



November 4, 2022

Filed Electronically: www.regulations.gov

Docket ID: IRS-2022-0051

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

RE: United Steelworkers Comments to Department of Treasury on Prevailing Wage, Apprenticeship, Domestic Content, and Energy Communities under the Act commonly known as the Inflation Reduction Act of 2022. (Notice 2022-51)

Dear Secretary Yellen:

I write to you on behalf of the United Steelworkers (USW) union, the largest industrial union in North America. Our members include workers in many, if not most, of the industries that produce products and materials that go into all major infrastructure projects, including clean energy generation. Further, we share the Administration's view and goal that the transition to a clean energy economy in the U.S. and around the world can and must be a driver of good, family-supporting union jobs, and are strong partners in helping to shape and implement policies to achieve that goal.

USW strongly supports the worker- and manufacturing-friendly provisions that Congress included in the Inflation Reduction Act that will help drive this transformation of our economy while ensuring that American workers remain at the forefront, reaping the widespread benefits that will accrue to them – and all of us – if these provisions are implemented in a manner that allows them to reach their full job-creation potential.

To that end, we are pleased to offer these comments to Treasury's request for information on the implementation of Inflation Reduction Act provisions relating to worker-centric policies like prevailing wage, apprenticeship, domestic content, and energy communities. We strongly support all of these policies, which have had long

success in ensuring that federal investments and expenditures (now including tax expenditures) are drivers of good jobs. Due to the specific work environments of USW members, these comments will primarily focus on the domestic content and energy communities provisions.

Domestic Content Requirements

Question 1

In the application of domestic content (Buy America) preferences, the question of how certain products and materials should be considered produced in the United States, and how such provenance should be documented and certified are paramount considerations and we appreciate the care with which the Department is considering these questions.

In determining how these requirements should be implemented, it is important to consider the intent of Congress in developing, drafting, and passing these provisions, as well as other similar provisions. Over the past several years, spanning multiple Congresses and administrations, the goal of the United States government has been to strengthen and expand Buy America preferences, which are long-standing and highly-successful policy tools to incentivize domestic manufacturing production and job growth.

These provisions are part of the whole-of-government effort undertaken by the Biden Administration and Congress to strengthen and expand Buy America and drive domestic manufacturing job creation. Along with efforts such as the passage of the Build America, Buy America Act in the Infrastructure Investment and Jobs Act and the Administration's strengthening of the Buy American Act, which covers direct federal procurement, these provisions seek to ensure that to the maximum extent practicable, clean energy products and facilities are constructed using iron, steel, and manufactured products produced in the United States. A common thread in all of these policies is the clear and unambiguous goal that they should be administered as robustly as possible and that any standards that are more permissive than those which are being strengthened elsewhere in the government are contrary to the intent of the Administration and Congress.

In determining what "produced in the United States" means, and the references to other regulations included in the legislative text, it is useful to consider iron and steel products and manufactured products separately, as the legislative text clearly intends.

Iron and Steel

Modern Buy America policies have been applied to iron and steel used in projects receiving federal financial assistance since 1983. Since that time, all federal agencies that administer a Buy America preference have taken the term “produced in the United States” to mean that for iron and steel, all manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives.

The “All Manufacturing Processes” standard for iron and steel (often also referred to as a “melted and poured” standard) is the best, strongest, most comprehensive standard for determining whether an iron or steel product is produced in the United States. It is simple, it is straightforward, and certification of it is well-established and mature, and it is the best way to ensure that the benefits of Buy America are felt throughout the supply chain. For iron and steel, it is simply the only appropriate standard that is effective, administrable, and consistent with legislative intent.

In determining legislative intent, it is instructive that while a reference to 49 CFR 661 in general was included in section 45(b)(9)(B)(i), a specific reference to 49 CFR 661.5 was included in section 45(b)(9)(B)(ii), which refers to how the requirement should be applied in the case of steel and iron specifically. 49 CFR 661.5(b) states that for a product to be considered “produced in the United States”, “all steel and iron manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives.” Such reference in the legislative text and now in the code is unambiguous in its requirement that the Department apply an “all manufacturing processes/melted-and-poured” standard for steel and iron.

Manufactured Products

While the code specifically references 49 CFR 661 to apply a melted-and-poured standard to steel and iron in section 45(b)(9)(B)(ii), it does not make any such reference to these regulations in section 45(b)(9)(B)(iii) applicable to manufactured products. This is reflective of legislative intent that the reference to 45 CFR 661 was intended solely to direct the Department to the proper origin standard for steel and iron, but the content threshold for manufactured products is outside the scope of 49 CFR 661.

In determining the proper interpretation and implementation of an origin standard for manufactured products, the Department should draw upon precedent and the consistent actions taken by the Congress and Administration. For example,

the Build America, Buy America Act expanded domestic content preferences to iron, steel, manufactured products, and construction materials, and the Administration has put in place a phased increase in the content percentage for manufactured goods under the Buy American Act. In both cases, the goal has been to strengthen and expand the amount of domestic content required for a manufactured product to be considered American-made, and the implementation of this provision should be implemented similarly.

Further, the Department should reject a policy that overlooks the origin of components, parts, and upstream raw materials necessary to produce a given manufactured product. These policies work best and drive job growth and retention most when they are applied as broadly as possible, and should be applied here with that intent.

Documentation

We appreciate that the Department is carefully considering the records and documentation necessary to certify compliance with these requirements. This is crucial to the successful functioning of these provisions and must be robust.

We recommend the implementation of a “step certification” process similar to those used by federal agencies that administer federal assistance Buy America preferences. These are mature and successful mechanisms that maximize compliance while minimizing administrative burden. Further, as a process which places the responsibility on the assistance recipient or, in this case, the taxpayer, to maintain records to demonstrate compliance which he or she may be required to produce, the application of a step certification process seems in some ways even better suited to Treasury than other agencies, as the IRS obviously has long experience in requiring retention of documents that may be called upon under audit.

Question 2

We appreciate the need for clear and unambiguous guidance in areas which can often be difficult to parse, and the Department’s interest in providing such guidance. For all of these sub-questions, to the extent that further clarification is necessary, we urge the Department to make these clarifications in a manner that reflects the Biden Administration’s consistent stated goal of strengthening Buy America policies and broadening their reach.

For example, often the domestic sourcing requirements for manufactured products turn on whether a given item is considered a component or a subcomponent

of a manufactured product. Gamesmanship often manifests within all these definitional issues, and the Department should seek in any clarifications to ensure that terms like “qualified facility”, “component”, and “subcomponent” are defined such that the preference applies to the maximum practicable number of products.

This is particularly important in the context of a bonus credit, which is designed to reward good actors for sourcing domestically. This is intended to be a high bar and should drive investment in domestic supply chains in order to receive this benefit, and should be applied in that context.

Question 3

We have long supported, and worked for many years to help refine, the inclusion of responsible waiver systems whenever Buy America is applied. Absent such policies, Buy America would run the risk of slowing down deployment of projects, which is contrary to our goals and the goals of Congress and the Administration. Buy America is intended to provide a preference for domestic products and an incentive to source them, but it is nevertheless the case that some necessary products are not produced domestically at present. In such cases, narrowly construed, time limited waivers have proven necessary until such time as a domestic industry in a given product can be developed.

While waivers are not necessary in the case of the bonus credit, which is either an extra reward for those that qualify, we support the policy that for purposes of applying the reduction in elective payment amount for qualified facilities that do not use domestic products, a waiver process is necessary and advisable.

In formulating its guidance and/or rules surrounding waivers, we urge the Department to look to existing agency Buy America preferences for federal assistance programs as a guide. The stated waivers in the legislative text, and now the code, are commonplace and consistent across all such agency preferences. These include a waiver if the use of domestic materials will increase the cost of the overall project by more than 25 percent, and if domestic materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality.

The terms for which the Department is seeking potential clarification in this section are well-understood terms in federal assistance Buy America preferences and should be understood as having the same meaning here. This is in keeping with Congressional and Legislative goals to ensure the harmonization wherever possible of all domestic content preferences throughout the government. Ensuring these

policies work the same as much as possible, as often as possible makes them all easier to manage, administer, and with which to comply.

Energy Communities

As a union that also represents energy workers, we strongly support an inclusive and transparent approach to ensure that the definition of energy community is inclusive of as many types of energy or former energy communities as possible. Our members and former members at oil refineries have seen closures over the last several years, and those communities need economic development to provide comparable jobs and restore tax revenue. We regret that, in naming specific technologies, Congress only identified coal mines and coal-fired electric generating units. However, we are confident that a broad and inclusive approach to the additional provisions will ensure that more than just coal communities will benefit from these provisions.

Care should be taken in crafting these definitions to ensure that urban communities that have lost energy jobs are not disadvantaged comparable to rural communities. Jobs in the traditional, fossil energy community are very high wage, no matter where they are located. The loss of these jobs impacts working families and local communities, and investment in new energy projects in those areas is critically important.

In determining a metropolitan statistical area (MSA) and non-metropolitan statistical area (non-MSA), Treasury should include employment directly for a company engaged in extraction, processing, transport, or storage of coal, oil, or natural gas. The Department should also include construction and the operation of directly-related infrastructure, such as pipelines or transportation directly related to the fossil fuel-related jobs in the area.

When determining tax revenues for consideration, the Department should consider both property taxes and income taxes when determining changes in tax revenues. As previously noted, energy jobs are very high wage, and those workers contribute a significant amount to local government where local income taxes are collected.

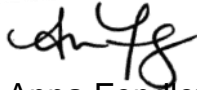
Finally, we urge transparency and inclusivity in determinations made under these provisions by using multiple methods for calculation and ensuring that all communities identified are eligible. Treasury and the IRS should make public a list of eligible communities determined by these calculations. Additionally, a process for appeal to include a community not on the list should be developed.

Conclusion

The Steelworkers are very cognizant that the addition of these policies to the tax code is somewhat new territory, and we appreciate the care with which Treasury is undertaking the implementation of these policies. Domestic content preferences are a mature and highly-successful policy to drive investment and job growth and retention to American producers and workers. The application of domestic content preferences to clean energy tax credits has been a goal of our union for many years. We were highly involved in the development of these policies and we look forward to working collaboratively with the Department as they move from legislative text to actual job-creating policy.

As we move forward, we urge Treasury to apply and implement these provisions in the context in which they were developed and passed, as part of Congress and the Administration's whole-of-government approach to expanding and strengthening Buy America and other domestic content preferences across the board. These policies were designed to allow Treasury to draw from and build upon the administrative success of these preferences for decades, and we look forward to working with you to further refine the answers to these important questions.

Sincerely,



Anna Fendley

Director of Regulatory and State Policy