DAIMLER TRUCK
North America

November 4, 2022

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Internal Revenue Service
U.S. Department of Treasury
Washington, DC

Re: Submission of comments in response to IRS Notice 2022-51
Docket: https://www.regulations.gov/document/IRS-2022-0020-0001

Daimler Truck North America (DTNA) appreciates the opportunity to provide comments in response to IRS Notice 2022-51 (the "Notice") regarding Prevailing Wage, Apprenticeship, Domestic Content, and Energy Communities Requirements Under the Inflation Reduction Act of 2022.

Headquartered in Portland, Oregon, DTNA is the leading manufacturer of medium- and heavy-duty trucks in North America. We design, engineer, manufacture, and market medium- and heavy-duty trucks, school buses, vehicle chassis, and their associated technologies and components under the Freightliner, Western Star, Thomas Built Buses, Freightliner Custom Chassis Corporation, and Detroit powertrain brands. Our truck manufacturing roots in the United States trace back 85 years; today, DTNA proudly employs more than 15,000 people in the country, working in seven manufacturing plants, eight parts distribution centers, and numerous satellite locations.

DTNA agrees that decarbonization of the commercial vehicle sector is essential to support the climate and public health objectives of the nation, and the world. These vehicles include the tractor-trailers, box trucks, and step vans used to meet growing inter/intrastate freight and last-mile delivery demands. We are the market leader in each of these segments, and thus uniquely positioned to provide critical input to ensure the success of medium- and heavy-duty vehicle electrification.

More than any other commercial vehicle manufacturer, DTNA has a wide variety of medium- and heavy-duty EVs available today, all of which are built in the U.S. These advanced technology electric vehicles include the Freightliner eCascadia and eM2 trucks (which are available to order now and enter series production later this year), the Thomas Built C2 Saf-T-Liner or "Jouley" school bus (which is already in service throughout the country), and the Freightliner Custom Chassis Corp MT50e chassis for use in walk-in vans (which began series production earlier this year).

The Inflation Reduction Act establishes domestic content requirements that must be satisfied in order for taxpayers to receive bonus amounts to the existing Production Tax Credit and Investment Tax Credit as well as two new credits, the Clean Energy Production Tax Credit and the Clean Electricity Investment Credit.

In connection with the Production Tax Credit and Clean Energy Production Tax Credits, a 10% domestic content bonus credit is provided if 100% of any steel or iron component of the facility was produced in the United States and 40% of manufactured products that are components of the facility were produced in the United States. Consistent with 49 C.F.R. §661.5 (General Requirements under the Federal Transit Administration's Buy America Requirements), the steel and iron requirements apply "to all construction materials made primarily of steel or iron and used in infrastructure projects such as transit or maintenance facilities, rail lines, and bridges. These items include, but are not limited to, structural steel or iron, steel or iron beams and columns, running rail and contact rail." Those requirements do not, however, "apply to steel or iron used as components or subcomponents of other manufactured products or rolling stock, or to bimetallic power rail incorporating steel or iron components."

From a manufacturer's perspective, and again upon reference to 49 C.F.R. §661.5, all manufacturing processes associated with the product components must occur in the United States, with all the components of those products also being of U.S. origin. For that purpose, "A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents."

As for the Investment Tax Credit and Clean Electricity Investment Credit, any failure to satisfy the above outlined domestic content requirements will result in a stepped down reduction of the 10% bonus credit that otherwise may be realized.

Based on this foundation, the IRS requests comments on a specific range of questions. The items below reflect the items for which clarification in upcoming proposed guidance (the "Proposed Guidance") would address the most pressing concerns facing DTNA as a manufacturer of clean commercial vehicles. Our comments follow the order of specific questions identified in Section 3.03 of the Notice in the sequential order of the Notice (not necessarily in order of priority).

Questions raised in Section 3.03 the Notice (Domestic Content)

1. Certification that any steel, iron, or manufactured product a component of a qualified facility was produced in the United States

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?

The Proposed Guidance should adopt certain aspects of the definitions set forth in 49 C.F.R. 661.3. The definitions in 661.3 do not perfectly align with the thrust of the questions raised by

the Notice, however, so we recommend a careful evaluation of each term to determine its applicability in this instance. We touch on several examples of note in our comments below.

Beyond this consideration, the general requirements set out in 49 C.F.R. §661.5, as well as the certification template provided in §661.6, are useful reference tools. For §661.5, some of the same concerns, as expressed above (and further below) regarding the wholesale adoption of that provision will require further consideration.

Finally, for consistency and transparency, the waiver mechanisms under 661.7 and 661.9 should be considered as guides as the IRS seeks to implement its own waiver program. A waiver program should be considered regardless of the +25% cost differential local sourcing of steel/iron, or the unavailability of supply.

b) What should the Treasury Department and the IRS consider when determining "completion of construction" for purposes of the domestic content requirement? Should the "completion of construction date" be the same as the placed in-service date? If not, why?

The terms "completion of construction date" and "placed in service" are not synonymous. A facility is normally "complete" from a construction perspective prior to its placed in service date. Placed in service is associated with actual production; however, any new facility, expansion or newly installed production line must first undergo testing for quality and safety purposes. "Dry runs" are used to ensure that any production occurring within the facility is properly staged and sequenced. Regardless of the purpose, construction of the facility itself is complete and the bonus credit to be realized should be granted at that time.

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?

Yes, the Proposed Guidance should use these definitions of "steel" and "iron" to the extent applicable. The definitions set out in Part 661 are broader in scope, embracing additional considerations from a Buy America perspective that are not pertinent where these credits are concerned. Creating uniformity where possible, however, is to the benefit of all stakeholders (including the IRS).

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 documentation required to support certification should be those records retained by a taxpayer in the ordinary course of business. Purchasing records, production records (including

records reflecting allocated use), bills of materials and documented process flows that detail the steps involved in the establishment of a qualified facility as well as individual manufactured products should be retained. That information should be retained consistent with the underlying obligations imposed under the Internal Revenue Code.

2. Qualification of Manufactured Products Under the IRA

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?

Yes, the Proposed Guidance should provide additional clarity regarding the term "component of a qualified facility." 49 C.F.R. 661.3 provides one definition of a "component" for purposes of Buy America Requirements; however, that definition is focused on items incorporated into an end product produced at the final assembly location and not components of the facility itself. 49 C.F.R. 661.5(c) can serve as a starting point for purposes of identifying the components within scope but the items identified under that provision are exemplars which leave extensive room for interpretation.

In seeking further clarification, the Proposed Guidance should focus on those components that form the "bones" of the infrastructure since those are more essential to overall facility production. The exclusion under 49 C.F.R. 661.5(c), which provides that steel and iron sourcing requirements "do not apply to steel or iron used as components or subcomponents of other manufactured products," also should apply for purposes of the domestic content requirements.

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 Proposed Guidance should provide further guidance as to what costs are considered part of "total costs". Costs can be defined in any number of ways and could be limited to direct costs of production; to production costs plus an allocable amount of indirect expense; and to the inclusion of sales, general and administrative expenditures. However framed, we suggest the calculation of total costs be based on either Generally Accepted Accounting Principles or International Financial Reporting Standards as adopted within the United States or by any trading partner otherwise eligible to benefit from IRA implementation.

As for what constitutes "mined, produced or manufactured," both "production" and "manufacture" are subjective terms, so the Proposed Guidance should provide additional detail as

to how a taxpayer satisfies these standards and requirements. One potential reference point for purposes of defining "manufacture" could be the test adopted by the U.S. Court of Appeals for the Federal Circuit for purposes of both the Trade Agreements Act of 1979 and Federal Acquisition Regulations in *Acetris Health LLC v. U.S.*, No. 18-2399 (Fed. Cir. 2020). That definition, which focused on final manufacturing occurring within the United States irrespective of the origin of any incorporated components, would be consistent with the approach adopted under 49 C.F.R. Part 661. It would also be consistent with the definition of "manufacturing process" set forth in 49 C.F.R. 661.3.

"Production," in turn, should be defined consistent with the term as adopted by Congress in implementing the United States-Mexico-Canada Agreement. Under 19 U.S.C. §4531(a)(16), "production" is defined, *inter alia*, as "growing, cultivating, raising, mining, harvesting, fishing, trapping, hunting, capturing, breeding, extracting, manufacturing, processing, or assembling a good."

c) **Does the term "manufactured product" with regard to the various technologies eligible for the domestic content bonus credit need further clarification? If so, what should be clarified? Is guidance needed to clarify what constitutes an "end product" (as defined in 49 C.F.R. 661.3) for purposes of satisfying the domestic content requirements?**

The term "end product" only appears once within new IRC Section 45X as associated with the Advanced Manufacturing Production Credit applicable to any "eligible component." This is consistent with the definition of "end product" in 49 C.F.R. 661.3 which identifies an end product as "any vehicle, structure, product, article, material, supply, or system, which directly incorporates constituent components at the final assembly location, that is acquired for public use under a federally-funded third-party contract, and which is ready to provide its intended end function or use without any further manufacturing or assembly change(s)."

The term "manufactured product," on the other hand, appears much more often (14 times) in the Inflation Reduction Act; however, in each instance, that term is identified within the context of a manufactured product that is itself incorporated into the production of a qualified facility. This question incorrectly conflates "end product" with "manufactured product" and we would caution the IRS to be careful in not using the two terms interchangeably. For consistency, we refer back to our comments in response to Question 2(a) above and recommend the Proposed Guidance focus on those products that form the "bones" of the facility rather than any ancillary or supportive components thereof.

d) **Does the adjusted percentage threshold rule that applies to manufactured products need further clarification? If so, what should be clarified?**

No, we believe this rule is clear and endorse how it is currently written in the statute.

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

The Proposed Guidance should provide additional guidance regarding the treatment of subcomponents. While the Buy America provisions set forth in 49 C.F.R. Part 661 are helpful, further expansion of those terms is needed consistent with our comments raised above where production, manufacture, and lesser components are involved.

3. Phased Domestic Content Requirement Impact from High-Cost Steel, Iron or Manufactured Products or Unavailability of Needed Supplies

a) Does the determination of "overall costs" and increases in the overall costs with regard to construction of a qualified facility need further clarification? If so, what should be clarified?

Yes, clarification would be helpful. As noted above in response to Question 2(b) on "total costs," "overall costs" is similarly an ambiguous term and the Proposed Guidance should provide some clarity as to which costs (direct, indirect, allocable, etc.) should be captured within that amount. Clarity is further needed in understanding the implications of using steel, iron or manufactured products produced in the United States that increase production costs by more than the 25% ceiling. As referenced above, reliance on GAAP or IFRS guidance is a place to start in further fleshing out what should be captured from an "overall costs" perspective.

b) What factors should the Secretary include in guidance to clarify when an exception to the requirements under section §§ 45(b)(10)(D) and 45Y(g)(12)(D) applies? What existing regulatory or guidance frameworks, such as the Federal Acquisition Regulation (FAR) and Build America Buy America (BABA) guidance, may be useful for developing guidance to grant exceptions under §§ 45(b)(10)(D) and 45Y(g)(12)(D)?

As stated above, Proposed Guidance should provide further clarification on what constitutes "overall costs" to create greater clarity and consistency of interpretation and application. FAR 2.101 defines "cost or pricing data" although not to the degree that would be beneficial in determining what constitutes "overall costs." FAR 25.003 could provide a potential partial source of reference as the term "Cost of components" is defined as:

> (1) For components purchased by the contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product or construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

> (2) For components manufactured by the contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

Build America, Buy America ("BABA"), while also discussing cost (including the use of a 25% ceiling for deviation from domestic sourcing), does not provide sufficient details for defining "overall costs." Instead, we suggest the Proposed Guidance adopt either GAAP, IFRS or standard Cost Accounting principles as a reference point where this issue is concerned.

c) Do the "sufficient and reasonably available quantities" and "satisfactory quality" standards need further clarification? If so, what should be clarified?

The Proposed Guidance should provide guidance on what constitutes sufficient, reasonable, and satisfactory. The guidance should utilize existing definitions (outlined below) for simplicity and consistency.

One potential frame of reference could be the procedures implemented by the Commerce Department's Bureau of Industry & Security ("BIS") where the consideration and granting of exclusions for steel and aluminum importations under Section 232 of the Trade Expansion Act of 1962 is concerned. More specifically, in evaluating whether a domestic supplier presents a viable alternative to an importer's request for an exclusion, BIS considers whether the domestic source can act as a source of supply "immediately" which is generally defined as within eight weeks of order. While perhaps not eight weeks, a time parameter for order (on-going order) fulfillment should be implemented to avoid any undue delays or cost overruns.

Similarly, from a satisfactory quality perspective, BIS has adopted the position that an available competitive product does not have to be identical; rather, it must be "equivalent as a substitute product." A substitute product, in turn, must satisfy "the quality (*e.g.*, industry specs or internal company quality controls or standards), regulatory, or testing standards" associated with use "in that business activity in the United States by that end user." The Proposed Guidance should impose the same requirement to promote the use of first-quality materials in all IRA projects.

4. Treasury/IRS Considerations in Providing Guidance on Similar Domestic Content Requirements

One thought runs paramount above all others where this question is concerned: Consistency. As new laws, executive orders and regulations are issued, the complexity of complying with these various rules becomes a significant challenge. Different required content percentages, different

phase in requirements, different interpretations of manufacture or production and different characterizations of cost all conspire to limit the ability of companies such as DTNA from either benefiting from credit or investment incentives such as those found in the IRA or being able to participate in government contract opportunities overall. This is not for a lack of interest or effort but, rather, a reflection of the limited supply and overly complicated rules that jeopardize the ability to support the interests of the U.S. Government overall. With this in mind, we implore the IRS to look to existing guidelines, whether those are under one of the programs/laws referenced above or elsewhere and align final requirements so as not to create another program with another means of calculation and support that to which taxpayers would need to try to adhere.

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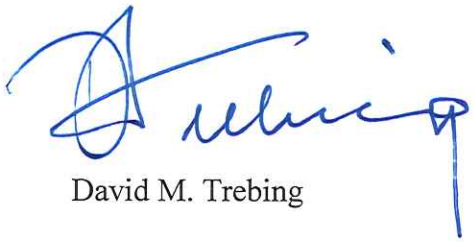
Commercial vehicle manufacturers are already playing a critical role in the transformation to a cleaner Nation and World. DTNA has the products, but without the strategic and critical financial support provided under the IRA, the transformation to CO_2-neutral commercial vehicles will not be successful. Thank you for the opportunity to provide these comments, and we look forward to working with the Treasury Department and the IRS to make the implementation process as consistent and seamless as possible.

Respectfully submitted,



David M. Trebing

Director – External Affairs
Daimler Truck North America
(202) 365-5508
david.m.trebing@daimlertruck.com