

Request for Comments on Prevailing Wage, Apprenticeship, Domestic Content, and Energy Communities Requirements Under the Act Commonly Known as the Inflation Reduction Act of 2022

Notice 2022-51

SECTION 1. PURPOSE

The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) plan to issue guidance regarding the provisions of §§ 30C, 45, 45L, 45Q, 45U, 45V, 45Y, 45Z, 48, 48C, 48E, and 179D of the Internal Revenue Code (Code), as amended or added by Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA). This notice requests comments on general as well as specific questions pertaining to the prevailing wage, apprenticeship, domestic content, and energy community requirements for increased or bonus credit (or deduction) amounts under those respective provisions of the Code. Comments received in response to this notice will help to inform development of guidance implementing the provisions of the IRA relating to §§ 30C, 45, 45L, 45Q, 45U, 45V, 45Y, 45Z, 48, 48C, 48E, and 179D.

SECTION 2. BACKGROUND

.01 Overview.

Taxpayers may qualify for increased credit amounts under §§ 30C, 45, 45Q, 45V, 45Y, 45Z, 48, 48C, and 48E, or an increased deduction amount under § 179D, if certain

prevailing wage and apprenticeship requirements are satisfied.¹ In addition, taxpayers may claim an increased credit amount under §§ 45L and 45U for satisfying prevailing wage requirements.² Further, taxpayers may qualify for bonus credit amounts under §§ 45, 48, 45Y, and 48E if certain domestic content requirements are satisfied.³ Finally, taxpayers may qualify for increased credit amounts under §§ 45, 48, 45Y, and 48E for investment in energy communities.⁴

.02 Prevailing Wage Requirement.

Sections 45(b)(7), 30C(g)(2), 45L(g), 45Q(h)(3), 45U(d)(2), 45V(e)(3), 45Y(g)(9), 45Z(f)(6), 48(a)(10), 48C(e)(5), and 48E(d)(3) include prevailing wage requirements that taxpayers must satisfy to qualify for increased credit amounts under those sections of the Code. Section 179D(b)(4) includes prevailing wage requirements that taxpayers must satisfy to qualify for an increased deduction amount under that section. The prevailing wage requirements under these various provisions are described below.

¹ See § 13404(d) of the IRA for the prevailing wage and apprenticeship requirements under § 30C(g); § 13101(f) of the IRA for the prevailing wage and apprenticeship requirements under § 45(b)(7); § 13104(d) of the IRA for the prevailing wage and apprenticeship requirements under § 45Q(h)(3) and (h)(4); § 13204(a)(1) of the IRA for the prevailing wage and apprenticeship requirements under § 45V(e)(3) and (e)(4); § 13701(a) of the IRA for the prevailing wage and apprenticeship requirements under § 45Y(g)(10); § 13704(a) of the IRA for the prevailing wage and apprenticeship requirements under § 45Z(f)(7); § 13102(k) of the IRA for the prevailing wage and apprenticeship requirements under § 48(a)(10) and (a)(11); § 13501(a) of the IRA for the prevailing wage and apprenticeship requirements under § 48C(e)(5) and (e)(6); § 13702(a) of the IRA for the prevailing wage and apprenticeship requirements under § 48E(c)(3) and (c)(4); and § 13303(a)(1) of the IRA for the prevailing wage and apprenticeship requirements under § 179D(b)(4) and (b)(5).

² See § 13304(d) of the IRA for the prevailing wage requirement under § 45L(g) and § 13105(a) for the prevailing wage requirements under § 45U(d)(2).

³ See § 13101(g) of the IRA for the domestic content requirements under § 45(b)(9), § 13102(l) of the IRA for the domestic content requirements under § 48(a)(12), § 13701(a) of the IRA for the domestic content requirements under § 45Y(g)(11), and § 13702(a) of the IRA for the domestic content requirements under § 48E(a)(3)(B).

⁴ See § 13101(g) of the IRA for the energy community provisions under § 45(b)(11), § 13102(o) of the IRA for the energy community provisions under § 48(a)(14), § 13701(a) of the IRA for the energy community provisions under § 45Y(g)(7), and § 13702(a) of the IRA for the energy community provisions under § 48E(a)(3)(A).

Section 45(b)(7)(A) provides, in general, that a taxpayer satisfies the prevailing wage requirements with respect to a qualified facility if the taxpayer ensures that any laborers and mechanics employed by the taxpayer or any contractor or subcontractor in the construction of such facility, and with respect to any taxable year for any portion of such taxable year that is within the period described in § 45(a)(2)(A)(ii), the alteration or repair of such facility, are paid wages at rates not less than the prevailing rates for construction, alteration, or repair of a similar character in the locality in which such facility is located as most recently determined by the Secretary of Labor, in accordance with subchapter IV of chapter 31 of title 40, United States Code. To determine an increased credit amount for a taxable year, the requirement under § 45(b)(7)(A)(ii) is applied to the taxable year in which the alteration or repair of the qualified facility occurs.

Section 45(b)(7)(B)(i) generally provides a correction and penalty mechanism for a taxpayer that claims the increased credit amount but fails to satisfy the prevailing wage requirement under § 45(b)(7)(A). Section 45(b)(7)(B)(ii) provides that the deficiency procedures under subchapter B of chapter 63 of the Code do not apply with respect to the assessment or collection of any penalty imposed by § 45(b)(7). Section 45(b)(7)(B)(iii) increases the penalty if the Secretary of the Treasury or her delegate (Secretary) determines that any failure to satisfy the prevailing wage requirement under § 45(b)(7)(A) is due to intentional disregard of the requirements under § 45(b)(7)(A).

Section 48(a)(10) provides, in general, that a taxpayer satisfies the prevailing wage requirements with respect to an energy project if the taxpayer ensures that any

laborers and mechanics employed by the taxpayer or any contractor or subcontractor in the construction of such energy project, and for the 5-year period beginning on the date such project is originally placed in service the alteration or repair of such project, are paid wages at rates not less than the prevailing rates for construction, alteration, or repair of a similar character in the locality in which such project is located as most recently determined by the Secretary of Labor, in accordance with subchapter IV of chapter 31 of title 40 of the United States Code. Subject to § 48(a)(10)(C), for purposes of any determination under § 48(a)(9)(A)(i) for the taxable year in which the energy project is placed in service, the taxpayer will be deemed to satisfy the requirement under § 48(a)(10)(A)(ii) at the time such project is placed in service. Section 48(a)(10)(B) provides that rules similar to the rules of § 45(b)(7)(B) (that is, the correction and penalty mechanism for failure to satisfy the prevailing wage requirement) apply. Section 48(a)(10)(C) provides that the Secretary is to, by regulations or other guidance, provide for recapturing the benefit of any increase in the credit allowed under § 48(a) by reason of § 48(a)(10) with respect to any project that does not satisfy the requirements under § 48(a)(10)(A) (after application of § 48(a)(10)(B)) for the period described in § 48(a)(10)(A)(ii) (but which does not cease to be investment credit property within the meaning of § 50(a)). The period and percentage of such recapture are determined under rules similar to the rules of § 50(a).

The prevailing wage requirements under §§ 30C(g)(2), 45L(g),⁵ 45Q(h)(3),⁶

⁵ Section 45L (New energy efficient home credit) includes a modified prevailing wage requirement under § 45L(g). Section 45L(g)(3) provides that the Secretary is to issue such regulations or other guidance necessary to carry out the purposes of § 45L(g).

⁶ Section 45Q(h)(3)(A) applies with respect to any qualified facility and any carbon capture equipment.

45U(d)(2), 45V(e)(3), 45Y(g)(9), 45Z(f)(6)(A), 48C(e)(5), 48E(d)(3), and 179D(b)(4) are similar to the requirements under § 45(b)(7) and § 48(a)(10).

.03 Apprenticeship Requirements.

Sections 45(b)(8), 30C(g)(3), 45Q(h)(4), 45V(e)(4), 45Y(g)(10), 45Z(f)(7), 48(a)(11), 48C(e)(6), and 48E(d)(4) include apprenticeship requirements that taxpayers must satisfy to qualify for increased credit amounts under those sections of the Code. Section 179D(b)(5) includes apprenticeship requirements that taxpayers must satisfy to qualify for an increased deduction amount. The apprenticeship requirements under these various provisions are described below.

Section 45(b)(8)(A)(i) provides that a taxpayer satisfies the apprenticeship requirements with respect to the construction of any qualified facility if the taxpayer ensures that not less than the applicable percentage of the total labor hours of the construction, alteration, or repair work (including such work performed by any contractor or subcontractor) with respect to such facility is, subject to § 45(b)(8)(B), performed by qualified apprentices. Section 45(b)(8)(E)(ii) defines “qualified apprentice” as “an individual who is employed by the taxpayer or by any contractor or subcontractor and who is participating in a registered apprenticeship program, as defined in section 3131(e)(3)(B).” Section 3131(e)(3)(B) of the Code defines a “registered apprenticeship program” as an “apprenticeship registered under the Act of August 16, 1937 (commonly known as the “National Apprenticeship Act”; 50 Stat. 664, chapter 663; 29 U.S.C. 50 et seq.) that meets the standards of subpart A of part 29 and part 30 of title 29, Code of Federal Regulations.”

Under § 45(b)(8)(A)(ii), the applicable percentage of total labor hours to be

performed by a qualified apprentice is (1) in the case of a qualified facility the construction of which begins before January 1, 2023, 10 percent, (2) in the case of a qualified facility the construction of which begins after December 31, 2022, and before January 1, 2024, 12.5 percent, and (3) in the case of a qualified facility the construction of which begins after December 31, 2023, 15 percent.

Section 45(b)(8)(B) provides that the requirement under § 45(b)(A)(i) is subject to any applicable requirements for apprentice-to-journey worker ratios of the Department of Labor or the applicable State apprenticeship agency.

Section 45(b)(8)(C) provides that each taxpayer, contractor, or subcontractor who employs four or more individuals to perform construction, alteration, or repair work with respect to the construction of a qualified facility must employ one or more qualified apprentices to perform such work.

Section 45(b)(8)(D)(i) provides that a taxpayer will not be treated as failing to satisfy the apprenticeship requirements if the taxpayer (1) satisfies the good faith effort requirements described in § 45(b)(8)(D)(ii), or (2) subject to § 45(b)(8)(D)(iii), in the case of any failure by the taxpayer to satisfy the requirements under § 45(b)(8)(A) and (C) with respect to the construction, alteration, or repair work on any qualified facility to which § 45(b)(8)(D)(i)(I) does not apply, makes payment to the Secretary of a penalty in an amount equal to the product of \$50, multiplied by the total labor hours for which the requirement was not satisfied with respect to the construction, alteration, or repair work on such qualified facility.

Section 45(b)(8)(D)(ii) provides that a taxpayer will be deemed to have satisfied the requirements under § 45(b)(8)(A) with respect to a qualified facility if such taxpayer

has requested qualified apprentices from a registered apprenticeship program and (1) such request has been denied, provided that such denial is not the result of a refusal by the taxpayer or any contractors or subcontractors engaged in the performance of construction, alteration, or repair work with respect to such qualified facility to comply with the established standards and requirements of the registered apprenticeship program, or (2) the registered apprenticeship program fails to respond to such request within 5 business days after the date on which such registered apprenticeship program received such request.

Section 45(b)(8)(D)(iii) provides that if the Secretary determines that any failure described in § 45(b)(8)(D)(i)(II) is due to intentional disregard of the apprenticeship requirements, § 45(b)(8)(D)(i)(II) must be applied by substituting \$500 for \$50 for purposes of computing the penalty.

Section 45(b)(8)(E)(i) defines the term “labor hours.”

Sections 30C(g)(3), 45Q(h)(4), 45V(e)(4), 45Y(g)(10), 45Z(f)(7), 48(a)(11), 48C(e)(6) (effective for taxable years beginning after January 1, 2023), 48E(d)(4), and 179D(b)(5) apply rules similar to those under § 45(b)(8).

.04 Domestic Content Requirement.

Sections 45(b)(9), 48(a)(12), 45Y(g)(11) and 48E(a)(3)(B) provide domestic content requirements that taxpayers must satisfy to qualify for bonus credit amounts under those sections of the Code. Sections 45(b)(9)(A) and 45Y(g)(11)(A) provide for a 10 percent domestic content bonus credit amount if the domestic content requirements are satisfied. Under §§ 48(a)(12)(C) and 48E(a)(3)(B), the domestic content bonus credit amount is reduced from 10 percent to 2 percent if certain other requirements are

not satisfied.

Section 45(b)(9)(B)(i) provides that with respect to any qualified facility, the domestic content requirement is satisfied if the taxpayer certifies to the Secretary (at such time, and in such form and manner, as the Secretary may prescribe) that any steel, iron, or manufactured product that is a component of such facility (upon completion of construction) was produced in the United States (as determined under 49 C.F.R. § 661).

Section 45(b)(9)(B)(ii) provides that in the case of steel or iron, § 45(b)(9)(B)(i) is applied in a manner consistent with 49 C.F.R. § 661.5. For purposes of § 45(b)(9)(B)(i), § 45(b)(9)(B)(iii) provides that the manufactured products that are components of a qualified facility upon completion of construction are deemed to have been produced in the United States if not less than the adjusted percentage (as determined under § 45(b)(9)(C)) of the total costs of all such manufactured products of such facility are attributable to manufactured products (including components) that are mined, produced, or manufactured in the United States.

Section 45(b)(9)(C)(i) provides that the adjusted percentage is 40 percent. Section 45(b)(9)(C)(ii) provides an exception for a qualified facility that is an offshore wind facility, for which the adjusted percentage is 20 percent.⁷

Section 45(b)(10) provides for the phaseout of elective payments. Section 45(b)(10)(A) provides that in the case of a taxpayer making an election under § 6417 with respect to a credit under § 45, the amount of such credit will be replaced with the

⁷ For purposes of §§ 45, 48, and 48E, the adjusted percentage is 40 percent (20 percent in the case of offshore wind facilities). For purposes of § 45Y, § 45Y(g)(11)(C) provides the adjusted percentages, ranging from 40 percent (20 percent in the case of offshore wind facilities) to 55 percent depending on when construction of a facility begins.

value of such credit (determined without regard to § 45(b)(10)), multiplied by the applicable percentage. Section 45(b)(10)(B) provides that in the case of any qualified facility (1) that satisfies the requirements under § 45(b)(9)(B), or (2) with a maximum net output of less than 1 megawatt (as measured in alternating current), the applicable percentage is 100 percent. Section 45(b)(10)(C) provides for a phased domestic content requirement, and states that subject to the exceptions in § 45(b)(10)(D), for any qualified facility that is not described in § 45(b)(10)(B), the applicable percentage is (1) 100 percent if construction of such facility begins before January 1, 2024, and (2) 90 percent if construction of such facility begins in calendar year 2024.⁸

Section 45(b)(10)(D)(i) provides that the Secretary is to provide exceptions to the requirements under § 45(b)(10)(D) if (1) the inclusion of steel, iron, or manufactured products that are produced in the United States increases the overall costs of construction of qualified facilities by more than 25 percent, or (2) relevant steel, iron, or manufactured products are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality. Section 45(b)(10)(D)(ii) provides that in any case in which the Secretary provides an exception pursuant to § 45(b)(10)(D)(i), the applicable percentage is 100 percent.

Sections 48(a)(12), 45Y(g)(11), and 48E(a)(3)(B) apply similar rules to those under § 45(b)(9). Sections 48(a)(13), 45Y(g)(12), and 48E(d)(5) apply similar elective payments rules to those under § 45(b)(10).

⁸ For purposes of §§45Y(g)(12) and 48E(d)(5), the applicable percentages are the same as for §§ 45 and 48 for facilities that begin construction in 2024 or earlier, but the applicable percentages decrease from 85 percent for facilities that begin construction in 2025 to 0 percent for facilities that begin construction after 2025.

.05 Energy Community Requirement. Sections 45(b)(11), 48(a)(14), 45Y(g)(7), and 48E(a)(3)(A) provide energy community requirements that taxpayers must satisfy to qualify for increased credit amounts under those provisions of the Code. Section 45(b)(11)(A) provides that in the case of a qualified facility located in an energy community, the credit determined under § 45(a) (determined after the application of § 45(b)(1) through (10), without the application of § 45(b)(9)) is increased by an amount equal to 10 percent of the amount so determined. Section 45Y(g)(7) provides a similar rule. Under §§ 48(a)(14) and 48E(a)(3)(A), the increase in the credit amount for satisfying the energy community requirements is reduced from 10 percent to 2 percent if certain other requirements are not satisfied.

Section 45(b)(11)(B) provides that for purposes of § 45(b)(11), the term energy community means: (1) A brownfield site (as defined in 42 U.S.C. 9601(39)(A), (B), and (D)(ii)(III)), (2) A metropolitan statistical area or non-metropolitan statistical area that has (or had, at any time after December 31, 2009) 0.17 percent or greater direct employment or 25 percent or greater local tax revenues related to the extraction, processing, transport, or storage of coal, oil, or natural gas (as determined by the Secretary), and has an unemployment rate at or above the national average unemployment rate for the previous year (as determined by the Secretary), or (3) A census tract (i) in which a coal mine has closed after December 31, 1999; or (ii) in which a coal-fired electric generating unit has been retired after December 31, 2009; or (iii) that is directly adjoining to any census tract described in § 45(b)(11)(B)(iii)(I).

The definition of an energy community in § 45(b)(11)(B) is adopted by §§ 45Y(g)(7), 48(a)(14) (subject to certain modifications), and 48E(a)(3)(A).

SECTION 3. REQUEST FOR COMMENTS

The Treasury Department and the IRS request comments on questions arising from the amendments in the IRA regarding prevailing wage, apprenticeship, domestic content, and energy community requirements that should be addressed in guidance. Commenters are encouraged to specify the issues on which guidance is needed most quickly as well as the most important issues on which guidance is needed. In addition to general comments, the Treasury Department and the IRS request comments that address the following specific questions:

.01 Prevailing Wage Requirement

(1) Section 45(b)(7)(A) provides that a taxpayer must ensure that any laborers and mechanics employed by the taxpayer, or any contractor or subcontractor, are paid wages at rates not less than the prevailing wage rates for construction, alteration, or repair of a similar character in the locality in which such facility is located as most recently determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, which is commonly known as the Davis-Bacon Act. Is guidance necessary to clarify how the Davis-Bacon prevailing wage requirements apply for purposes of § 45(b)(7)(A)?

(2) Section 45(b)(7)(B)(i) generally provides a correction and penalty mechanism for failure to satisfy prevailing wage requirements. What should the Treasury Department and the IRS consider in developing rules for taxpayers to correct a deficiency for failure to satisfy prevailing wage requirements?

(3) What documentation or substantiation should be required to show compliance with the prevailing wage requirements?

(4) Is guidance for purposes of § 45(b)(7)(A) needed to clarify the treatment of a qualified facility that has been placed in service but does not undergo alteration or repair during a year in which the prevailing wage requirements apply?

(5) Please provide comments on any other topics relating to the prevailing wage requirements for purposes of § 45(b)(7)(A) that may require guidance.

.02 Apprenticeship Requirement

(1) Section 45(b)(8)(C) provides that each taxpayer, contractor, or subcontractor who employs four or more individuals to perform construction, alteration, or repair work with respect to a qualified facility must employ one or more qualified apprentices from a registered apprenticeship program to perform that work. What factors should the Treasury Department and the IRS consider regarding the appropriate duration of employment of individuals for construction, alteration, or repair work for purposes of this requirement?

(2) Section 45(b)(8)(D)(ii) provides for a good faith effort exception to the apprenticeship requirement.

(a) What, if any, clarification is needed regarding the good faith effort exception?

(b) What factors should be considered in administering and promoting compliance with this good faith effort exception?

(c) Are there existing methods to facilitate reporting requirements, for example, through current Davis-Bacon reporting forms, current performance reporting requirements for contracts or grants, and/or through DOL's Registered Apprenticeship Partners Information Management Data System (RAPIDS) database or a State Apprenticeship Agency's database?

(3) What documentation or substantiation do taxpayers maintain or could they create to demonstrate compliance with the apprenticeship requirements in § 45(b)(8)(A), (B), and (C), or the good faith effort exception?

(4) Please provide comments on any other topics relating to the apprenticeship requirements in § 45(b)(8)(B) that may require guidance.

.03 Domestic Content Requirement

(1) Sections 45(b)(9)(B) and 45Y(g)(11)(B) provide that a taxpayer must certify that any steel, iron, or manufactured product that is a component of a qualified facility (upon completion of construction) was produced in the United States (as determined under 49 C.F.R. 661).

(a) What regulations, if any, under 49 C.F.R. 661 (such as 49 C.F.R. 661.5 or 661.6) should apply in determining whether the requirements of section §§ 45(b)(9)(B) and 45Y(g)(11)(B) are satisfied? Why?

(b) What should the Treasury Department and the IRS consider when determining “completion of construction” for purposes of the domestic content requirement? Should the “completion of construction date” be the same as the placed in service date? If not, why?

(c) Should the definitions of “steel” and “iron” under 49 C.F.R. 661.3, 661.5(b) and (c) be used for purposes of defining those terms under §§ 45(b)(9)(B) and 45Y(g)(11)(B)? If not, what alternative definitions should be used?

(d) What records or documentation do taxpayers maintain or could they create to substantiate a taxpayer’s certification that they have satisfied the domestic content requirements?

(2) Sections 45(b)(9)(B)(iii) and 45Y(g)(11)(B)(iii) provide that manufactured products that are components of a qualified facility upon completion of construction will be deemed to have been produced in the United States if not less than the adjusted percentage of the total costs of all of such manufactured products of such facility are attributable to manufactured products (including components) that are mined, produced, or manufactured in the United States.

(a) Does the term “component of a qualified facility” need further clarification? If so, what should be clarified and is any clarification needed for specific types of property, such as qualified interconnection property?

(b) Does the determination of “total costs” with regard to all manufactured products of a qualified facility that are attributable to manufactured products (including components) that are mined, produced, or manufactured in the United States need further clarification? If so, what should be clarified? Is guidance needed to clarify the term “mined, produced, or manufactured”?

(c) Does the term “manufactured product” with regard to the various technologies eligible for the domestic content bonus credit need further clarification? If so, what should be clarified? Is guidance needed to clarify what constitutes an “end product” (as defined in 49 C.F.R. 661.3) for purposes of satisfying the domestic content requirements?

(d) Does the adjusted percentage threshold rule that applies to manufactured products need further clarification? If so, what should be clarified?

(e) Does the treatment of subcomponents with regard to manufactured products need further clarification? If so, what should be clarified?

(3) Solely for purposes of determining whether a reduction in an elective payment amount is required under § 6417, §§ 45(b)(10)(D) and 45Y(g)(12)(D) provide an exception for the requirements contained in §§ 45(b)(9)(B) and 45Y(g)(10)(B) (respectively) if the inclusion of steel, iron, or manufactured productions that are produced in the United States increases the overall costs of construction of qualified facilities by more than 25 percent or relevant steel, iron, or manufactured products are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality.

(a) Does the determination of “overall costs” and increases in the overall costs with regard to construction of a qualified facility need further clarification? If so, what should be clarified?

(b) What factors should the Secretary include in guidance to clarify when an exception to the requirements under section §§ 45(b)(10)(D) and 45Y(g)(12)(D) applies? What existing regulatory or guidance frameworks, such as the Federal Acquisition Regulation (FAR) and Build America Buy America (BABA) guidance, may be useful for developing guidance to grant exceptions under §§ 45(b)(10)(D) and 45Y(g)(12)(D)?

(c) Do the “sufficient and reasonably available quantities” and “satisfactory quality” standards need further clarification? If so, what should be clarified?

(4) Sections 48 and 48E have domestic content bonus amount rules similar to other provisions of the Code. Section 48(a)(12) has domestic content requirement rules similar to § 45(b)(9)(B) and § 48E(a)(3)(B) has domestic content rules similar to the rules of § 48(a)(12). What should the Treasury Department and the IRS consider in

providing guidance regarding the similar domestic content requirements under § 48(a)(12) and § 48E(a)(3)(B)?

(5) Please provide comments on any other topics relating to the domestic content requirements that may require guidance.

.04 Energy Community Requirement

(1) Section 45(b)(11)(A) provides an increased credit amount for a qualified facility located in an energy community. What further clarifications are needed regarding the term “located in” for this purpose, including any relevant timing considerations for determining whether a qualified facility is located in an energy community? Should a rule similar to the rule in § 1397C(f) (Enterprise Zones rule regarding the treatment of businesses straddling census tract lines), the rules in 26 C.F.R. §§ 1.1400Z2(d)-1 and 1.1400Z2(d)-2, or other frameworks apply in making this determination?

(2) Does the determination of a brownfield site (as defined in subparagraphs (A), (B), and (D)(ii)(III) of § 101(39) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(39))) need further clarification? If so, what should be clarified?

(3) Which source or sources of information should the Treasury Department and the IRS consider in determining a “metropolitan statistical area” (MSA) and “non-metropolitan statistical area” (non-MSA) under § 45(b)(11)(B)(ii)? Which source or sources of information should be used in determining whether an MSA or non-MSA meets the threshold of 0.17 percent or greater direct employment related to the extraction, processing, transport, or storage of coal, oil, or natural gas, and an

unemployment rate at or above the national average unemployment rate for the previous year? What industries or occupations should be considered under the definition of “direct employment” for purposes of this section?

(4) Which source or sources of information should the Treasury Department and the IRS consider in determining census tracts that had a coal mine closed after December 31, 1999, or had a coal-fired electric generating unit retired after December 31, 2009, under § 45(b)(11)(B)(iii)? How should the closure of a coal mine or the retirement of a coal-fired electric generating unit be defined under § 45(b)(11)(B)(iii)?

(5) For each of the three categories of energy communities allowed under § 45(b)(11)(B), what past or possible future changes in the definition, scope, boundary, or status of a “brownfield site” under § 45(b)(11)(B)(i), a “metropolitan statistical area or non-metropolitan statistical area” under § 45(b)(11)(B)(ii), or a “census tract” under § 45(b)(11)(B)(iii) should be considered, and why?

(6) Under § 45(b)(11)(B)(ii)(I), what should the Treasury Department and the IRS consider in determining whether a metropolitan statistical area or non-metropolitan statistical area has or had 25 percent or greater local tax revenues related to the extraction, processing, transport, or storage of coal, oil, or natural gas? What sources of information should be used in making this determination? What tax revenues (for example, municipal, county, special district) should be considered under this section? What, if any, consideration should be given to the unavailability of consistent public data for some of these types of taxes?

(7) Please provide comments on any other topics relating to the energy community requirement that may require guidance.

.05 Increased Credit Amount for Qualified Facility With Maximum Net Output of Less than 1 Megawatt

Section 45(b)(6)(A) provides for an increased credit amount in the case of any qualified facility that satisfies the requirements of § 45(b)(6)(B). One way that a qualified facility can satisfy the requirements of § 45(b)(6)(B) is if it is a facility with a maximum net output of less than 1 megawatt (as measured in alternating current). Similarly, § 48(a)(9)(A) provides for an increased credit amount in the case of any energy project that satisfies the requirements of § 48(a)(9)(B), and one way that an energy project can satisfy the requirements of § 48(a)(9)(B) is if it is a project with a maximum net output of less than 1 megawatt of electrical (as measured in alternating current) or thermal energy. Sections 45Y(a)(2)(B) and 48E(a)(2)(A) also provide similar rules. Does the determination of when a facility or project will be considered to have a maximum net output of less than 1 megawatt need further clarification? If so, what should be clarified?

SECTION 4. SUBMISSION OF COMMENTS

.01 Written comments should be submitted by Friday, November 4, 2022. Consideration will be given, however, to any written comment submitted after Friday, November 4, 2022, if such consideration will not delay the issuance of guidance. The subject line for the comments should include a reference to Notice 2022-51. Comments may be submitted in one of two ways:

(1) Electronically via the Federal eRulemaking Portal at www.regulations.gov (type IRS-2022-51 in the search field on the regulations.gov homepage to find this notice and submit comments).

(2) Alternatively, by mail to: Internal Revenue Service, CC:PA:LPD:PR (Notice

2022-51), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

.02 All commenters are strongly encouraged to submit comments electronically. The Treasury Department and the IRS will publish for public availability any comment submitted electronically, or on paper, to its public docket on [regulations.gov](https://www.regulations.gov).

SECTION 5. 60-DAY RULE NOT EFFECTUATED FOR THE PREVAILING WAGE AND APPRENTICESHIP REQUIREMENTS

For purposes of §§ 30C, 45, 45L, 45Q, 45U, 45V, 45Y, 48, 48C, 48E, and 179D, the publication of this notice requesting comments is not the publication of guidance with respect to the prevailing wage and apprenticeship requirements, and it is not relevant in determining whether the prevailing wage and apprenticeship requirements are satisfied under such sections. The Treasury Department and the IRS will explicitly identify when it has published guidance with respect to the prevailing wage and apprenticeship requirements that is relevant for determining whether such requirements have been satisfied for purposes of §§ 30C, 45, 45L, 45Q, 45U, 45V, 45Y, 48, 48C, 48E, and 179D.

SECTION 6. DRAFTING INFORMATION

The principal author of this notice is the Office of Associate Chief Counsel (Passthroughs & Special Industries). However, other personnel from the Treasury Department and the IRS participated in its development. For further information regarding this notice, call the energy security guidance contact number at (202) 317-5254 (not a toll-free call).