



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

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**Response to the U.S. Environmental Protection Agency’s Request for Comment on the Proposed General Applicability Public Interest Waiver of the Build America, Buy America Act as Applied to the Clean Ports Program**

The BlueGreen Alliance (BGA) unites labor unions and environmental organizations to solve today’s environmental challenges in ways that create and maintain quality jobs and build a clean, prosperous, and equitable economy. Our partnership is firm in its belief that we do not have to choose between a good job and a clean environment—we can and must have both.

We appreciate the opportunity to provide input to shape the U.S. Environmental Protection Agency’s (EPA) proposed waiver of Buy America requirements on zero emission technologies funded by the Clean Ports Program. The Clean Ports Program directs essential resources toward reducing emissions from the nation’s ports, which represent significant sources of air pollution that disproportionately impact the disadvantaged communities that surround them. Reducing emissions from ports is a critical environmental justice priority. We understand EPA’s efforts to implement this important program expeditiously and efficiently.

We also know that a sustained and fair transition to cleaner technologies—including at ports—requires a commitment to building a robust domestic supply chain for those technologies. Buy America requirements as laid out in the Bipartisan Infrastructure Law’s Build America, Buy America Act, provide essential market signals to the industry that the clean technologies of today and tomorrow—on which we will rely to meet climate and environmental justice goals—must be made in the United States. Buy America requirements put companies that are making meaningful investments in the nation’s clean technology supply chain—and the manufacturing workers who make those technologies—first in line to benefit from public dollars like those administered by the Clean Ports Program.

**While the BlueGreen Alliance supports narrowly tailored waivers of Buy America requirements, this proposed general applicability waiver does not strike a balance between two explicit priorities of the Build America, Buy America Act and the Clean Ports Program: building a domestic supply chain for clean technologies, and deploying those clean technologies to meet the climate moment and improve air quality in disadvantaged communities.** As written, the proposed waiver is overly permissive, and risks permanently offshoring supply chains for clean port

technologies—and the manufacturing jobs that come with them. We urge EPA to take the following actions to better tailor this Buy America waiver to ensure rapid deployment of clean ports technologies, without undermining the domestic supply chain for those technologies.

**Recommendation #1: Seek supply chain expertise from the U.S. Department of Energy (DOE) and the White House Made In America Office (MIAO) to develop technology-specific, and time-limited Buy America waivers for each of the technologies eligible for Clean Ports Program funding. Extend the application deadline for the Clean Ports Program to provide adequate time to refine the waiver(s).**

The universe of mobile technologies used at ports is vastly diverse, as acknowledged by EPA itself in the text of the proposed waiver. From Class 3 trucks to tugboats to ship-to-shore cranes, there is significant variance in the level of development of each technology's domestic supply chain. Buy America waivers for the Clean Ports Program must reflect that variance. EPA should partner with DOE and MIAO to evaluate the need for Buy America waivers for each program-funded technology on an individual basis. Such tailoring may include specific timelines for Buy America compliance with intermediate benchmarks that clearly signal to manufacturers that they should immediately move to onshore their supply chains for zero emission port equipment. Together, DOE and MIAO have the supply chain expertise, the industry relationships, and the grantmaking experience to create narrowly tailored Buy America waivers for each Clean Ports Program technology and determine which technologies do not need Buy America waivers at all due to the existing strength and completeness of their domestic supply chains.

We acknowledge that executing this recommendation will take time and resources from EPA and other agencies. We recommend that EPA extend the application deadline for the Clean Ports Program by at least one month, and shorten the application review timeline, to provide additional time for EPA to modify this proposed waiver according to the realities of each technology's supply chain, and the intent of the Build America, Buy America Act. This extension should not delay implementation of the program or delivery of resources to the program's awardees.

**Recommendation #2: For all technologies funded by the Clean Ports Program, apply requirements for the use of domestic iron and steel components.**

We appreciate EPA's responsiveness to comments on its May 2023 Request for Information highlighting the importance of protecting jobs in the domestic iron and steel industries, and strongly support the addition of a requirement to use domestic iron and steel components for all Clean Ports Program funded technologies. Such a requirement would prove essential to safeguarding existing jobs and incumbent workers in the domestic clean technology supply chain—particularly “tier 3” or upstream suppliers that are not a part of the battery supply chain. These

manufacturing facilities will significantly benefit from strong Buy America requirements that require not only domestic assembly and domestically manufactured batteries, but also domestic iron and steel components.

**Recommendation #3: Eliminate the supplemental de minimis waiver, which is made superfluous by better-tailored and technology-specific Buy America waivers.**

The proposed supplemental de minimis waiver would set a dangerous precedent that opens the door for weakening Buy America requirements across all programs and agencies. Better tailoring the Buy America waivers to each of the Clean Ports Program technologies, as described by Recommendation #1, would obviate EPA's justification for the supplemental de minimis waiver, because the specific conditions of each technology's supply chain would already be accounted for. EPA must not effectively lower the 55% domestic content threshold with a supplemental de minimis waiver for all technologies. Such a waiver would also significantly counteract the positive benefits of the proposed requirement for domestic iron and steel components and muddle the clear market signal intended by the Build America, Buy America Act.

**Conclusion**

Manufacturing workers here in the United States are prepared to build the clean technologies of today and tomorrow. The Build America, Buy America Act puts those workers first in line to benefit from the Bipartisan Infrastructure Law's transformative investments in our infrastructure. It spreads the benefits of climate policies beyond those impacted by climate pollution, to those building the technologies that eliminate climate pollution, and the communities they live in. EPA must ensure that its Buy America waivers hold fast to the intent, and transformative economic potential, of the law. As written, the proposed Buy America waiver for the Clean Ports Program puts existing U.S. manufacturing jobs at risk and crowds out investment from manufacturers that are already making strides to onshore their supply chains in favor of rent-seeking manufacturers with low-road environmental and labor practices. This was not Congress' intent in passing the Build America, Buy America Act, and it must not be the impact of EPA's waiver.

Thank you for the opportunity to comment.