA's guidance letters clarify that the agency's Buy America steel requirements apply to primarily steel products that serve a load-bearing, support, or structural purpose. Consistent with FTA's regulatory practice, Treasury should find that all manufacturing processes for steel products, and manufacturing products made primarily of steel, used in renewable energy projects and that serve a load-bearing, support, or structural purpose must be produced in the United States to count towards the domestic content bonus credit.

Treasury's application of this standard here is not only consistent with the law, but also with Congressional intent and Administration policy. To this end, by referencing the FTA Buy America regulations in the IRA, Congress intended that all steel used in qualified renewable energy facilities comply with the FTA requirements in order to receive a bonus tax credits. In doing so, Congress was clear that all steel manufacturing processes take place in the United States. According to the Senate Finance Committee summary document for the IRA, the domestic content requirements require that, with respect to the project for which a tax credit is claimed, 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. For purposes of these requirements, steel and iron must be 100 percent produced in the United States."<sup>3</sup> Furthermore, statements regarding the IRA from Senators Bob Casey (D-PA) and Sherrod Brown (D-OH), key Senate authors of the domestic content requirements, reiterate the intention of steel used in qualified facilities to be entirely domestically produced in order to qualify for the domestic content bonus credit.<sup>4,5</sup>

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<sup>3</sup> Senate Finance. Comm., *Summary of Subtitle D – Energy Security*, <https://www.finance.senate.gov/imo/media/doc/Summary%20of%20Subtitle%20D%20-%20Energy%20Security.pdf> (last visited Nov 2, 2022) (emphasis added).

<sup>4</sup> Office of Sen. Bob Casey, *Casey Applauds Senate Passage of Inflation Reduction Act, Historic Bill to Lower Costs for Families and Tackle Climate Crisis* (Aug. 7, 2022), <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>.

<sup>5</sup> Office of Sen. Sherrod Brown, *Senate Measure will Lower Drug Prices for Older Ohioans, Reduce Health Care Costs, Grow Ohio's Renewable Energy Industries, Hold Wall Street Accountable* (Aug. 7, 2022), <https://www.brown.senate.gov/newsroom/press/release/sherrod-brown-senate-passes-inflation-reduction-act>.

Additionally, requiring that all iron and steel products used in qualified facilities for these renewable electricity tax credits is a policy requirement that is in line with recently enacted legislation and Biden administration policies. The significant 2021 Infrastructure Investment and Jobs Act (IIJA) contained the provisions of the Build America, Buy America Act (“BABA”). One of the key aspects of this infrastructure law is the requirement in Section 70914(a) that each covered Federal agency must ensure that, “none of the funds made available for a Federal financial assistance program for infrastructure ... may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.”

The Biden administration has also taken several administrative steps to require that only iron and steel produced in the United States be used in federal procurement policies. The Administration’s Made in America policies have reiterated the importance of using U.S.-produced steel federal procurement.<sup>6</sup> In February of 2022, the administration announced an initiative intended to “support American leadership on clean manufacturing – including low-carbon production of the steel and aluminum we need for electric vehicles, wind turbines, and solar panels.”<sup>7</sup> Also, the recent federal Buy Clean actions taken by the administration are intended to advance the development of domestic low-carbon construction materials.<sup>8</sup> Through these actions, the administration has repeatedly demonstrated its commitment to ensuring that government dollars are used to procure only iron and steel products made in the United States.

Maximizing the use of iron and steel products made in the United States for the renewable electricity tax credits in the IRA would also be consistent with the decarbonization intent of the legislation. The domestic content provisions of the IRA should be implemented in a similar manner as federal procurement policy to ensure that public funding be used to promote the use of domestically produced steel products. If imported steel products – often produced with a much larger environmental impact – are allowed to benefit from these bonus credits, this would undermine the policy intent in the IRA to decrease global greenhouse gas (GHG) emissions and enhance American manufacturing.

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<sup>6</sup> The White House, *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* (July 28, 2021)

<sup>7</sup> The White House, *Fact Sheet: Biden-Harris Administration Advances Cleaner Industrial Sector to Reduce Emissions and Reinvent American Manufacturing* (Feb. 15, 2022).

<sup>8</sup> The White House, *Fact Sheet: Biden-Harris Administration Announces New Buy Clean Actions to Ensure American Manufacturing Leads in the 21<sup>st</sup> Century* (Sept. 15, 2022) (emphasis added).

**Summary**

AISI believes the domestic content bonus credits for the generation of, and investment in, renewable electricity from the IRA should be implemented in such a manner so as to maximize the use of domestically produced steel products, *i.e.*, Treasury should require that all manufacturing processes for steel products, and manufacturing products made primarily of steel, occur in the United States. Failure to do so would result in U.S. tax policy supporting the purchase of higher-emitting steel products made overseas. This would allow the use of steel imported from nations with more GHG-intensive steel production to be used in the United States' renewable electricity system, frustrating the intent of the legislation, and undermining the legislation's goals of lowering emissions while strengthening the nation's supply chains to support clean energy. Treasury should issue guidance for the implementation of these domestic content provisions that maximizes the inclusion of domestically made iron steel products under the statute.

Sincerely,

A handwritten signature in black ink that reads "Kevin M. Dempsey". The signature is written in a cursive, slightly slanted style.

Kevin M. Dempsey  
President and Chief Executive Officer  
American Iron and Steel Institute