

May 1, 2023

The Honorable Michael Regan
Administrator
Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20004

Re: Request for Information to Support New Inflation Reduction Act Programs to Lower Embodied Greenhouse Gas Emissions Associated with Construction Materials and Products (EPA-HQ-OPPT-2022-0924)

Dear Administrator Regan:

The Alliance for American Manufacturing (AAM) appreciates the opportunity to provide comments in response to the Environmental Protection Agency's Request for Information to support new Inflation Reduction Act programs to Lower Embodied Greenhouse Gas Emissions Associated with Construction Materials and Products.

Based on AAM's stakeholder concerns we wish to specifically address questions #14, #18, and #25 and convey the following overarching recommendations to EPA concerning its implementation of Buy Clean:

- Third Party Verification Alone is Insufficient to Ensure Integrity of Buy Clean Procurement Markets;
- Standards Should be Product-specific and Based on Company-wide Averages;
- EPA Should Utilize Global Emissions Comparisons when Establishing Standards;
- EPA Should Look to its Past Experience Regulating the Steel Industry;
- EPA Should Work with Industry to Establish Standards as Data Becomes Available;
- EPA Should Incorporate Lessons Learned from California's Implementation of Buy Clean;
- GSA's Policy Should Incentivize Ongoing Efforts to Reduce Emissions; and
- Buy Clean Must Not Undermine Buy America and Buy American Efforts.

The comments below will go into further details on these points.

About the Alliance for American Manufacturing (AAM)

The Alliance for American Manufacturing (AAM) is a non-profit, non-partisan partnership formed in 2007 by some of America's leading manufacturers and the United Steelworkers. Our mission is to strengthen American manufacturing and create new private-sector jobs through smart public policies. We believe that an innovative and growing manufacturing base is vital to America's economic and national security, as well as to providing good jobs for future generations. AAM achieves its mission through research, public education, advocacy, strategic communications, and coalition building around the issues that matter most to America's manufacturers and workers.

AAM has been engaged with a broad range of stakeholders in the development and implementation of "Buy Clean" policy since before California first introduced its version of this policy in early 2017. As a labor management partnership, we are uniquely positioned to view the opportunities and challenges of Buy Clean policy formulation and implementation through the lens of both manufacturing workers and domestic

producers. AAM stands ready to work with the administration to realize President Biden’s aspirations to create millions of good-paying union jobs as the nation moves “ambitiously to generate clean, American-made electricity, while building the infrastructure to electrify major sectors of our economy, meet the existential threat of climate change,”¹ and, at the same time, “power new demand for American products, materials, and services.”² We agree enthusiastically with President Biden’s remarks made during his signing of a January 25, 2021, executive order to enhance domestic content preference policies when he said, “American manufacturing was the arsenal of democracy in World War Two, and it must be part of the engine of American prosperity now. That means we are going to use taxpayers’ money to rebuild America. We’ll buy American products and support American jobs, union jobs.”³

However, as we have cautioned in past comments, the details of such an ambitious “Buy Clean” policy framework at the federal level are critical to ensuring that the Administration can live up to its commitments to both address its climate goals and rebuild our manufacturing sector. A poorly constructed or rushed policy could result in U.S. tax dollars purchasing foreign-manufactured iron, steel, manufactured products, and construction materials instead of those produced by American workers. Further, a poorly constructed or rushed policy that does not contemplate production processes in certain sectors could also leave American workers who currently manufacture these products on the sidelines. We have been concerned by recent proposals by the General Services Administration and welcome the opportunity to share recommendations intended to guide EPA to a “Buy Clean” policy that lives up to its promise of incentivizing the purchase of products with lower embodied carbon yet without causing unintended damage to domestic producers and their workers. Our recommendations and concerns related to a selection of the EPA RFI’s questions can be found below.

14. Verifying Environmental Product Declarations (EPDs)

Third Party Verification Alone is Insufficient to Ensure Integrity of Buy Clean Procurement Markets

AAM has regularly voiced, and continues to voice, our concerns about basing a Buy Clean policy on the use of currently available EPDs. One area of particular concern is verifiability. If EPDs are to be the basis for the federal government’s “Buy Clean” policies, they cannot rely solely on third party verification. The U.S. government should ensure that bad actors cannot game this well-intended policy, including through the establishment of a mechanism for audit and verification that does not rely on outside parties. As we have seen all too often, manufacturers outside of the United States, particularly, but not exclusively, in places like China and Russia, have engaged in a variety of tactics, including manipulating pricing data and establishing elaborate transshipment schemes, to evade U.S. trade laws, undermining domestic producers and workers. With the prospect of a new means to advantage their products over competitors in order to access to the U.S. government’s vast purchasing power, it would be prudent to expect overseas producers to attempt to game the system with equal vigor.

We are appreciative that the Administration has regularly reinforced its commitment to instituting “Buy Clean” as an added means to incentivize low carbon production on top of existing domestic preference policies like Buy American (applied to direct procurement and acquisitions) and Buy America (applied to federal assistance infrastructure spending). However, this alone does not ensure overseas producers will be unable to access our

¹ <https://joebiden.com/clean-energy/>

² <https://joebiden.com/made-in-america/>

³ Available at: <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/01/25/remarks-by-president-biden-at-signing-of-executive-order-on-strengthening-american-manufacturing/>

public procurement markets to the detriment of domestic producers and their workers. Thus, the threat of carbon data manipulation remains a concern that must be addressed and continually monitored. Given that the Trade Agreements Act (TAA) affords more than 60 countries nearly unfettered market access to federal acquisition and direct procurement by waiving the Buy American Act for many purchases, comprehensive protocols would need to be established for verifying the carbon intensity of material inputs to products purchased overseas through this glaring loophole. Currently, products from TAA countries need only be substantially transformed to qualify for BAA-covered direct procurement markets. As a result, China and other countries that do not have a procurement agreement with the United States effectively have backdoor access to U.S. direct procurement markets by supplying upstream inputs into products that are substantially transformed in a TAA country. This presents alarming hazards for the effectiveness of any “Buy Clean” regime, as it reduces transparency into the true carbon intensity of inputs into these products.

Waivers of Buy America policies (including the recently enacted Build America, Buy America Act (BABA) and other precursor Buy America laws), which are applied to federal assistance infrastructure spending, raise similar concerns discussed in detail below.

Domestic steelmakers and downstream fabricators are more environmentally friendly than their counterparts across the world, including those countries aggressively seeking to dominate global production of clean energy manufacturing through predatory state investments and overcapacity that stifles opportunities for U.S. production and innovation. One analysis found that U.S. steelmakers spend 80 percent more than their Chinese counterparts per ton of steel to limit air and water pollution levels, equal to an annual subsidy for China’s mills of more than \$1.7 billion.⁴ The environmental implications of this disparity between environmental safeguards applied to steelmaking in the United States versus those applied and enforced on steelmaking in China have only worsened since the publication of that report, as China’s share of global steelmaking capacity grew from less than 40 percent in 2009 to approximately 50 percent by 2019.⁵ Moreover, China’s share of the world’s total steel production reached an astounding 56.5% by 2020.⁶ Any efforts to standardize reporting data or to rely on emissions reduction commitments by the Chinese Communist Party (CCP) or Chinese producers must contemplate longstanding transparency concerns with respect to environmental and other data, along with a history of flouting trade, human rights, and environmental commitments.

18. Other input on standardization, measurement, verification, and reporting approaches that EPA should consider?

EPA Should Consider Standards that are Product-specific and Based on Company-wide Averages

Most domestic steelmakers operate more than one production facility. Similarly, many of the major overseas producers that domestic steelmakers compete with are large firms with multiple production facilities. Although we recognize that there are some benefits to the use of facility-specific EPD data, we would recommend consideration of company-wide averages for specific products for “Buy Clean” standards.

⁴ Available at: <https://www.americanmanufacturing.org/research/an-assessment-of-environmental-regulation-of-the-steel-industry-in-china/>

⁵ Data available at: https://stats.oecd.org/Index.aspx?datasetcode=STI_STEEL_MAKINGCAPACITY

⁶ Available at: <https://www.worldsteel.org/media-centre/press-releases/2021/Global-crude-steel-output-decreases-by-0.9--in-2020.html>

Steelmakers do not make investment decisions about a mill in a vacuum. Many operate mills of differing ages and carbon intensity. Some operate both integrated mills and electric arc furnaces (EAFs). Relying solely on facility-specific EPDs could result in steelmakers utilizing a single facility, or a select few facilities, to serve Buy Clean procurement markets, while at the same time ignoring the carbon intensity of their other facilities. To properly incentivize the company-wide investment decisions necessary to reduce a firm's overall carbon intensity, company-wide, but product-specific, EPDs warrant consideration. Further, guardrails should be contemplated to ensure that manufacturers do not simply shift or idle capacity to game "Buy Clean" so that producers who invest in technologies to lower their carbon intensity are disadvantaged.

EPA Should Utilize Global Emissions Comparisons when Establishing Standards

While there are problems with global EPDs and environmental performance data, it is important to recognize that there are poorer performers than the American industry. American steel-only thresholds disadvantage domestic products which already have lower greenhouse gas (GHG) footprint than global competitors.

Putting limits on the "best-of-the-best" will only impact the domestic industry while allowing global competitors and imports to continue business as usual with their typically more-carbon intensive production.

As discussed in detail above, TAA waivers of the Buy American Act (BAA) provide access to federal acquisition and direct procurement markets for more than 60 countries. TAA only requires that products be "substantially transformed," meaning that the actual materials and upstream inputs could be produced elsewhere – including countries that do not have a procurement agreement with the United States. For instance, steel that is produced in a third-party, non-TAA country is able to gain indirect access to BAA-covered direct procurement markets after being "substantially transformed" in a TAA country and subsequently purchased by the U.S. government. This weak "substantial transformation" threshold, means, in practice, that producers in non-TAA nations, including China and Russia, would have backdoor access to these markets. Thus, the BAA applies to only a narrow set of procurements and, even then, can be waived if relatively minor pricing difference thresholds are met, providing another means of access for global producers to U.S. direct procurement markets.

Separately, Buy America domestic preferences applied to federal assistance infrastructure spending give domestic producers the first shot at supplying our critical infrastructure projects. The origin standards and international obligation policies of these congressionally enacted policies differ from Buy American Act procurements. For instance, the recently enacted Build America, Buy America Act (BABA) put robust origin standards into statute, including an "all manufacturing processes" standard that requires steel to be melted and poured in the United States. However, even these strong Buy America policies offer opportunities for upstream foreign-produced steel to be embedded into end-use manufactured products.

Buy America policies allow for waivers related to non-availability, unreasonable cost, and the public interest. General waivers that have regrettably been applied more broadly cover entire programs or categories of products. If Buy America is waived for any one of these reasons, there are virtually no limits to where a covered product or material may be sourced. Further, a number of materials, including cementitious materials, have been statutorily exempted as a "construction material" in BABA, meaning there are no equivalent domestic preferences in place for a variety of carbon-intensive materials like cement, concrete, and asphalt when used as a "construction material." Other products and materials have been administratively exempted, for instance the Department of Transportation has been in non-compliance with Buy America requirements for manufactured products for over four decades. Moving forward, the origin standard for "manufactured products" under BABA

requires that the final manufacturing of a product occur in the United States and that more than 55 percent of the components be domestic. Thus, much of the content in a “manufactured products” may not be domestically produced. Moreover, like the shortcomings in BAA and TAA, it is currently unclear how the administration intends to treat upstream inputs, subcomponents, and materials that ultimately become the components in a manufactured product. The Office of Management and Budget (OMB) is currently working to update guidance on this issue as it pertains to BABA implementation.

EPA Should Look to its Past Experience Regulating the Steel Industry and Institute Standards Differentiated by Production Process for Steel

EPA can look to its own experience implementing requirements under Section 6002 of the Resource Conservation and Recovery Act ([42 U.S.C. §6901 et seq. \(1976\)](#)) where it acknowledged the need to avoid using a one-size fits all approach to regulating the different types of production processes in the steel industry, electric arc furnace and integrated mill production. In this instance, EPA established two separate standards to reflect these differences and the importance of both production processes to our economic and national security.

It is critical that EPA once again utilize this differentiated approach to ensure that its proposed standards do not unjustly favor one production process over another in the steel sector, where EAFs and integrated mills that use basic oxygen furnaces (BOFs) are both present. Integrated mills create steel from iron and alloying elements. EAFs manufacture steel primarily from post-consumer steel waste (aka steel scrap). BOFs make certain types of high-grade steel that cannot be made in EAFs. Furthermore, there is not enough existing steel scrap to rely solely on EAFs, and BOFs have significant employment impacts, including many union jobs throughout the production process. This includes upstream raw materials, downstream steel production, finishing, and fabrication.

In the context of different production processes, EPA must precisely calibrate the manner in which EPDs measure emissions. It is critical that the emissions of any production process be fully accounted for, including those attributable to material inputs, such as pig iron, that have been extracted and processed outside the United States.

It would be wholly inappropriate, and regrettable for the sake of union jobs and U.S. national security, if EPA were to advance standards that favor one production process over another based on faulty assumptions. Further, such an approach would undermine the very aims at the core of “Buy Clean” and reduce incentives for further steps to reduce the carbon intensity of steel production. For instance, a standard that favored EAFs, and eliminated integrated mills from “Buy Clean” markets, would remove key incentives for steelmakers using both processes to continue to invest in more carbon efficient technologies.

EPA Should Work with Industry to Establish Standards as Data Becomes Available

In the General Services Administration’s (GSA) recent pre-decisional discussion draft on low-embodied carbon materials, circulated on January 25, 2023, the GSA identified steel products for which the domestic industry does not have published company-level or facility-level EPDs. It makes little sense to establish standards that rely on incomplete data and unreliable proxies. By taking the time to align the process of setting standards with the realities of the steel industry, EPA will be better able to tailor these standards to drive the Administration’s dual goals of aggressively combatting climate change through the promotion of cleaner domestic production while also expanding U.S. manufacturing which is critical to U.S. economic and national security.

25. Existing Programs and Lessons Learned

EPA Should Incorporate Lessons Learned from California’s Implementation of Buy Clean

California was the first state in the nation to pass legislation establishing a Buy Clean regime. California’s [AB 262](#), commonly referred to as “Buy Clean,” was signed into law in the fall of 2017. Yet, in recognition of the complexities involved with setting global warming potentials (GWPs) and using EPDs for the covered materials, California did not rush to implement before extensive industry engagement.

California’s AB 262 began its implementation phase after industry engagement with the Department of Government Services, and in January 2021 [published](#) the maximum GWP for the products covered by the legislation: structural steel (hot-rolled sections, hollow structural sections, and plate), concrete reinforcing steel, flat glass, and mineral wool board insulation. Only on July 1, 2022, did California’s awarding authorities begin to gauge GWP compliance of eligible materials with the required EPD.

In a much shorter time frame following EPA guidance, GSA proposed to implement a “Buy Clean” policy for materials that have never been covered by such a policy on a federal level. Further, GSA proposed to aggressively pursue GWPs on materials in the top 20th to 40th percentile – a more aggressive target than the GWP threshold California selected after years of consideration and over a decade of experience in implementing its own climate policy.

EPA should recognize the difficulties California faced in implementing “Buy Clean” and commit to getting the critical details of this policy right. EPA should carefully work to ensure that U.S. steel producers are not made ineligible due to a flawed, "one-size-fits-all" approach or due to poorly calibrated timing considerations relative to the limited availability of EPDs, as has been the case under California's "Buy Clean" policy. We appreciate the sense of urgency to move towards less carbon intensive materials production, but instituting standards that fail to establish safeguards on foreign inputs of products substantially transformed in TAA countries or perversely remove incentives for domestic producers to continue to invest in reducing their carbon intensity will move our nation in the wrong direction and undermine the long-term climate goals of IRA and the Administration.

GSA’s Policy Should Incentivize Ongoing Efforts to Reduce Emissions

The technologies and processes to further reduce emissions in energy intensive trade exposed industries (EITE) are becoming clearer with each passing day. But after years of deindustrialization driven in large part by predatory imports and distorted markets, many manufacturers have not enjoyed the market conditions necessary to make such upgrades. Robust federal support for demonstration projects to validate the acceleration of carbon capture and removal and other green technologies is necessary for clean energy and climate innovation. Moreover, providing appropriate market signals that favor cleaner, U.S.-produced goods will boost the confidence of the EITE sectors to make necessary investments that will further drive emissions reductions.

In addition, carefully calibrating the timing for implementation of any “Buy Clean” policies is vital, as these sectors will be asked to meet new requirements while at the same time still experiencing difficulties from distorted markets due to overcapacity and foreign government state-driven industrial policies. Robust enforcement and monitoring mechanisms will be required to identify and promptly address attempts by unscrupulous foreign actors to circumvent trade flows, falsify information, or manipulate loopholes as a means of increasing their share of the U.S. market and increasing import penetration.

Buy Clean Must Not Undermine Buy America and Buy American Efforts

It is essential that “Buy Clean” policies build upon, but do not in any way undermine, conflict with, or negate statutory Buy America and Buy American requirements. A poorly constructed or rushed “Buy Clean” policy – including one that outpaces full implementation of domestic content requirements – could result in U.S. tax dollars purchasing foreign-manufactured iron, steel, manufactured products, and construction materials instead of those produced by American workers. The “Buy Clean” effort must be guided by market signals that incentivize capital investments and expansions of productive capabilities in the United States for materials that have less climate impact – not by promoting an increased reliance on imports or by failing to give appropriate consideration to various production processes.

American workers stand ready to produce the iron, steel, manufactured products, and construction materials necessary for a cleaner economy. American ingenuity and the collective power of the United States labor force put our nation in a strong position to achieve its environmental goals. Moreover, U.S. environmental laws and regulations do not have extraterritorial application. The best way to ensure that products and materials procured by the government meet the ambitious standards imposed by U.S. environmental safeguards is to ensure the product is produced in the United States, in accordance with U.S. laws and policies.

Thank you for the opportunity to provide these comments.

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