



CREATING GOOD JOBS, A CLEAN ENVIRONMENT, AND A FAIR AND THRIVING ECONOMY

BlueGreen Alliance
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BlueGreen Alliance Response to Proposed IRS Regulation Regarding Statutory Exceptions to Phaseout Reducing Elective Payment Amounts for Applicable Entities if Domestic Content Requirements are Not Satisfied

The BlueGreen Alliance unites America’s labor unions and environmental organizations to solve today’s environmental challenges in ways that create and maintain quality jobs and build a stronger, fairer economy. Our partnership is firm in its belief that Americans don’t have to choose between a good job and a clean environment—we can and must have both. The clean energy tax credits extended and strengthened in the Inflation Reduction Act, and the accessibility of those credits for tax-exempt institutions through elective pay, will accelerate and broaden deployment of clean energy, especially by non-profit and public entities. We commend the Department of Treasury for soliciting information on how to best apply exemptions for the domestic content provisions associated with Elective Pay.

Further, we strongly support the strategic use of demand levers (e.g., domestic content policies) and supply-side investments (e.g., the 45X and 48C tax credits authorized by the Inflation Reduction Act) to boost U.S. manufacturing of clean technologies. Expanded domestic manufacturing of clean energy components affords the opportunity to build the clean economy on a foundation of good jobs, clean manufacturing, a reliable industrial base, and greater equity.

Done right, onshoring of clean energy manufacturing can help to:

- Link climate action with the creation of high-paying manufacturing jobs;
- Reverse the economic and racial inequality exacerbated by manufacturing job losses;
- Counter forced labor and other human rights violations that plague several overseas clean energy supply chains;

- Support clean domestic manufacturing of the aluminum, steel, and cement that go into solar, wind, and other clean technologies rather than relying on emissions-intensive production overseas;
- Build reliable supply chains for clean energy rather than exposing our climate goals to shipping bottlenecks and geopolitical conflict; and
- Foster global competition in clean technology manufacturing to keep driving down costs, rather than pinning our climate goals on trust that increasingly monopolistic producers abroad will maintain low prices.

We also strongly support efforts to ensure that public and nonprofit entities are widely able to access direct pay to fully take advantage of the clean energy tax credits. The direct pay provisions offer an opportunity for institutions that serve our communities – public schools, hospitals, local and state governments, territorial governments, Tribes, community organizations, rural electric cooperatives, houses of worship, and more – to be full participants in expanding access to clean energy. The benefits of broad access to direct pay are significant for reducing climate pollution, supporting clean air, creating good jobs, expanding energy democracy, and cutting energy costs for institutions that serve the public.

We appreciate the Department’s efforts to clarify the domestic content requirements and exemption processes for elective pay entities.

Our recommendations answer specific questions related to documentation, delineating exemption requirements, and general recommendations for the Department.

Recommendations:

(2) What documentation or other substantiation should be required of Applicable Entities to qualify for the Increased Cost Exception?

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 that 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. The IRS has extensive experience in requiring retention of documents that may be called upon under audit.

4) For purposes of the Non-Availability Exception, what factors should be considered “relevant” in defining the term “relevant steel, iron, or manufactured products”?

In the application of a Non-Availability Exemption, the determination 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. 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 leading to job growth. 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, the Elective Pay provision 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. In determining what factors should be considered for the Non-Availability Exemption and in determining what is in fact produced in the United States, 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, straightforward, 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 US Code 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.

(6) What steps should be taken, if any, in implementing the Domestic Content Exceptions to reduce the burden on Applicable Entities? For example, how can the Secretary identify certain steel, iron, or manufactured products that are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality and what process and criteria could be used?

Elective pay entities need a clear process so they can tailor purchasing decisions to domestic content requirements and boost certainty that clean energy projects can be brought to fruition. As part of this process, Treasury should create an opportunity for public and nonprofit entities to request a free advance determination of their adherence to domestic content requirements, for projects over 1 MW, so that they can make any necessary revisions to purchasing plans in time to meet the requirements and qualify for direct pay. In addition, Treasury should offer public and nonprofit entities technical assistance for identifying and utilizing domestic supply chains that can help them meet the domestic content requirements prior to submitting tax forms. Treasury should dedicate additional resources to maintain a list of domestic suppliers or work with the Made in America Office or other federal agencies that maintain such a list of supplies and create dedicated technical assistance for entities to receive advanced determination. BGA recently published a supply chain mapping tool that covers several relevant technologies for tax exempt entities. We encourage Treasury to review our resource as well as other similar resources to help elective pay entities identify products compliant with domestic content requirements. A link to our mapping tool is [here](#).

Other Considerations:

We strongly encourage the Department to not issue general exemptions or exemptions that are not specifically timebound. Unlike non-availability or cost waivers, general waivers offer no justification for waiving domestic content rules that aim to support stronger, cleaner, and fairer U.S. supply chains. General waivers send no actionable market signals and instead simply circumvent established policy. To uphold existing laws and the public interest in onshoring clean energy manufacturing, Treasury should eschew general waivers related to the domestic content rules for direct pay. Instead, Treasury should ask eligible entities to use non-availability and cost waivers where appropriate, as outlined above.

Conclusion

We commend the IRS efforts to clarify the role of domestic content for Elective Pay entities. Getting these details right will enable historically excluded entities to access these generous clean energy tax credits while creating good manufacturing jobs. We look forward to working with Treasury and the Internal Revenue Service to address the necessary points above in order to ensure all of these entities can draw down these tax credits.

