Comment from Nucor Corporation

On behalf of Nucor Corporation, we hereby submit the following comments in response to the Department of Treasury's and the Internal Revenue Service's 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. As detailed below, Treasury should require that all manufacturing processes for products made primarily of steel that are used in qualified facilities occur in the United States to be eligible for the domestic content bonus credit. This interpretation is not only consistent with the law, but also with Congressional intent and Administration policy. Please see attached narrative.

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

Re: Response to 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 (IRS-2022-51)

Dear Secretary Yellen:

On behalf of Nucor Corporation ("Nucor"), we hereby submit the following comments in response to the Department of Treasury's and the Internal Revenue Service's (collectively "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*. As detailed below, Treasury should require that all manufacturing processes for products made primarily of steel that are used in qualified facilities occur in the United States to be eligible for the domestic content bonus credit. This interpretation is not only consistent with the law, but also with Congressional intent and Administration policy.

I. BACKGROUND

Nucor is the largest steel producer in the United States, with production capacity that exceeds 28 million tons and a workforce of more than 31,000 teammates. Headquartered in Charlotte, North Carolina, Nucor has over 300 locations throughout North America and has become the leading producer of structural steel, steel bars, steel reinforcing bars, and steel joists

and girders. Nucor is a major producer of steel in sheet and plate form, cold finished steel, and steel fasteners, among other steel products, many of which are used on federally funded infrastructure and renewable energy projects.

Sustainability has been at the core of Nucor's business model since the company first started making steel in the 1960s. Indeed, using scrap as its primary feedstock, Nucor is North America's largest recycler and one of the cleanest steelmakers in the world. In 2021, 75.4% of Nucor steel was made from recycled content, accounting for approximately 23 million tons of recycled scrap metal. By primarily using scrap feedstock and the much more carbon efficient electric arc furnace ("EAF") production process, Nucor's greenhouse gas intensity per ton of steel produced is one-third the global average and one-fifth the average of blast furnace-basic oxygen furnace ("BF-BOF") producers. As a result, Nucor accounts for approximately 25% of American steel production but only 8% of the domestic industry's greenhouse gas emissions.

Nucor's current emissions levels are less than half the most aggressive Paris Agreement steel sector targets for 2030. Even so, Nucor has committed to an additional 35% reduction in its Scope 1 and Scope 2 greenhouse gas emissions intensity by 2030. Nucor's sustainability efforts are substantial and ongoing. In 2021, Nucor introduced the world's first net-zero carbon steel at scale – Econiq^{TM}. Nucor is also the largest purchaser of renewable power purchase agreements among steel producers, and it is actively pursuing carbon capture, sequestration, and utilization technologies.

Nucor has made a number of investments in steel used in clean energy generation, including both wind and solar power, in recent years. These investments include a new plate facility in Brandenburg, Kentucky, which is expected to begin production at the end of this year. This new $1.7 billion facility will produce 1.2 million tons of steel plate annually and in

dimensions that are particularly suited for offshore wind applications. Nucor is also expanding its production of steel products used in solar applications, including galvanized solar torque tubes (used to support solar panels) and steel beams (used in foundation posts that support solar panels and arrays). In a few short years, Nucor has become one of the leading steel suppliers to the U.S. renewable energy market.

Nucor therefore welcomes the Inflation Reduction Act (the "IRA") and Congress' efforts to spur investment in clean energy, including through the application of domestic content provisions for clean energy production.[1]

II. DOMESTIC CONTENT BONUS CREDIT

Nucor is a longstanding proponent of robust Buy America/n requirements. For decades, federal Buy America/n laws have helped to stimulate production and job growth in the domestic steel industry by requiring the use of U.S. produced steel and other products in federally funded projects. They have also provided critical incentives for Nucor and other domestic steel producers to invest in the development and production of steel products used in these projects and, in particular, low-carbon or carbon-neutral steel products. The availability of bonus tax credits and other financial benefits for using domestically produced products, such as those in the IRA, have a similar effect. These domestic content incentives are important for stimulating investment in domestic manufacturing, particularly in clean energy technology, and for creating jobs in the steel and other critical U.S. industries.

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[1] *See* Inflation Reduction Act, H.R. 5376, 107th Cong. §§ 13101(g), 13701(a) (2022).

A. Congressional Intent and Administration Policy Support the Application of a Melted and Poured Standard to Products Made Primarily of Steel that are Used in Qualified Facilities

Congress' intent in requiring that all steel used in qualified renewable energy facilities comply with the steel requirements set forth in 49 C.F.R. § 661.5 (the Federal Transit Administration's ("FTA") Buy America regulations) in order to receive a bonus tax credit is clear. Congress enacted the IRA domestic content provision, set forth in § 45(b)(9)(B)(i) of the Internal Revenue Code ("IRC"),[2] to incentivize and, therefore, maximize the use of steel that is "melted and poured" in the United States (*i.e.*, steel for which all manufacturing processes take place in the United States) in clean energy production.[3] Recent statements made by the Congressional authors/supporters of the IRA's domestic content provision are clear in this regard:

- **Senate Finance Committee:** "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."[4]

- **Senator Casey:** "This bill invests in American-made energy and manufacturing. The IRA includes Senator Casey's amendments that will require some clean energy projects to meet strict domestic content standards to receive tax credits. Further, all clean energy projects will receive a 10% bonus tax credit for meeting domestic content standards. Senator Casey's provisions ensure that the U.S. is developing and manufacturing clean energy here at home."[5] Senator Casey fought "for the

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[2] The IRA modifies the IRC to include a domestic content bonus credit. *See* § 13101(g) of the IRA for the domestic content requirements under 45(b)(9) and 13701(a) of the IRA for the domestic content requirements under § 45Y(g)(11). This identical domestic content bonus credit appears at both §§ 45(b)(9)(B) and 45Y(g)(11)(B) of the IRC. For purposes of simplicity, the following comments refer to §45(b)(9)(B) but apply equally to both provisions.

[3] H.R. 5376.

[4] Senate Fin. 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 Oct. 25, 2022) (emphasis added).

[5] Off. 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.

inclusion of provisions . . . to give a bonus to new clean energy investments made with American materials."

- **Senator Brown:** "The Inflation Reduction Act includes Brown's priorities to improve domestic clean energy manufacturing and housing, and to support consumers. These provisions were included with prevailing wage requirements for construction facilities and Buy America/domestic content requirements for the steel, iron, and manufactured products that go into the construction."[6]

In short, Congress intended for steel used in qualified facilities to be 100% domestically produced in order to qualify for the domestic content bonus credit.[7]

Congress' intent in enacting the domestic content provision of the IRA is consistent with a long line of recent legislative actions imposing a rigorous melted and poured standard for steel to be deemed Buy America/n compliant. This includes the recent enactment of the Infrastructure Investment and Jobs Act's Build America, Buy America Act ("BABA") as well as significant modifications to the Buy American Act ("BAA").

BABA, which became law in November 2021, requires that "all iron and steel used in [a federally funded infrastructure] project are produced in the United States."[8] The statute further provides that "in the case of iron or steel products" this means that "all manufacturing processes, from the initial melting stage through the application of coatings, occur[] in the United States." BABA also amended the BAA to significantly strengthen the domestic content rules for iron and steel, providing that "manufactured articles, materials, and supplies of iron and steel are deemed

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6 Off. 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.

7 The Congressional Research Service has interpreted Congress' intent in a similar manner, noting that the "IRA would require the iron and steel requirements be applied in a manner consistent with the Federal Transit Administration's Buy America regulations, which specify that all iron and steel manufacturing processes must take place in the United States." Christopher Watson & Molly Sherlock, Cong. Rsch. Serv., IN11983, Proposed Tax Preference for Domestic Content in Energy Infrastructure (2022).

8 Build America, Buy America Act, H.R. 2810, 117th Cong. § 70912(2)(A) (2021).

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." As support for its enactment of these and other provisions in BABA, Congress found that "common construction materials used in public works infrastructure projects, including steel . . . are not adequately covered by a domestic content procurement preference, thus limiting the impact of taxpayer purchases to enhance supply chains in the United States." Accordingly, Congress enacted a more rigorous domestic content standard.

Requiring that steel is melted and poured in the United States to qualify for the domestic content bonus credit is not only consistent with Congressional intent, but also with the Administration's Made in America and clean energy policy objectives. To this end, the Administration has consistently supported the use of U.S.-produced steel and other products in federal government procurement.[9] In his first week of office, President Biden signed Executive Order 14005, *Ensuring the Future is Made in All of America by All of America's Workers*, which states that "the United States Government should, whenever possible, procure goods, products, materials, and services from sources that will help American businesses compete in strategic industries and help America's workers thrive."[10] More recently, the Administration announced its Federal Buy Clean Initiative "to spur the development of low-carbon construction materials made in America."[11] This initiative is intended to "support American leadership on clean

[9] 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).

[10] Exec. Order No. 14,005, 86 Fed. Reg. 7,475, 7,475 § 2(b) (Jan. 28, 2021) ("Ensuring the Future Is Made in All of America by All of America's Workers").

[11] The White House, *FACT Sheet: Biden-Harris Administration Announces New Buy Clean Actions to Ensure American Manufacturing Leads in the 21st Century* (Sept. 15, 2022) (emphasis added).

manufacturing—including low-carbon production of the steel and aluminum we need for electric vehicles, wind turbines, and solar panels."[12]

The IRA's domestic content bonus credit provisions should be interpreted in a manner that is consistent with these goals and objectives. They must not be interpreted in a manner that encourages the use of higher-emission imported steel, thereby offsetting the environmental gains of renewable energy production. Of the major steel-producing countries, the United States is among the most carbon efficient.[13] American steel emissions are lower per ton of steel produced than key trading partners like Canada, Mexico, and the European Union, and American emissions are substantially lower than China, India, Japan, and Korea.[14] Specifically, U.S. emissions are 37% lower than Europe.[15] This is largely because domestic steel production is predominantly EAF-based, with approximately 70% of American crude steel being made through EAF processes.[16] In contrast, less than 30% of global steel production is EAF.[17] In the United States, EAF production generates 78% fewer greenhouse gas emissions per ton of steel than typical BF-BOF production.[18]

In addition, Nucor and others in the domestic steel industry continue to make key investments to further decrease carbon emissions. Anything less than a melted and poured standard would prioritize environmentally unfriendly foreign steel (most of which is made from

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12 The White House, *Fact Sheet: Biden-Harris Administration Advances Cleaner Industrial Sector to Reduce Emissions and Reinvigorate American Manufacturing* (Feb. 15, 2022).

13 Ali Hasanbeigi, *Steel Climate Impact*, Global Efficiency Intelligence (Apr. 2022) at 3.

14 *Id.*

15 CRU, Emissions Analysis Executive Summary (June 14, 2022) at 7.

16 *Id.*

17 Ali Hasanbeigi, *Steel Climate Impact*, Global Efficiency Intelligence (Apr. 2022) at 14.

18 CRU, Emissions Analysis Executive Summary (June 14, 2022) at 7.

high carbon-emitting blast furnace technology) at the expense of cleaner America-made steel (again, the majority of which is made with low-emitting EAF technology) and is directly contrary to the Administration's environmental goals.

As further detailed below, and consistent with the IRA, Treasury should apply the steel requirements set forth in 49 C.F.R. § 661.5(b) to all products made primarily of steel that are used in covered renewable energy projects, including wind towers, solar torque tubes, foundation posts, and horizontal purlins, and require that all steel used in the production of these products be melted and poured in the United States. This is the only interpretation of the IRA that is consistent with both Congressional intent and Administration policy. Even if steel products are deemed to be manufactured product components, requiring that steel used in their production be melted and poured in the United States to count towards the domestic content adjusted percentages is appropriate and consistent with both Congressional intent and President Biden's Made in America objectives.

B. Treasury Should Require that Products Made Primarily of Steel are Melted and Poured in the United States Under Section 45(b)(9)(B)(ii) of the IRC

A domestic content bonus credit is available where a taxpayer can certify that any steel, iron, or manufactured product that is a component of a qualified facility (*e.g.*, wind farm, solar farm) is "produced in the United States."[19] In the case of iron and steel, § 45(b)(9)(B)(ii) of the IRC 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. As further detailed below, Treasury should require that products made primarily of steel that are used in qualified facilities be melted and poured in the United States to count towards the domestic content bonus credit.

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[19] *See* 26 U.S.C. § 45(b)(9)(B)(ii).

As an initial matter, while the IRA does not define a "component" of a "qualified facility," this statutory language is sufficiently broad to capture products that are made primarily of steel[20] (*e.g.*, wind towers, solar piles, torque tubes, horizontal purlins, foundation posts). These steel products are brought to the construction site as steel products for incorporation into the qualified facility as a support or load bearing structure. It is thus particularly appropriate to treat such products as a component of a qualified facility pursuant to § 45(b)(9)(B)(i). Any other reading of "component" of a "qualified facility" – *i.e.*, deeming these steel products as something less than a component – would effectively nullify the IRA's express inclusion of U.S.-produced steel in qualified facilities as counting toward the bonus credit.

Under § 45(b)(9)(B)(ii) of the IRC, steel products must comply with the requirements in 49 C.F.R. § 661.5 to be deemed "produced in the United States" and thus count towards the domestic content threshold for the bonus credit.[21] 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 is effectively a "melted and poured" standard for steel. FTA's steel and iron requirements apply to "all construction materials made primarily of steel or iron and used in infrastructure projects such as

[20] As set forth in 49 C.F.R. § 661.5(c), FTA's 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."

[21] 26 U.S.C. § 45(b)(9)(B)(ii).

transit or maintenance facilities, rail lines, and bridges."[22] These products "include, but are not limited to, structural steel or iron, steel or iron beams and columns, running rail and contact rail."[23]

FTA's guidance letters clarify that the agency's Buy America steel requirements apply to steel products that serve a load-bearing, support, or structural purpose. In a 2014 Buy America clarification letter sent to electricity provider Sun Edison, FTA stated that a steel product that serves a "load bearing, structural, or support function" will "fall within the scope of 49 C.F.R. 661.5(b)-(c)."[24] For instance, a "steel tower would be considered structural, *i.e.*, load-bearing, given that it is used to support some form of overhead power lines" and thus would be subject to the "all steel and iron manufacturing processes" standard of 661.5(b). FTA similarly noted that if steel poles "are made of steel or iron and function in a load-bearing, support, or structural capacity, then the steel or iron requirements under 49 C.F.R. 661.5(b) and (c)" would apply. FTA provided no discussion of whether the steel functions as an end product, component, or subcomponent in addressing when its Buy America requirements for steel apply; rather, the agency rested its analysis on whether the steel serves a load-bearing, support, or structural purpose.

FTA has reinforced this position in subsequent guidance letters, making clear that where a steel product serves a load bearing or structural function, the agency conducts its Buy America

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[22] 49 C.F.R. § 661.5(c). While FTA does not define "made primarily of steel," the United States Environmental Protection Agency defines "primarily of iron and steel" to mean steel that is greater than 50% by cost for purposes of its American Iron and Steel requirement. *See* EPA American Iron and Steel Requirement Guidance, https://www.epa.gov/sites/default/files/2015-09/documents/ais-final-guidance-3-20-14.pdf. The Buy American Act's implementing regulations, the Federal Acquisition Regulation, defines a similar term – "predominantly iron and steel" – as requiring "that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components." *See* FAR 25.003.

[23] 49 C.F.R. § 661.5(c).

[24] Letter from Dana Nifosi, Deputy Chief Couns., Fed. Transit Admin., to Douglas Bauder, Vice President/Chief Procurement Officer, Southern California Edison, re: *Southern California Edison (SCE) – April 30, 2014* (Apr. 30, 2014), https://www.transit.dot.gov/regulations-and-guidance/buy-america/southern-california-edison-sce-april-30-2014.

analysis under 49 C.F.R. § 661.5(b) and (c) (steel), and therefore not under 49 C.F.R. § 661.5(d) (manufactured products). For instance, in a 2015 advisory opinion regarding components of KONE elevator guide rails and door frames, FTA made clear that the "steel and iron requirements, however, still continue to apply to construction materials made primarily of steel or iron, *i.e.*, steel and iron construction materials that are structural and load-bearing."[25]

Consistent with FTA's regulatory practice, Treasury should find that steel products such as wind towers, solar piles, solar torque tubes, foundation posts, and horizontal purlins are made "primarily of steel" and serve a load-bearing, support, or structural purpose, and, consequently, all manufacturing processes for these products must take place in the United States to count towards the domestic content bonus credit. For example, a wind tower is comprised primarily of steel plate and is brought to the construction site as a standalone steel product.[26] The wind tower is "designed to support the nacelle and rotor blades in a wind turbine."[27] The primary steel products used in solar arrays (*e.g.*, horizontal purlins, solar torque tubes, foundation posts) similarly serve a structural or support purpose, as they are used to support and rotate the solar panel system. These primarily steel products should be subject to the requirements of § 45(b)(9)(B)(ii) of the statute and therefore the "all manufacturing processes" requirements set forth in 49 C.F.R. § 661.5(b).

Treasury's application of this standard here is not only consistent with the law, but also with Congressional intent and Administration policy. As previously discussed, Congress enacted

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[25] Letter from Dana Nifosi, Deputy Chief Counsel, Fed. Transit Admin., to Eric Cannon, Director, Compliance, KONE Inc., re: *Request for Advisory Opinion Regarding Components of KONE Elevator Guide Rails and Door Frames* (Jan. 8, 2015), https://www.transit.dot.gov/regulations-and-guidance/buy-america/kone-elevators-january-08-2015 (emphasis added).

[26] *Utility Scale Wind Towers from China and Vietnam*, Inv. Nos. 701-TA-486 and 731-TA-1195-1196, USITC Pub. 4888 (Apr. 2019) (Review) at I-22.

[27] *Id.* at 6.

the IRA's domestic content bonus requirement to maximize the use of domestically produced steel, *i.e.*, steel that is 100% produced in the United States. Moreover, the Administration has consistently supported maximizing the use of domestically produced steel and other products in infrastructure projects. Requiring that all primarily steel products used in renewable energy projects be melted and poured in the United States to count towards the IRA's domestic content threshold is consistent with the statute and is the only interpretation that furthers these objectives. In fact, any other interpretation would effectively read the steel and iron clause of 45(b)(9)(B)(ii) out of the statute, which Treasury may not do.

C. Even if Primarily Steel Products are Manufactured Product Components Under Section 45(b)(9)(B)(iii) of the IRC, Treasury Should Require that the Steel is Melted and Poured in the United States

The statute and FTA Buy America regulations and guidance, together with Congressional intent and Administration policy, support the application of FTA's melted and poured requirements to primarily steel products used in renewable energy projects. However, even if these steel products are deemed to be manufactured product components under § 45(b)(9)(B)(iii) of the IRC, requiring that the steel be melted and poured in the United States to count towards the domestic content adjusted percentages is also appropriate, and consistent with both Congressional intent and President Biden's Made in America objectives.

Under the IRA, manufactured products which are "components of a qualified facility" are "deemed to have been produced in the United States if not less than the adjusted percentage . . . of the total costs are attributable to manufactured products (including components) which are mined, produced, or manufactured in the United States." To the extent that wind turbines, solar arrays, and similar items are deemed to be the "components of a qualified facility," the primarily steel products that comprise the turbine and array (*e.g.*, wind towers, solar torque tubes, horizontal

purlins, etc.) should be deemed to be their manufactured product components (*i.e.*, "manufactured products (including components)"). Under this scenario, and consistent with § 45(b)(9)(B)(iii), these manufactured product components must be "mined, produced, or manufactured" in the United States to count towards the adjusted domestic content percentages set forth in § 45(b)(9)(C).

Section 45(b)(9)(B)(iii), or the "manufactured products" provision, makes no reference to FTA's regulations. In fact, this provision contains its own domestic production standard – *i.e.*, "manufactured products (including components) which are mined, produced, or manufactured" in the United States, meaning that Treasury may not look to 661.5(d) with respect to manufactured product components that are iron and steel. The "mined, produced, or manufactured" standard is the same standard that is used in the BAA, which, as mentioned above, was recently modified to require that all manufacturing processes for steel occur domestically. Absent a definition for "mined, produced, or manufactured" under the IRA (or FTA regulations), the only reasonable interpretation is to require that steel is melted and poured in the United States. Such an interpretation is not only consistent with how the same term is defined elsewhere under U.S. law (*i.e.*, the BAA), it is also consistent with Congressional intent and Administration policy.

D. Documentation for Taxpayers to Certify Compliance

The documentation that taxpayers can produce to substantiate a certification that they have satisfied the domestic content requirements with respect to steel is mill test certificates. For four decades, suppliers have certified that steel used on federally funded highway and transit projects comply with both the Department of Transportation's Buy America requirements, including both those administered by FTA and the Federal Highway Administration ("FHWA"). There is nothing unique about steel used in qualified facilities that would make certifying compliance any more difficult here. To the contrary, mill test certificates for steel inputs are routinely provided to

distributors and fabricators, so that complete traceability is maintained throughout the distribution chain. The use of mill test certificates to trace the origin of steel inputs is not unique to Nucor – it is an industry standard that is required per any steel specification (*e.g.*, ASTM). Indeed, as FHWA has recognized, "[o]ne piece of documentation you should expect to receive for all steel and iron is the mill certification."[28]

III. CONCLUSION

In sum, for the reasons discussed above, Treasury should require that all manufacturing processes for primarily steel products used in qualified facilities occur in the United States to be eligible for the domestic content bonus credit. This interpretation is not only consistent with the law, but also with Congressional intent and Administration policy.

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Please do not hesitate to contact the undersigned if you have any questions or if additional information would be useful.

Respectfully submitted,

/s/ Christopher B. Weld
Alan H. Price, Esq.
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Counsel to Nucor Corporation

[28] *See* U.S. Dep't of Transp. Fed. Highway Admin., *FHWA Guidance for Iron and Steel* (Aug. 2012), https://www.fhwa.dot.gov/federal-aidessentials/companionresources/28buyamerica.pdf.