

April 15, 2024

The Honorable Michael Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Dear Administrator Regan,

I am writing you to express support for EPA's proposed waiver of Build America, Buy America (BABA) requirements for the Clean Ports Program. This support is on behalf of the American Association of Port Authorities (AAPA), the nation's trade association for public port authorities. The \$3 billion Clean Ports Program will make a massive difference for ports and their nearby communities in maritime regions across the country. However, without the BABA waiver that you have proposed, I fear that the industry will not be able to procure zero-emission equipment in sufficient quantities to put the taxpayer dollar to its best use. In this letter, I will outline the lack of availability of zero-emission port equipment manufactured in the United States and why our industry believes this proposed waiver is absolutely necessary.

AAPA requests that EPA finalize the proposed waiver with small modifications referenced below, and that the waiver be finalized well in advance of the May 28th application deadline.

Availability of Equipment by Type

AAPA has been conducting research on the market of port equipment manufacturers for years. This research has been conducted by our staff, our port members across the country, and most recently, by Tioga Group, who we have contracted through a cooperative agreement with the Maritime Administration (MARAD). Through this cooperative agreement, Tioga Group, AAPA, and MARAD are conducting a survey on the projected demand ports will have for equipment of all fuel types. While this survey is not yet concluded, we have so far generated a list of manufacturers ports are currently procuring equipment from, and this list has supplemented the previous research AAPA has on domestic availability. Below is a summary of AAPA's understanding of the market of domestically manufactured zero-emission port equipment. As a caveat, AAPA cannot certify that each of these manufacturers is BABA-compliant.

Zero-Emission (ZE) Equipment Type	Domestic Availability?
Ship-to-shore cranes	None



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Rubber tire gantry cranes (RTGs)	Mijack (our understanding is that Mijack electric RTGs are in use only in pilot demonstrations)
Rail mounted gantry cranes	None
Straddle carriers/shuttle trucks	None
Mobile harbor cranes	None
Reach Stackers	Taylor
Loaded container handlers/top picks	Taylor
Empty container handlers	Taylor
Yard tractors	<ul style="list-style-type: none"> • Orange EV (two ports have informed AAPA that Orange EV yard tractors do not meet the necessary duty cycle between charges) • TICO (while TICO produces electric yard tractors in South Carolina, they have been in production for less than one year) • Taylor (will begin production in 2025 but will not be BABA-compliant at first)
Drayage trucks	<ul style="list-style-type: none"> • Nikola • Kenworth and Toyota produce hydrogen fuel cell drayage trucks through a joint venture, with some manufacturing in the United States, but the trucks do not appear to be BABA-compliant.
Forklifts	Several, including Taylor, Liebherr, and Hyster
Locomotives and railcar movers	Shuttlewagon (production may still be in prototype phase)
Harbor craft	None



Shore power cable management systems	None
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Policy Goals Cannot Be Achieved Without the Proposed Waiver

EPA states that the proposed waiver “is critical to ensure that recipients of the Clean Ports Program federal financial assistance can advance vital emission reduction initiatives at ports by deploying decarbonization and clean air projects to benefit port-adjacent communities across the country and help meet this Administration’s international climate commitment to reduce greenhouse gas pollution 50-52% by 2030.”¹ In service of this goal, it is critical that EPA adopt the proposed waiver and finalize it prior to the May 28th, 2024 application deadline. Zero-emission models of the largest types of port equipment, that would replace the highest quantity of emissions, are not made in America. Without the proposed waiver, the Clean Ports Program will be primarily limited to \$3 billion worth of forklifts. This will have minimal impact in reducing emissions and advancing air quality improvements for near-port communities. Without a waiver, the Clean Ports Program will also fail to advance the important goal of bolstering the American manufacturing base for zero-emission port equipment. Manufacturers will not open new factories or hire thousands of new workers for a one-time infusion of grant funds.

I also request that EPA consider adding other equipment types to the proposed waiver. While it is clear that there is insufficient supply of mobile equipment from BABA-compliant manufacturers, other equipment types, such as shore power cable management systems, also have zero domestic producers. If EPA does not implement a waiver for this equipment, it risks also precluding the purchase of shore power systems with the Clean Ports Program.

EPA proposes to issue this waiver under the “public interest” category as laid out in BABA. The Office of Management and Budget’s (OMB) implementation memo for BABA states, “[a] waiver in the public interest may be appropriate where an agency determines that other important policy goals cannot be achieved...”² After consultation with ports and potential suppliers, I believe the goals of the Clean Ports Program cannot be fully realized without a BABA waiver.

EPA’s proposed waiver is consistent with several other public interest waivers issued for novel programs funded by Congress – particularly those related to transportation and infrastructure,

¹ <https://www.epa.gov/system/files/documents/2024-03/clean-ports-baba-requiremts-proposed-waiver-notice-2024-03.pdf>

² <https://www.whitehouse.gov/wp-content/uploads/2023/10/M-24-02-Buy-America-Implementation-Guidance-Update.pdf>



including waivers approved by the [Federal Highway Administration](#),³ the [U.S. Department of Transportation](#),⁴ and the [Department of Commerce](#).⁵

The price differential between zero-emission port equipment produced in the United States versus abroad will also hamper the Program's effectiveness absent the proposed waiver. One large port informed AAPA that they conducted a study in cooperation with one of their terminal operators. In the study, they found that battery electric terminal tractors produced in Asia cost 1.5-2 times that of diesel-powered terminal tractors, battery electric terminal tractors produced in Europe cost 2-3 times, and battery electric terminal tractors produced in the United States cost 3-4 times. Not finalizing the proposed waiver will directly result in less equipment purchased through the Clean Ports Program and less emissions mitigated.

Availability May Not Meet EPA Readiness Standards

While several categories of equipment have at least one available American supplier, most of these companies will not meet the readiness levels required by EPA. The Notice of Funding Opportunity (NOFO) for the Zero-Emission Technology Deployment Competition, states that "First-of-a-kind demonstration and pilot projects designed to determine the technical feasibility and economic potential of technologies at either a pilot or prototype stage" would not be eligible for grants. It also states that "Applications including examples of at least three successful prior deployments in regular port-related service may be scored more favorably than those with examples of non-port related service or examples that only include prior pilot/demonstration phase projects."⁶

Several of the companies in the above list would likely be included in the "pilot" or "prototype" categories for the Clean Ports Program. However, only a few manufacturers (at best) have accrued more than three cases of successful commercial deployment at ports. Without a waiver, the NOFO as written will disincentivize ports from procuring equipment that will result in large-scale emissions mitigation. The equipment that has a track record of more than three successful deployments from BABA-compliant manufacturers will most often be small equipment like forklifts.

By limiting the Clean Ports Program to BABA-compliant equipment and equipment with a long history of commercial viability, EPA is essentially mandating that only small equipment with low emissions footprints are eligible.

³ <https://www.federalregister.gov/documents/2023/02/21/2023-03498/waiver-of-buy-america-requirements-for-electric-vehicle-chargers>

⁴ <https://www.federalregister.gov/documents/2023/08/16/2023-17602/waiver-of-buy-america-requirements-for-de-minimis-costs-and-small-grants>

⁵ <https://www.commerce.gov/sites/default/files/2024-02/BABA%20Waiver%20Signed.pdf>

⁶ <https://www.epa.gov/system/files/documents/2024-02/2024-clean-ports-ze-tech-deploymt-competition-2024-02.pdf>



Concerns with Relying on a Single Supplier

The above list may lead EPA to believe that, since there is at least one American manufacturer for several equipment types, a BABA waiver is not justified. However, having a single manufacturer is insufficient for a national, multi-billion-dollar industry. A single manufacturer will not be able to meet the robust demand for these products that the Clean Ports Program will create. As a result, a small number of ports (likely those with the biggest orders) will secure contracts with these manufacturers, while all others will be left with no BABA-compliant manufacturer to purchase from.

One large port recounted to AAPA how a similar case actually put two American manufacturers out of business. The port received a federal grant to purchase a large order of cargo-handling equipment (CHE) and had to comply with BABA rules for all mobile equipment. The port secured contracts with two American manufacturers to produce the equipment. The two manufacturers scaled up their operations to fulfill the orders but were not able to complete manufacturing. Scaling their manufacturing operations up caused logistical and financial strain and put both companies out of business. While just an anecdote, this serves as a cautionary reference point against relying on a single manufacturer to serve a national market.

A different large port informed me that they intend to apply for a Clean Ports Program grant to procure over 300 pieces of mobile equipment. This demand could consume a majority of the supply of available BABA-compliant equipment, just for one port. EPA has declared that at least \$250 million of the ZE Technology Deployment Competition will be reserved for small ports; however, without the BABA waiver, it is possible that few or no small ports will be able to procure equipment from American manufacturers. With only one manufacturer available for most equipment types, these companies may be relied on to produce hundreds of pieces of equipment, only for Clean Ports Program orders. These manufacturers will likely prioritize the largest orders from the largest ports, rather than fulfilling smaller orders. Small ports, and the communities that surround them, will bear the consequences.

Do Not Require Domestic Iron and Steel in Domestically Assembled Equipment

In the proposed waiver, EPA requests comments on whether, in addition to requiring that equipment be assembled in America, it should also require iron and steel to be sourced from American manufacturers. AAPA believes that EPA should not impose this additional requirement. Mandating that iron and steel come from American manufacturers would conflict with the allowance that equipment must only be assembled in the United States. Under the proposed waiver, manufacturers from abroad would be able to import equipment components to the United States, and American workers and manufacturing plants could be employed in the assembly of the equipment. However, if iron and steel must be manufactured in the United States, the proportion of components that can be imported from abroad will be greatly reduced. As a result, foreign companies would have to put together a supply chain whereby



they are sourcing iron and steel from American manufacturers but producing the rest of components abroad. These companies likely do not have existing domestic supply chains that would allow them to build equipment with this unique combination of foreign and domestic components. AAPA is concerned that with this requirement, many companies that would otherwise sell equipment to American ports would determine that it is too expensive to source American iron and steel and then build out the necessary manufacturing capacity, just for a one-time grant program with this unique combination of regulations.

Do Not Exclude Cranes from the 10% De Minimus Waiver, Clarify Definition of “Crane”

AAPA supports EPA’s proposal that 10% of the cost of mobile equipment would be waived from BABA applicability. However, EPA also noted that cranes would be excluded from the de minimus waiver. This is an arbitrary decision based on misconceptions of the White House’s February 21st fact sheet on cybersecurity at ports.⁷ EPA’s rationale in the proposed waiver is that exceptions to BABA should not be made for cranes because the Federal Government is taking action to reshore the manufacturing of cranes. However, the two principal actions announced in the fact sheet, that PACECO is going to build cranes in the United States, and that \$20 billion is available for crane manufacturing, are not relevant to EPA’s proposed waiver.

First, while it was announced in the fact sheet that PACECO is “planning to” start manufacturing cranes in America, there are no indications that this manufacturing will start in the near future. Since the Clean Ports Program requires applications to be submitted by May 28th, 2024, and ports do not know what types of cranes PACECO will produce, or when they will be available, this announcement should not preclude ports from using the de minimus waiver for the purchase of cranes from abroad.

Second, the proposed waiver states that “The Biden-Harris Administration recently issued an Executive Order to bolster the security of the nation’s ports and a commitment to invest through the Bipartisan Infrastructure Law and the Inflation Reduction Act over \$20 billion into U.S. port infrastructure” as a justification for exclusion of cranes from the de minimus waiver. However, none of this \$20 billion is slated to be spent on reshoring crane manufacturing. While the White House did not identify where this \$20 billion is going, it is our understanding that the \$20 billion number is a combination of the \$17 billion appropriated for port infrastructure in the Bipartisan Infrastructure Law and the \$3 billion for the Clean Ports Program from the Inflation Reduction Act. The \$17 billion number is frequently miscited, as billions of dollars of this funding was allocated for land ports of entry. Among the funding for maritime ports, billions of dollars are specifically dedicated to the Army Corps of Engineers, which will not be able to use any of the funding to incentivize domestic manufacture of cranes. Further, none of

⁷ <https://www.whitehouse.gov/briefing-room/statements-releases/2024/02/21/fact-sheet-biden-harris-administration-announces-initiative-to-bolster-cybersecurity-of-u-s-ports/>



the \$20 billion cited in the fact sheet is explicitly to incentivize the domestic manufacture of cranes.

Therefore, EPA should not use the PACECO announcement or the \$20 billion figure as justification for excluding cranes from the de minimus waiver. The NOFO already excludes purchases from foreign countries of concern with Clean Ports Program funds. The proposed waiver therefore purports to exclude the purchase of cranes from abroad, namely European countries, through the de minimus waiver. Since there are no American manufacturers of ship-to-shore cranes, rubber tire gantry cranes (save Mijack, which appears to be in pilot phase), rail mounted gantry cranes, or mobile-harbor cranes, this policy will discourage ports from purchasing cranes at all through the Clean Ports Program. The decision to allow ports to use Clean Ports Program funds to buy drayage trucks, top picks, straddle carriers, and more from European companies, but not cranes, seems arbitrary.

Further, EPA should clarify what it defines as a “crane.” There are several different types of cranes employed by the port industry, including ship-to-shore cranes, rubber tire gantry cranes, rail-mounted gantry cranes, and mobile harbor cranes. If EPA is going to preclude the purchase of “cranes,” or preclude the use of a BABA waiver to purchase “cranes,” it must define which types of cranes are specified prior to the May 28th, 2024 application deadline so that ports are able to put forward their best applications.

Create Clear and Flexible Terms for Complying with BABA and Grant Contracts

AAPA has a long history of collecting feedback from ports on the grant administration process for a variety of Federal Government programs. Our extensive feedback indicates that BABA requirements are burdensome on the procurement process, but Federal Agencies can facilitate a smoother process for grant recipients, regardless of the BABA rules themselves. To most efficiently administer Clean Ports Program grants, AAPA recommends that EPA should consider the following:

- Finalize the BABA waiver well in advance of the May 28th application deadline. *This is critical.* If the waiver is not finalized prior to the application deadline, ports will be put in a position where they may be applying for this one-time grant opportunity for equipment that ends up not being eligible under BABA requirements that have not been published.
- Make all BABA rules clear prior to grant administration. In the proposed waiver, EPA states that equipment need only be assembled in the United States and that it may have less than 55% content manufactured in the United States. If EPA intends to impose a definition of what constitutes “final assembly,” EPA should release clear guidelines on what is required to meet this standard. The definition of final assembly should be clear so that equipment manufacturers can contract with ports with confidence that their products will be covered by the grant. The definition should also



be flexible enough to allow companies without extensive domestic manufacturing supply chains to quickly set up an operation to deliver equipment to ports. Companies cannot be expected to build entire manufacturing plants to fulfill one order.

- Allow equipment purchased through the BABA waiver to be procured through the performance period of the Clean Ports Program. In the Technology Deployment Competition NOFO, EPA states that the performance period for grants will begin on about December 1st, 2024 and last for four years. In the proposed waiver, EPA states that grant recipients would be able to make orders of equipment through December 31st, 2027, and that equipment would have to be delivered six months after that. Equipment procurement timelines routinely run over a year or even longer after orders are submitted to manufacturers. EPA should allow delivery of equipment through the end of the performance period, which would be about December 1st, 2028.

Thank you for your consideration of our views. Please [contact me](#), or [Ian Gansler](#) (AAPA Manager of Energy, Resilience, and Sustainability Policy) if you have any questions or would like to discuss further.

Very Respectfully,



Cary S. Davis
President & CEO
American Association of Port Authorities



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