

August 30, 2022

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

*RE: Build America Buy America Act Requirements of the Clean School Bus Program*

Dear Administrator Regan:

The Alliance for American Manufacturing (AAM) appreciates the opportunity to provide comments on the Environmental Protection Agency's (EPA) implementation of the Clean School Bus Program (CSBP) and the Build America, Buy America (BABA) requirements included in the *Infrastructure Investment and Jobs Act* (IIJA). A robust domestic content requirement for all school bus purchases financed by this program is required by law. Despite its May 14, 2022, statutory implementation deadline, AAM is perplexed that EPA has not yet applied BABA to this program and urges immediate corrective action.

#### **About AAM**

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.

#### **The Build America, Buy America Requirement Applies to ALL Federally Assisted Infrastructure, Including the Clean School Bus Program**

The BABA provisions in the IIJA require that all federally assisted infrastructure projects be completed with iron, steel, manufactured products, and construction materials that are produced in the United States. Our nation has a once-in-a-generation opportunity to strengthen supply chains while rebuilding our public works infrastructure. Reinvesting tax dollars here at home creates American jobs, invests in goods produced under strong environmental and workplace safety standards, and protects our economic and national security. It is now the job of federal departments and agencies to fully implement these Congressionally mandated, comprehensive Buy America policies.

In Section 70912 of BABA, "infrastructure" is defined as inclusive of "public transportation" and a wide range of other forms of infrastructure. Congress clearly intended for BABA to apply broadly to all forms of federally assisted infrastructure so that departments and agencies would have no doubts as to its scope of coverage. The BABA law does not afford departments and agencies

the authority to determine at their own discretion whether BABA applies to federally assisted infrastructure programs under their jurisdiction that are clearly covered under the law.

It is thus deeply perplexing that EPA makes no mention of the clear BABA requirements for federal assistance infrastructure in its January 2022 Initial Implementation Report to Congress.<sup>1</sup> Instead, the report states that the program “will support domestic manufacturing and American jobs” as there are “facilities across the county that produce zero-emission and clean school buses.” Furthermore, it is concerning that EPA merely identifies “the impact on domestic manufacturing jobs” as one of its many award criteria but is explicit that it will not be given “preference” over other individual criterion – which includes “lowest overall cost of bus replacement.”

**Excerpt on Page 3 of EPA’s “Bipartisan Infrastructure Law Clean School Bus Program: Initial Implementation Report to Congress”**

In making awards for low- or zero-emission clean school buses, EPA will consider the following criteria without preference to any individual criterion:

- Lowest overall cost of bus replacement;
- Local conditions, including the length of bus routes and weather conditions;
- The impact on domestic manufacturing jobs, to include parts, components, and assembly, including the job impact in underserved communities;
- Technologies that most reduce emissions; and
- Whether funds will bring new technologies to scale or promote cost parity between old technology and new technology, particularly for production in the United States.

EPA’s acknowledgement of the importance of domestic manufacturing, while laudable, does not meet the BABA requirements and would apparently allow grant recipients to purchase school buses that do not meet the clear BABA requirement that iron, steel, manufactured products, and construction materials be produced in the United States. If EPA continues to implement the CSBP without requiring recipients to adhere to the BABA policy, the agency will continue to be in clear violation of the BABA law, which took effect on May 14, 2022.

Moreover, EPA’s Initial Implementation Report and its CSBP implementation to date also appears to conflict with the Office of Management and Budget’s (OMB) initial BABA implementation guidance.<sup>2</sup> OMB is clear that “infrastructure” includes “public transportation” and guides agencies to “interpret the term ‘infrastructure’ broadly and consider the definition provided as illustrative and not exhaustive.” Agencies are directed to consider “whether the project will serve a public function, including whether the project is publicly owned and operated” or “privately operated on behalf of the public,” indicating these types of projects have “greater indicia of infrastructure.”

<sup>1</sup> “Bipartisan Infrastructure Law Clean School Bus Program Initial Implementation Report to Congress,” EPA. January 2022. Available at: <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P1014098.pdf>.

<sup>2</sup> Memorandum for Heads of Executive Departments and Agencies. Office of Management and Budget. April 18, 2022. Available at: <https://www.whitehouse.gov/wp-content/uploads/2022/04/M-22-11.pdf>.

Federally assisted purchases of school buses to safely transport our nation's students to schools unequivocally meets this standard. AAM finds it disconcerting that EPA failed to identify the BABA requirement in its report and did not outline the steps it is taking to implement the law.

### **EPA Must Begin BABA Implementation and Should Use FTA's Rolling Stock Buy America Requirements as a Starting Point for the CSBP**

AAM urges EPA to immediately take corrective action to begin applying the BABA policy in accordance with the express terms of the law and the guidance provided by OMB. Moreover, AAM urges EPA to implement the CSBP in a manner that ensures these procurements support the expansion of all stages of manufacturing, including upstream inputs that are critical for the completion of a final product assembly or manufacture. The longstanding application of Buy America requirements to federally assisted rolling stock purchases – including transit buses – provides a well-established and useful model for the EPA to implement the CSBP.

The Federal Transit Administration's (FTA) Buy America policy framework should be used as a starting point to set the CSBP on a course to be compliant with the BABA law. The FTA's Buy America policy requires final assembly in the United States and that 70 percent of a vehicle's component content be domestic. Buy America application to rolling stock, particularly transit buses, has incentivized investments in U.S. productive capacity and domestic employment while ensuring timely delivery of rolling stock to states and localities.

When EPA begins the required implementation of BABA to the CSBP, AAM looks forward to expanding upon the following recommendations to improve upon FTA's Buy America policy:

- First, to ensure that an energy storage system (i.e., the battery) is truly "American made," the EPA should place an emphasis on a resilient domestic battery supply chain, including both raw materials and subcomponent content, while avoiding loopholes that allow foreign content to be treated as domestic. The Administration's government-wide initiatives on advanced battery technologies and electric vehicle charging infrastructure will be undermined if an energy storage system or its charging equipment consisting of wholly imported content is permitted to qualify as domestically produced for purposes of Buy America compliance.
- Second, because energy storage systems account for an outsized percentage of the overall cost of components of an electric bus, EPA should adopt a robust BABA requirement that ensures that the steel, aluminum, tires, glass and other component materials and parts are produced in the United States – meeting the strong origin standards in the BABA law. The outsized cost of an energy storage system should not "crowd out" other domestically produced inputs used to construct the vehicle. This undesirable outcome would be detrimental to U.S. manufacturers and their workers.
- Finally, any use of BABA's statutory waiver authority must be narrow, conditional, and time limited to ensure timely investments in critical infrastructure without undermining domestic producers or chilling the market signal for domestic investment.

### **EPA Should Consider Additional Criteria that Safeguard U.S. Taxpayer Dollars from Use on Rolling Stock Supplied by State-Owned Enterprises**

AAM urges EPA to address the disruption caused by the entry of China's state-owned, -controlled, and -subsidized firms into U.S. public infrastructure markets. In recent years, companies with connections to the People's Republic of China, People's Liberation Army, and restricted entities including Huawei have set up final assembly facilities in the United States as a means of accessing federally assisted contracts for transit electric buses.<sup>3</sup> In response, Congress in 2019 passed the Transit Infrastructure Vehicle Security Act into law, prohibiting the use of FTA dollars to purchase rolling stock from Chinese state-owned, -controlled or -subsidized firms. AAM urges the EPA to adopt these same prohibitions in the CSBP for the protection of U.S. supply chains and national security. The EPA should take this action now to ensure that assistance recipients are not impacted by future limitations on programmatic assistance as such policies are harmonized across federal financial assistance programs.

### **Conclusion**

The United States has a once-in-a-generation opportunity to implement policies designed to strengthen critical transportation supply chains. Not only have existing supply chains deteriorated, but the United States stands at the precipice of an historic transition in our transportation sector to clean energy vehicles. Congress was clear in BABA that federally assisted infrastructure spending must prioritize the industrial supply chain that underpins our infrastructure, including the next generation of battery cells and packs that will power electric buses and other transit vehicles.

Moreover, BABA supports the EPA's larger mission of reducing carbon emissions and pollution, as U.S. production of steel and other key inputs used in rolling stock supply chains are among the least-carbon intensive in the world. It makes little sense to pursue policies to reduce our carbon footprint by relying on imports produced in polluting factories outside the United States.

A robust domestic content requirement for all school bus purchases financed by this program is required by law. Despite its May 14, 2022, statutory implementation deadline, AAM is perplexed that EPA has not yet applied BABA to this program and urges immediate corrective action.

Thank you for the opportunity share comments on this matter.

### **Alliance for American Manufacturing**

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<sup>3</sup> [Building the China Dream: BYD & China's Grand Strategic Offensive](#). Bruyere and Picarsic. Radarlock. October 2019.