

INTERNAL REVENUE BULLETIN



HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2023-39
September 25, 2023

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

Notice 2023-63, page 919.

Notice 2023-63 announces the IRS' intent to issue regulatory guidance to address issues regarding specified research or experimental expenditures under § 174. Notice 2023-63 also provides interim guidance regarding these expenditures. This includes definitions of relevant terms; in addition to rules for allocation of costs, software development, research provided under contract, disposition of property, long term contracts, and cost-sharing transactions. Finally, Notice 2023-63 requests comments for issues regarding the interim guidance provided.

REG-100908-23, page 931.

The proposed regulations describe the rules for satisfying the prevailing wage and registered apprenticeship requirements to qualify for increased credit or deduction amounts under the Internal Revenue Code. In addition, the proposed regulations provide correction and penalty procedures for taxpayers to be deemed to satisfy the prevailing wage and registered apprenticeship requirements. The proposed regulations also describe recordkeeping and reporting requirements related to the prevailing wage and registered apprenticeship requirements.

The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned

against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.

This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

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Part III

Guidance on Amortization of Specified Research or Experimental Expenditures under Section 174

Notice 2023-63

SECTION 1. OVERVIEW

This notice announces that the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) intend to issue proposed regulations (forthcoming proposed regulations) addressing (1) the capitalization and amortization of specified research or experimental (SRE) expenditures under § 174 of the Internal Revenue Code (Code)¹, as amended by Public Law 115-97, 131 Stat. 2054 (Dec. 22, 2017), commonly referred to as the Tax Cuts and Jobs Act (TCJA), (2) the treatment of SRE expenditures under § 460, and (3) the application of § 482 to cost sharing arrangements involving SRE expenditures. The Treasury Department and the IRS intend to propose rules in the forthcoming proposed regulations consistent with the interim guidance provided in sections 3 through 9 of this notice. Section 10 of this notice provides that taxpayers may rely on the interim guidance provided in sections 3 through 9 of this notice prior to the publication date of the forthcoming proposed regulations in the Federal Register. Section 11 of this notice requests comments, including comments on specific issues and issues not addressed in this notice.

The guidance in this notice does not apply for purposes of determining whether an expenditure paid or incurred for taxable years beginning before January 1, 2022, is a research or experimental expenditure under § 174 as in effect for taxable years beginning before January 1, 2022 (former § 174). This notice provides guidance regarding expenditures that are treated as SRE expenditures under § 174 and, therefore, affects expenditures that

may be treated as SRE expenditures for purposes of § 41(d)(1)(A) and § 1.41-4(a)(2)(i). However, this notice is not intended to change the rules for determining eligibility for or computation of the research credit under § 41 and the regulations thereunder, including rules for “research with respect to computer software,” and the definitions of “qualified research” and “qualified research expenses.”

SECTION 2. BACKGROUND

.01 *Prior law treatment of research or experimental expenditures.*

(1) *In general.* Former § 174 was first enacted in 1954 to provide certainty to taxpayers regarding the treatment of otherwise capitalizable research or experimental expenditures with no determinable useful life. *See* H.R. Rep. No1337, 83d Cong., 2d Sess. 28 (1954); S. Rep. No. 1622, 83d Cong., 2d Sess. 33 (1954). Before the enactment of former § 174, courts consistently held that the law required capitalization of product research and development costs, including production costs of tangible property used in the research process. Under such prior law, expenditures related to a taxpayer’s research and experimentation generally were capitalized and held in suspense until the taxpayer could determine (1) whether or not the research had failed; and (2) if the research was successful, whether or not the research resulted in property that had a useful life determinable with reasonable accuracy.

Former § 174 allowed taxpayers to elect to deduct research or experimental expenditures paid or incurred in connection with a trade or business as currently deductible expenses, to capitalize and amortize such expenditures over a period of not less than 60 months, or to charge such expenditures to capital account.

(2) *Definition of research or experimental expenditures under former § 174.*

The provisions of § 1.174-2 address the scope and definition of research or experimental expenditures under former § 174. Specifically, § 1.174-2(a)(1) provides

that the term “research or experimental expenditures” means those expenditures incurred in connection with a taxpayer’s trade or business that represent research and development costs in the experimental or laboratory sense, and generally includes all such costs incident to the development or improvement of a product or a component or subcomponent of the product, as well as the costs of obtaining a patent. Expenditures represent research and development costs in the experimental or laboratory sense if they are for activities intended to discover information that would eliminate uncertainty concerning the development or improvement of a product. Section 1.174-2(a)(3) defines the term “product” to include any pilot model, process, formula, invention, technique, patent, or similar property, and includes products to be used by the taxpayer in its trade or business as well as products to be held for sale, lease, or license.

Section 1.174-2(a)(10) and (b)(3) generally provide that former § 174 also applies to expenditures paid or incurred by a taxpayer for research or experimentation carried on by another person or organization (such as a research institute, foundation, engineering company, or similar contractor) on behalf of the taxpayer, provided that such expenditures are made at the taxpayer’s order and risk. However, § 1.174-2 does not explicitly address expenditures paid by a contractor for research or experimentation carried on for another person or organization.

Section 1.174-2(a) also provides guidance on expenditures that are not subject to former § 174, including costs paid or incurred in the production of a product after the elimination of uncertainty concerning the development or improvement of the product, and expenditures for: quality control testing, efficiency surveys, management studies, consumer surveys, advertising or promotions, the acquisition of another’s product, and research in connection with literary, historical or similar projects. In addition, § 1.174-2(b) and former § 174(c) provide that any expenditure for the acquisition or improvement

¹ Unless otherwise specified, all “section” or “§” references are to sections of the Code or the Income Tax Regulations (26 CFR part 1).

of land or depreciable property to be used in connection with the research or experimentation and of a character which is subject to the allowance under § 167 or § 611 are not research or experimental expenditures. However, allowances for depreciation and depletion with respect to such property are treated as research or experimental expenditures. Finally, § 1.174-2(c) and former § 174(d) provide that the provisions of former § 174 are not applicable to any expenditures paid or incurred for the purpose of ascertaining the existence, location, extent, or quality of any deposit of ore, oil, gas, or other mineral.

(3) *Software development.* Prior to the effective date of the TCJA amendments to former § 174, section 5 of Rev. Proc. 2000-50, 2000-2 C.B. 601, permitted taxpayers to treat costs to develop computer software that were not otherwise treated as research or experimental expenditures under former § 174 as currently deductible expenses or capital expenditures that are amortized over 60 months or 36 months. Accordingly, under section 5 of Rev. Proc. 2000-50, costs to develop computer software that did not otherwise meet the definition of research or experimental expenditures under former § 174 were afforded generally similar treatment to research or experimental expenditures under former § 174. Rev. Proc. 2000-50 does not define software development or otherwise describe software development activities. *See also Kellett v. Commissioner*, T.C. Memo. 2022-62 (discussing, and questioning the statutory support for, deduction of software development expenditures under Rev. Proc. 2000-50).

.02 *Treatment of research or experimental expenditures under the TCJA.*

(1) *Requirement to capitalize and amortize SRE expenditures.* Section 13206(a) of the TCJA amended former § 174 for amounts paid or incurred in taxable years beginning after December 31, 2021. For such amounts, § 174(a)(1) disallows deductions for SRE expenditures, except as provided in § 174(a)(2). Section 174(a)(2) requires taxpayers to charge SRE expenditures to capital account and allows amortization deductions of such capitalized expenditures ratably over the applicable § 174 amortization period,

beginning with the midpoint of the taxable year in which such expenditures are paid or incurred. As used in this notice, the term “applicable § 174 amortization period” refers to a 5-year (60-month) period in the case of SRE expenditures attributable to domestic research or a 15-year (180-month) period in the case of SRE expenditures attributable to foreign research, as defined in section 3.03 of this notice.

(2) *Definition of SRE expenditures.* Section 174(b), as amended by section 13206(a) of the TCJA, defines “SRE expenditures” to mean, with respect to any taxable year beginning after December 31, 2021, research or experimental expenditures that are paid or incurred by the taxpayer during such taxable year in connection with the taxpayer’s trade or business. *See Snow v. Commissioner*, 416 U.S. 500 (1974) (“in connection with” a trade or business is broader than “in carrying on” a trade or business).

(3) *Software development.* Section 13206(a) of the TCJA added new § 174(c) (3) to require that any amount paid or incurred in connection with the development of any software in taxable years beginning after December 31, 2021, be treated as a research or experimental expenditure (and thus an SRE expenditure to the extent paid or incurred by the taxpayer during the taxable year in connection with the taxpayer’s trade or business).

(4) *Amortization deductions for disposed of, retired, or abandoned property.* Section 13206(a) of the TCJA added new § 174(d) to provide that deductions of SRE expenditures may not be taken on account of the disposition, retirement, or abandonment of property with respect to which such SRE expenditures are paid or incurred. If such property is disposed of, retired, or abandoned during the applicable § 174 amortization period, § 174(d) requires that the amortization deductions for such SRE expenditures continue over that period.

(5) *Other changes to former § 174.* Section 13206(a) of the TCJA redesignated former § 174(c) to § 174(c)(1) and former § 174(d) to § 174(c)(2), removed former § 174(e), which provided that only reasonable expenditures are considered research or experimental expenditures under former § 174, and also removed former § 174(f), which contained

cross-references to basis adjustments under § 1016(a)(14) and to an election for 10-year amortization under § 59(e).

(6) *Change in method of accounting.*

(a) *TCJA requirement.* Section 13206(b) of the TCJA requires taxpayers to apply the provisions of § 174, as amended by section 13206(a) of the TCJA, as a change in method of accounting for purposes of § 481, initiated by the taxpayer and made with the consent of the Secretary of the Treasury or her delegate, and applied on a cutoff basis to SRE expenditures paid or incurred in taxable years beginning after December 31, 2021. Thus, no adjustments under § 481(a) are permitted or required with respect to research or experimental expenditures paid or incurred in taxable years beginning before January 1, 2022.

(b) *Procedural guidance.* On December 12, 2022, the Treasury Department and the IRS issued Rev. Proc. 2023-8, 2023-3 I.R.B. 407, to provide procedures for taxpayers to obtain automatic consent to change methods of accounting to comply with § 174, as amended by the TCJA. On December 29, 2022, the Treasury Department and the IRS issued Rev. Proc. 2023-11, 2023-3 I.R.B. 417, to modify and supersede Rev. Proc. 2023-8. The change in method of accounting provided by Rev. Proc. 2023-11 was subsequently included in section 7.02 of Rev. Proc. 2023-24, 2023-28 I.R.B. 1207. Section 7.02 of Rev. Proc. 2023-24 implements the requirement imposed by § 13206(b) of the TCJA that a taxpayer must make this change in method of accounting on a cutoff basis if the change was made during the taxpayer’s first taxable year beginning after December 31, 2021. However, section 7.02 of Rev. Proc. 2023-24 provides that a taxpayer making the change for a taxable year subsequent to the taxpayer’s first taxable year beginning after December 31, 2021, is required to make that change with a modified § 481(a) adjustment that takes into account only SRE expenditures paid or incurred in taxable years beginning after December 31, 2021. Section 7.02(7) of Rev. Proc. 2023-24 also provides that a taxpayer that changes its method of accounting for SRE expenditures under the revenue procedure will receive limited audit protection. Specifically, audit protection will not apply for expenditures paid or incurred in

taxable years beginning before January 1, 2022. Audit protection also will not apply for expenditures paid or incurred in taxable years beginning after December 31, 2021, if a change in method of accounting is made for the taxable year immediately subsequent to the first taxable year beginning after December 31, 2021. See section 10.02 of this notice for additional procedural guidance the Treasury Department and IRS intend to issue.

SECTION 3. CAPITALIZATION AND AMORTIZATION OF SRE EXPENDITURES

.01 *Purpose.* The Treasury Department and the IRS intend to propose rules in forthcoming proposed regulations consistent with the interim guidance provided in this section 3, which provides taxpayers with clarity regarding the requirement in § 174(a) to capitalize and amortize SRE expenditures and the treatment of short taxable years.

.02 *Requirement to capitalize and amortize SRE expenditures.* Taxpayers are required to capitalize SRE expenditures (as defined in section 4.02(2) of this notice) and amortize such expenditures ratably over the applicable § 174 amortization period beginning with the midpoint of the taxable year in which such expenditures are paid or incurred.

.03 *Definition of foreign research.* The term *foreign research* means any research conducted outside the United States, the Commonwealth of Puerto Rico, or any U.S. territory or other possession of the United States. See §§ 174(a)(2)(B) and 41(d)(4)(F).

.04 *SRE expenditures attributable to foreign research.* Taxpayers must look to where the SRE activities (as defined in section 4.02(4) of this notice) are performed to determine whether the corresponding SRE expenditures are attributable to foreign research for purposes of section 3.02 of this notice.

.05 *Definition of midpoint.* Except as provided in section 3.06 of this notice, for purposes of determining when amortization begins under § 174(a)(2)(B) and section 3.02 of this notice, the term *midpoint* means the first day of the seventh month of the taxable year in which the SRE expenditures are paid or incurred.

See section 7.03 of this notice for interim guidance with respect to SRE expenditures that relate to property disposed of before the midpoint of the taxable year in which such SRE expenditures are paid or incurred.

.06 *Short taxable years.*

(1) *In general.* The amortization deduction for a short taxable year is based on the number of months in the short taxable year. If a short taxable year includes part of a month, the entire month is included in the number of months in the taxable year, but the same month may not be counted more than once. If a taxpayer has two successive short taxable years and the first short taxable year ends in the same month that the second short taxable year begins, the taxpayer should include that month in the first short taxable year and not in the second short taxable year.

(2) *Midpoint for short taxable years.* The midpoint of a short taxable year is the first day of the midpoint month. In the case of a short taxable year with an even number of months (as determined under section 3.06(1) of this notice), the midpoint month is determined by dividing the number of months in the short taxable year by two and then adding one (for example, for a short taxable year consisting of ten months, the midpoint month is the sixth month of the short taxable year $((10 / 2) + 1 = 6)$). In the case of a short taxable year with an odd number of months (as determined under section 3.06(1) of this notice), the midpoint month is the month for which there are an equal number of months before and after such month (for example, for a short taxable year consisting of seven months, the midpoint month is the fourth month of the short taxable year).

.07 *Example.*

(1) *Facts.* Taxpayer is a calendar-year taxpayer that incorporated and began operations on October 17, 2022. In 2022, Taxpayer paid or incurred \$60,000 in SRE expenditures that were not attributable to foreign research. Taxpayer has no short taxable years after its initial taxable year.

(2) *Analysis.* Taxpayer has a short taxable year that begins on October 17, 2022, and ends on December 31, 2022, and thus is treated as having a three-month taxable year under section 3.06(1) of this notice. The midpoint month is November, and thus November 1, 2022, will be treated as the midpoint under section 3.06(2) of this notice. In 2022, Taxpayer amortizes \$2,000 of SRE expenditures $(\$60,000 / 60 \text{ months} \times 2 \text{ months})$. In taxable years 2023 through 2026, each a full 12-month taxable

year, Taxpayer amortizes \$12,000 $(\$60,000 / 60 \text{ months} \times 12 \text{ months})$ each year, or \$48,000 total. In 2027, Taxpayer amortizes the remaining \$10,000 $(\$60,000 / 60 \text{ months} \times 10 \text{ months})$.

SECTION 4. SCOPE OF SECTION 174

.01 *Purpose.* The Treasury Department and the IRS intend to propose rules in forthcoming proposed regulations consistent with the interim guidance provided in this section 4, which provides taxpayers with clarity in determining whether expenditures are SRE expenditures subject to capitalization and amortization under § 174.

.02 *Definition of SRE expenditures and other relevant terms.* For purposes of this notice:

(1) *Terms used in § 1.174-2.* Unless otherwise provided, all terms used in this notice have the same meaning as those in § 1.174-2. For example, the term *product* has the meaning set forth in § 1.174-2(a)(3).

(2) *SRE expenditures defined.* The term *SRE expenditures* means, with respect to any taxable year beginning after December 31, 2021, research or experimental expenditures (as defined in section 4.02(3) of this notice), which are paid or incurred by the taxpayer during such taxable year in connection with the taxpayer's trade or business.

(3) *Research or experimental expenditures defined.* The term *research or experimental expenditures* means expenditures that—

(a) satisfy the requirements under § 1.174-2 to be research or experimental expenditures, or

(b) are paid or incurred in connection with the development of any computer software (as provided in section 5 of this notice), regardless of whether such expenditures are research or experimental expenditures under § 1.174-2.

See section 6 of this notice for rules to determine whether expenditures paid or incurred pursuant to a contract meet the definition of research or experimental expenditures under this section 4.02(3).

(4) *SRE activities defined.* The term *SRE activities* means—

(a) software development activities described in section 5.03 of this notice, or

(b) research or experimental activities described in § 1.174-2 (that is, activities

in the experimental or laboratory sense intended to discover information that would eliminate uncertainty concerning the development or improvement or appropriate design of a product or a component or subcomponent of a product).

03 Identification and allocation of SRE expenditures. As provided in section 4.02(2) and (3) of this notice, SRE expenditures include expenditures that satisfy the requirements under § 1.174-2 or are paid or incurred in connection with the development of any computer software, regardless of whether such software expenditures satisfy the requirements under § 1.174-2. Section 1.174-2(a)(1) and (5) provide that research or experimental expenditures under § 1.174-2 include all costs incident to the development or improvement of a product, a component of a product, or subcomponent of a product, as applicable (that is, research or experimental expenditures under § 1.174-2 include all costs incident to SRE activities described in section 4.02(4)(b) of this notice). Section 4.03(1) of this notice provides a non-exhaustive list of examples of the types of costs that are incident to SRE activities described in section 4.02(4)(b) of this notice or paid or incurred in connection with software development activities described in sections 4.02(4)(a) and 5.03 of this notice. In other words, section 4.03(1) of this notice provides a non-exhaustive list of examples of the types of costs that are SRE expenditures. Section 4.03(2) of this notice provides a list of costs that are not permitted or required to be treated as SRE expenditures, regardless of whether they may be incident to SRE activities described in section 4.02(4) of this notice. Section 4.03(3) of this notice provides interim guidance addressing the allocation of costs, including those described in section 4.03(1) of this notice, to SRE activities.

(1) *Examples of costs that are SRE expenditures.* The types of costs that are considered incident to SRE activities described in section 4.02(4)(b) of this notice or paid or incurred in connection with software development activities described in sections 4.02(4)(a) and 5.03 of this notice include but are not limited to:

(a) *Labor costs.* Labor costs of full-time, part-time, and contract employees and independent

contractors who perform, supervise, or directly support SRE activities. Labor costs include all elements of compensation other than severance compensation, such as basic compensation, stock-based compensation, overtime pay, vacation pay, holiday pay, sick leave pay, payroll taxes, pension costs, employee benefits, and payments to a supplemental unemployment benefit plan.

(b) *Materials and supplies costs.* Costs of materials and supplies, including tools and equipment that are not depreciable under § 168, which are used or consumed in the performance of SRE activities or in the direct support of SRE activities. For example, a cost described in § 1.162-3, relating to the cost of a material or supply, may be an SRE expenditure.

(c) *Cost recovery allowances.* Depreciation, amortization, or depletion allowances with respect to property used in the performance of SRE activities or in the direct support of SRE activities, including property placed in service in a taxable year that begins on or before December 31, 2021. For example, depreciation with respect to a test bed used in the performance of SRE activities, or allocable depreciation with respect to a facility in which SRE activities, or services that directly support SRE activities, are performed.

(d) *Patent costs.* Costs of obtaining a patent, such as attorneys' fees expended in making and perfecting a patent application.

(e) *Certain operation and management costs.* Rent, utilities, insurance, taxes, repairs and maintenance costs, security costs, and similar overhead costs with respect to facilities, equipment and other assets used in the performance of SRE activities or in the direct support of SRE activities.

(f) *Travel costs.* Travel costs for the performance of SRE activities or the direct support of SRE activities.

(2) *Costs that are not treated as SRE expenditures.* The following costs are not permitted or required to be treated as SRE expenditures, regardless of whether they may be incident to SRE activities described in section 4.02(4)(b) of this notice or paid or incurred in connection with software development activities described in sections 4.02(4)(a) and 5.03 of this notice:

(a) Costs paid or incurred by general and administrative service departments (or functions) that only indirectly support or benefit SRE activities (for example, services of payroll personnel in preparing salary checks of research personnel, services of human resources personnel who hire research personnel, or services of accounting personnel who account for research expenses);

(b) Interest on debt to finance SRE activities;

(c) Costs paid or incurred for activities described in section 5.05 of this notice;

(d) Costs to input content into a website;

(e) Costs for website hosting that involve the payment of a specified, periodic fee to an Internet service provider in return for hosting a website on its server(s) connected to the Internet;

(f) Costs to register an Internet domain name or trademark;

(g) Costs listed in § 1.174-2(a)(6)(i)-(vii);

(h) Amounts representing amortization of SRE expenditures; and

(i) Amounts representing amortization of research or experimental expenditures paid or incurred in taxable years beginning before January 1, 2022.

(3) *Allocation method.* To determine total SRE expenditures for a taxable year, taxpayers must allocate costs, including the types of costs described in section 4.03(1) of this notice, to SRE activities on the basis of a cause-and-effect relationship between the costs and the SRE activities or another relationship that reasonably relates the costs to the benefits provided to the SRE activities. The allocation method used for one type of cost may be different than the allocation method used for another type of cost. However, the allocation method used for each type of cost must be applied on a consistent basis. For example, a taxpayer that consistently allocates labor costs described in section 4.03(1)(a) of this notice to SRE activities by multiplying such labor costs by the ratio of the total time the person or people actually spent performing, supervising, or directly supporting SRE activities during the taxable year to the total time the person or people spent performing all services for the taxpayer during the taxable year, meets the requirements in this section 4.03(3). Similarly, a taxpayer that consistently allocates facility cost recovery allowances described in section 4.03(1)(c) of this notice to SRE activities by multiplying such cost recovery allowances by the ratio of the square footage of the area used to conduct or directly support SRE activities to the total square footage of the facility, meets the requirement of this section 4.03(3). An allocation method for a particular type of cost that meets the requirements of this section 4.03(3) may not be appropriate for purposes of

allocating that same type of cost under other sections of the Code.

(4) *Example.* The following example illustrates the rules set forth in section 4.03 of this notice.

(a) *Facts.* Company A, a calendar year taxpayer, is engaged in the business of manufacturing chemical products. On January 1, 2023, Company A begins a research project to develop a new product. This research project constitutes an SRE activity. Company A does not undertake any other SRE activities during its 2023 taxable year. Company A is

comprised of six departments: (1) the Manufacturing Department, (2) the Research Department, (3) the Engineering Department, (4) the Legal Department, (5) the Personnel Department, and (6) the Accounting Department. The Manufacturing Department does not provide any support services to the Research Department. The Personnel Department provides indirect support services to the Research Department by hiring research personnel and preparing their paychecks but does not directly support any aspect of the research project. The Accounting Department provides indirect support services to the Research Department by paying Research Department

invoices and accounting for research costs but does not directly support any aspect of the research project. The Engineering Department provides direct support services to the Research Department with respect to the research project by collaborating with the Research Department to develop the new product. The Legal Department provides direct support services to the Research Department with respect to the research project by preparing patent applications for the new product. Company A owns the following assets, each of which is used, in whole or in part, to perform research or directly support the research project:

Description	Department(s)	Depreciation for 2023
10,000 square foot facility	The Manufacturing Department occupies 5,000 square feet of the facility. The other departments each occupy 1,000 square feet.	\$200,000
Computers, furniture, and equipment used exclusively for the research project	Research Department	\$150,000
Computers, furniture, and equipment used by the Engineering Department	Engineering Department	\$100,000
Computers and furniture used by the Legal Department	Legal Department	\$20,000

In addition to interest on debt used to finance operations and research and costs specific to the Manufacturing,

Personnel, and Accounting Departments, Company A incurs the following costs during its 2023 taxable year:

Description	Department(s)	Total Cost
Materials and supplies used exclusively for the research project	Research Department	\$50,000
Materials and supplies used by the Engineering Department	Engineering Department	\$40,000
Materials and supplies used by the Legal Department	Legal Department	\$10,000
Labor costs of Research Department employees and their direct supervisor, each of which spends 100% of their time on the research project	Research Department	\$600,000
Labor costs of all Engineering Department employees, each of which spends 20% of their time on the research project	Engineering Department	\$200,000
Labor costs of all Legal Department employees, each of which spends 10% of their time on the research project	Legal Department	\$100,000
Electricity for the facility	The Research Department and the Manufacturing Department consume large amounts of electricity relative to the other departments. The Research Department uses 100,000 kilowatt-hours of electricity. The Manufacturing Department uses 220,000 kilowatt-hours of electricity. The other departments each use 20,000 kilowatt-hours of electricity.	\$200,000
Other utilities and overhead costs for the facility	All departments benefit from such costs in proportion to square footage occupied	\$100,000
Other miscellaneous overhead costs incurred by the Research Department	Research Department	\$50,000
Other miscellaneous overhead costs incurred by the Engineering Department	Engineering Department	\$50,000
Other miscellaneous overhead costs incurred by the Legal Department	Legal Department	\$50,000

(b) *Analysis.* Pursuant to section 4.03(1) of this notice, Company A determines that the costs described in the tables in section 4.03(4)(a) are the types of costs that are incident to SRE activities described in section 4.02(4) of this notice. Pursuant to section 4.03(2)(a) of this notice, Company A determines that the costs incurred by the Manufacturing,

Personnel, and Accounting Departments are not treated as SRE expenditures because the activities of those departments are not SRE activities and such costs either do not, or only indirectly, support or benefit SRE activities. Similarly, pursuant to section 4.03(2)(b) of this notice, Company A determines that interest on debt used to finance operations

and research is not treated as an SRE expenditure. Pursuant to section 4.03(3) of this notice, Company A determines its total SRE expenditures for 2023 by allocating the costs described in the tables in section 4.03(4)(a) of this notice to its SRE activities on the basis of a cause-and-effect relationship between the costs and the SRE activities or another relationship

that reasonably relates the costs to the benefits provided to the SRE activities as provided in the following table. This allocation method generally relates the costs described in the tables in section 4.03(4)(a) of this notice to SRE activities on the basis of total labor hours spent on such activities; however,

for certain costs, Company A determines that a different allocation method more appropriately relates the costs to the benefits that they provide to the SRE activities, such as an allocation method based on the relative square footage of each department. As noted in section 4.03(4)(a), employees in the Research

Department spent 100% of their time on SRE activities, employees in the Engineering Department spent 20% of their time on SRE activities, and employees in the Legal Department spent 10% of their time on SRE activities.

Description	Allocation Method	Amount of SRE Expenditure
Depreciation on facility - \$200,000	Research Department: \$20,000 ($\$200,000 \times 1,000/10,000$ square feet \times 100% of time spent by Research Department on research project) + Engineering Department: \$4,000 ($\$200,000 \times 1,000/10,000$ square feet \times 20% of time spent by Engineering Department on research project) + Legal Department: \$2,000 ($\$200,000 \times 1,000/10,000$ square feet \times 10% of time spent by Legal Department on research project)	\$26,000
Depreciation on computers, furniture, and equipment used by the Research Department exclusively for the research project - \$150,000	$\$150,000 \times 100\%$ use for research project	\$150,000
Depreciation on computers, furniture and equipment used by the Engineering Department - \$100,000	$\$100,000 \times 20\%$ of time spent by Engineering Department employees on the research project	\$20,000
Depreciation on computers and furniture used by the Legal Department - \$20,000	$\$20,000 \times 10\%$ of time spent by Legal Department employees on the research project	\$2,000
Materials and supplies used exclusively by the Research Department for the research project - \$50,000	$\$50,000 \times 100\%$ use for research project	\$50,000
Materials and supplies used by the Engineering Department - \$40,000	$\$40,000 \times 20\%$ of time spent by Engineering Department employees on the research project	\$8,000
Materials and supplies used by the Legal Department - \$10,000	$\$10,000 \times 10\%$ of time spent by Legal Department employees on the research project	\$1,000
Labor costs of Research Department employees and their direct supervisor - \$600,000	$\$600,000 \times 100\%$ of time spent by Research Department employees on the research project	\$600,000
Labor costs of Engineering Department employees - \$200,000	$\$200,000 \times 20\%$ of time spent by Engineering Department employees on the research project	\$40,000
Labor costs of Legal Department employees - \$100,000	$\$100,000 \times 10\%$ of time spent by Legal Department employees on the research project	\$10,000
Electricity for the facility - \$200,000	Research Department \$50,000 ($\$200,000 \times 100,000/400,000$ kilowatt-hours used for research project) + Engineering Department \$2,000 ($\$200,000 \times 20,000/400,000$ kilowatt-hours used by Engineering Department \times 20% of time spent by Engineering Department employees on the research project) + Legal Department \$1,000 ($\$200,000 \times 20,000/400,000$ kilowatt-hours used by Legal Department \times 10% of time spent by Legal Department employees on research project)	\$53,000
Other utilities and overhead costs for the facility - \$100,000	Research Department \$10,000 ($\$100,000 \times 1,000/10,000$ square feet \times 100% of time spent by Research Department on research project) + Engineering Department \$2,000 ($\$100,000 \times 1,000/10,000$ square feet \times 20% of time spent by Engineering Department on research project) + Legal Department \$1,000 ($\$100,000 \times 1,000/10,000$ square feet \times 10% of time spent by Legal Department on research project)	\$13,000
Other miscellaneous overhead costs incurred by the Research Department - \$50,000	$\$50,000 \times 100\%$ of time spent by Research Department employees on the research project	\$50,000
Other miscellaneous overhead costs incurred by the Engineering Department - \$50,000	$\$50,000 \times 20\%$ of time spent by Engineering Department employees on the research project	\$10,000
Other miscellaneous overhead costs incurred by the Legal Department - \$50,000	$\$50,000 \times 10\%$ of time spent by Legal Department employees on the research project	\$5,000
Total SRE Expenditures		\$1,038,000

.04 *Consistency requirement.* SRE expenditures must be treated consistently for purposes of all provisions under subtitle A of the Code (subtitle A). Thus, expenditures that are defined as SRE expenditures under section 4.02(2) of this notice must be treated as SRE expenditures for all purposes under subtitle A. Such expenditures may not be treated as ordinary and necessary expenses under § 162 or capitalized under § 195, § 263(a), § 263A, or § 471. The amortization deductions arising from such SRE expenditures must also be allocated and apportioned consistent with the rules under §§ 1.861-8 and 1.861-17.

SECTION 5. SOFTWARE DEVELOPMENT

.01 *Purpose.* The Treasury Department and the IRS intend to propose rules in forthcoming proposed regulations consistent with the interim guidance provided in this section 5, which provides taxpayers with clarity in determining whether certain activities constitute software development for purposes of § 174(c)(3).

.02 *Defined terms.* For purposes of this notice:

(1) *Computer software.* The term *computer software* generally means any computer program or routine (that is, any sequence of code) that is designed to cause a computer to perform a desired function or set of functions, and the documentation required to describe and maintain that program or routine. The code may be stored on a computing device, affixed to a tangible medium (for example, a disk or DVD), or accessed remotely via a private computer network or the Internet, for example, via cloud computing. Computer software generally includes system software, programming software, application software, embedded software, and all forms and media in which the software is contained, whether written, magnetic, or otherwise. Computer software also generally includes computer programs of all classes, for example, operating systems, executive systems, software monitors, compilers and translators, assembly routines, and utility programs as well as application programs.

Computer software includes a computer program, a group of programs, and upgrades and enhancements (as

defined in section 5.02(2) of this notice). Computer software also includes any incidental and ancillary rights that are necessary to effect the acquisition of the title to, the ownership of, or the right to use the computer software, and that are used only in connection with that specific computer software. Computer software includes software developed for use by the taxpayer in its trade or business or for sale or licensing to others. Computer software does not include any data or information base described in § 1.197-2(b)(4) unless the database or item is in the public domain and is incidental to a computer program. For example, customer lists or client files are not included in computer software unless such items are in the public domain and incidental to a computer program. Additionally, computer software does not include any procedures that are external to the computer's operation.

(2) *Upgrades and enhancements.* The term *upgrades and enhancements* generally means modifications to existing computer software that result in additional functionality (enabling the software to perform tasks that it was previously incapable of performing), or materially increase speed or efficiency of the software.

.03 *Activities that are treated as software development.* Activities that are treated as software development for purposes of § 174 generally include but are not limited to:

(1) Planning the development of the computer software (or the upgrades and enhancements to such software), including identification and documentation of the software requirements;

(2) Designing the computer software (or the upgrades and enhancements to such software);

(3) Building a model of the computer software (or the upgrades and enhancements to such software);

(4) Writing source code and converting it to machine-readable code;

(5) Testing the computer software (or the upgrades and enhancements to such software) and making necessary modifications to address defects identified during testing, but only up until the point in time that:

(a) In the case of computer software developed for use by the taxpayer in its

trade or business, the computer software is placed in service; and

(b) In the case of computer software developed for sale or licensing to others, technological feasibility has been established, product masters(s) have been produced, and the computer software is ready for sale or licensing to others; and

(6) In the case of computer software developed for sale or licensing to others (or the upgrades and enhancements to such software), production of the product master(s).

.04 *Software development activities related to purchased computer software.* In the case of upgrades and enhancements to purchased computer software, the principles set forth in section 5.03 of this notice apply. However, the purchase and installation of purchased computer software, including the configuration of pre-coded parameters to make such software compatible with the business and reengineering the business to make it compatible with the purchased software, and any planning, designing, modeling, testing, or deployment activities with respect to the purchase and installation of such software, are not activities that constitute software development for purposes of § 174.

.05 *Activities that are not treated as software development.* The following activities associated with software development projects are not treated as software development for purposes of § 174:

(1) *Computer software developed by a taxpayer for use in its trade or business.* In the case of computer software that is developed for use by the taxpayer in its trade or business (or upgrades and enhancements to such software):

(a) Training employees and other stakeholders that will use the computer software;

(b) Maintenance activities after the computer software is placed in service that do not give rise to upgrades and enhancements (for example, corrective maintenance to debug, diagnose, and fix programming errors);

(c) Data conversion activities, except for activities to develop computer software that facilitate access to existing data or data conversion; and

(d) Installing the computer software and other activities relating to placing the computer software in service.

(2) *Computer software developed for sale or licensing to others.* In the case of computer software that is developed for sale or licensing to others (or upgrades and enhancements to such software), activities that occur after such software (or upgrades and enhancements to such software) is ready for sale or licensing to others, such as marketing and promotional activities, maintenance activities that do not give rise to upgrades and enhancements, distribution activities (for example, making the software available via remote access), and customer support activities.

SECTION 6. RESEARCH PERFORMED UNDER CONTRACT

.01 *Purpose.* The Treasury Department and the IRS intend to propose rules in forthcoming proposed regulations consistent with the interim guidance provided in this section 6, which provides taxpayers with clarity in determining whether costs paid or incurred for research performed under contract are SRE expenditures under § 174.

.02 *Defined terms.* For purposes of this section 6:

(1) *Research provider.* The term *research provider* means the party that contracts with a research recipient (as defined in section 6.02(2) of this notice) to:

(a) perform research services for the research recipient with respect to an SRE product, or

(b) develop an SRE product (as defined in section 6.02(4) of this notice) that the research recipient acquires from the research provider.

(2) *Research recipient.* The term *research recipient* means the party that contracts with the research provider to:

(a) perform research services for the research recipient with respect to an SRE product, or

(b) develop an SRE product that the research recipient acquires from the research provider.

(3) *Financial risk.* The term *financial risk* means the risk that the research provider may suffer a financial loss related to the failure of the research to produce the desired SRE product.

(4) *SRE product.* The term SRE product means any pilot model, process, formula, invention, technique, patent, computer software, or similar property (or a component thereof) that is subject to protection under applicable domestic or foreign law. For example, mere know-how gained by a research provider through the performance of research services for a research recipient that is not subject to protection under applicable domestic or foreign law does not give rise to an SRE product in the hands of the research provider.

.03 *Treatment of costs paid or incurred by research recipient.* The treatment of costs paid or incurred by the research recipient is governed by the principles set forth in § 1.174-2(a)(10) and (b)(3).

.04 *Treatment of costs paid or incurred by research provider.* If the research provider bears financial risk under the terms of the contract with the research recipient, then costs paid or incurred by the research provider that are incident to the SRE activities (see section 4.03 of this notice) performed by the research provider under the contract are SRE expenditures. However, even if the research provider does not bear financial risk under the terms of the contract with the research recipient, if the research provider has a right to use any resulting SRE product in the trade or business of the research provider or otherwise exploit any resulting SRE product through sale, lease, or license, then costs paid or incurred by the research provider that are incident to the SRE activities performed by the research provider under the contract are SRE expenditures of the research provider for which no deduction is allowed except as provided in § 174(a)(2), regardless of whether the research recipient is required to treat its costs as SRE expenditures under section 6.03 of this notice. For purposes of the preceding sentence, a research provider will not be treated as having a right to use the SRE product in the trade or business of the research provider or otherwise exploit the SRE product through sale, lease, or license if such right is available to the research provider only upon obtaining approval from another party to the research arrangement that is not related

to the research provider within the meaning of § 267 or § 707.

.05 *Example.* The following example illustrates the rules set forth in section 6 of this notice.

(1) *Facts.* Company C engages Company D, a contractor located in the United States, to develop an SRE product for use in Company C's trade or business. The activities undertaken by Company D are undertaken upon Company C's order, and Company D makes no performance guarantees with respect to the SRE product. Company C will pay Company D a fixed sum of \$25,000 plus an amount equivalent to Company D's actual expenditures. Company D does not have any right to use or otherwise exploit any resulting SRE product. In 2023, Company D incurs \$125,000 of expenditures to successfully develop the product in the United States, and Company C pays to Company D \$150,000 pursuant to the terms of the contract.

(2) *Analysis.* Under section 6.04 of this notice, Company D may not treat the \$125,000 of expenditures it incurs to develop the SRE product on behalf of Company C as SRE expenditures under § 174 because (i) Company D does not bear financial risk, and (ii) Company D does not have any right to use or otherwise exploit any resulting SRE product. Under section 6.03 of this notice, the \$150,000 paid by Company C is an amount paid to another party for research or experimentation undertaken on Company C's behalf under § 1.174-2(a)(10) and (b)(3) and is thus an SRE expenditure under section 4.02(2) of this notice. The applicable § 174 amortization period is 5 years (60 months) because the research is performed by Company D in the United States. Company C's location is not relevant for determination of the applicable § 174 amortization period.

SECTION 7. DISPOSITION, RETIREMENT, OR ABANDONMENT OF PROPERTY

.01 *Purpose.* The Treasury Department and the IRS intend to propose rules in forthcoming proposed regulations consistent with the interim guidance provided in this section 7, which provides taxpayers with clarity in determining the treatment of unamortized SRE expenditures if property with respect to which such expenditures are paid or incurred is disposed of, retired, or abandoned in certain transactions during the applicable § 174 amortization period.

.02 *In general.* Except as provided in section 7.04 of this notice, if any property with respect to which SRE expenditures are paid or incurred is disposed of, retired, or abandoned during the applicable § 174 amortization period, no recovery is

allowed with respect to the unamortized SRE expenditures on account of such disposition, retirement, or abandonment, and the taxpayer that disposed of, retired, or abandoned such property continues to amortize such expenditures under § 174 over the remainder of the applicable § 174 amortization period. For purposes of this section 7, the term *unamortized SRE expenditures* means the amount of any SRE expenditures paid or incurred by the corporation (or its predecessor), less the amount of any amortization deductions previously allowed to the corporation (or its predecessor) under § 174.

.03 *Transactions occurring before the midpoint of the taxable year.* An amortization deduction is allowed under § 174 for SRE expenditures even if such expenditures relate to property that is disposed of, retired, or abandoned prior to the midpoint of the taxable year in which such expenditures are paid or incurred. Accordingly, such expenditures are subject to the rules in sections 7.02 and 7.04 of this notice.

.04 *Transaction in which corporation ceases to exist.*

(1) *Transaction described in § 381(a).* If a corporation ceases to exist for Federal income tax purposes in a transaction or series of transactions described in § 381(a), the acquiring corporation will continue to amortize the distributor or transferor corporation's unamortized SRE expenditures over the remainder of the distributor or transferor corporation's applicable § 174 amortization period beginning with the month of transfer.

(2) *Transaction not described in § 381(a).*

(a) *In general.* Except as provided in section 7.04(2)(b), if a corporation ceases to exist for Federal income tax purposes in a transaction or series of transactions to which § 381(a) does not apply, the corporation is allowed a deduction equal to the unamortized SRE expenditures in its final taxable year.

(b) *Anti-abuse exception.* Section 7.04(2)(a) of this notice does not apply if a principal purpose of the transaction(s)

described in section 7.04(2)(a) of this notice is to claim a deduction for the unamortized SRE expenditures.

.05 *Examples.* The following examples illustrate the rules set forth in section 7 of this notice.

(1) *Sale of property with respect to which SRE expenditures were incurred.*

(a) *Facts.* Company X, an accrual method, calendar-year taxpayer, incurs \$100,000 in SRE expenditures in 2023 for research performed in the United States. On September 30, 2025, Company X sells the property with respect to which such expenditures were incurred to Company Y and recognizes gain under § 1001.

(b) *Analysis.* In 2023, Company X amortizes \$10,000 ($10\% \times \$100,000$). See section 3.05 of this notice. In 2024, Company X amortizes \$20,000 ($20\% \times \$100,000$). In 2025 through 2028, Company X ratably amortizes the remaining \$70,000 ($\$100,000 - \$10,000 - \$20,000$) notwithstanding Company X's disposition of the assets with respect to which Company X's SRE expenditures were incurred. Company Y does not amortize any portion of the SRE expenditures originally paid or incurred by Company X. Company X does not factor its unamortized SRE expenditures into the computation of gain or loss under § 1001. See section 7.02 of this notice.

	2023	2024	2025	2026	2027	2028
Company X amortization %	10%	20%	20%	20%	20%	10%
Company X Dollar amount	\$10,000	\$20,000	\$20,000	\$20,000	\$20,000	\$10,000

(c) *Applicable asset acquisition.* The results would be the same as in section 7.05(1)(b) of this notice if the sale of property with respect to which the SRE expenditures were incurred were part of an applicable asset acquisition within the meaning of § 1060(c).

(d) *Section 351 exchange.* The results would be the same as in section 7.05(1)(b) of this notice if X transferred the property with respect to which the SRE expenditures were incurred in an exchange described in § 351.

(2) *Section 381(a) transaction.*

(a) *Facts.* The facts are the same as in section 7.05(1)(a) of this notice, except that, on October 16, 2025, Company X is acquired by Company Z, an accrual method, calendar-year taxpayer, in a transaction described in § 381(a).

(b) *Analysis.* In 2023, Company X amortizes \$10,000 ($10\% \times \$100,000$). See section 3.05 of this notice. In 2024, Company X amortizes \$20,000 ($20\% \times \$100,000$). In 2025, Company X amortizes

\$15,000 ($(9 \text{ months}/12 \text{ months}) \times 20\% \times \$100,000$), and Company Z amortizes \$5,000 ($(3 \text{ months}/12 \text{ months}) \times 20\% \times \$100,000$). See sections 3.06(1), 7.02, and 7.04(1) of this notice. In 2026 through 2028, Company Z ratably amortizes the remaining \$50,000 ($\$100,000 - \$10,000 - \$20,000 - \$15,000 - \$5,000$).

	2023	2024	2025	2026	2027	2028
Company X amortization %	10%	20%	15%	0%	0%	0%
Company Z amortization %	0%	0%	5%	20%	20%	10%
Company X Dollar amount	\$10,000	\$20,000	\$15,000			
Company Z Dollar amount			\$5,000	\$20,000	\$20,000	\$10,000

SECTION 8. LONG-TERM CONTRACTS UNDER § 460

.01 *Purpose.* The Treasury Department and the IRS are providing this interim

guidance to provide taxpayers with information about a proposed revision to the regulations under § 460 in forthcoming proposed regulations regarding how to apply the percentage-of-completion

method (PCM) to account for income from long-term contracts when allocable contract costs include SRE expenditures.

.02 *Background.* Section 460(a) generally requires use of the PCM to account for

taxable income from a long-term contract. Section 1.460-4(b)(2)(i) provides that under the PCM, the portion of the contract price a taxpayer must report in a tax year corresponds to the ratio of incurred allocable contract costs to total estimated allocable contract costs. This ratio represents the portion of a contract considered completed for purposes of the PCM. Under the PCM, a taxpayer generally deducts allocable contract costs as they are incurred. As provided by § 1.460-4(b)(2)(iv), an increase in the percentage of the contract price to be reported is matched by deduction of the incurred costs that cause the increase. Under the current § 460 regulations in § 1.460-5(b)(2)(vi), allocable contract costs include research or experimental expenses, other than independent research and development expenses. Thus, when these expenses are incurred, they increase the portion of a contract considered completed and the percentage of the contract price required to be reported. The current § 460 regulations were drafted when a taxpayer could deduct currently research or experimental expenses under former § 174. Section 174(a), as amended by the TCJA, requires that SRE expenditures be charged to capital account and deducted over the applicable § 174 amortization period. As a result, the current § 460 regulations provide that incurred research or experimental expenses increase the percentage of the contract price required to be reported, although § 174(a) prevents a corresponding current deduction of incurred SRE expenditures. The resulting mismatch of contract price and contract costs is inconsistent with the contemplated operation of the PCM.

.03 *Treatment of SRE expenditures under § 460.* The Treasury Department and the IRS anticipate issuing proposed regulations that would amend the existing § 460 regulations, including § 1.460-5(b)(2)(vi), to provide that the costs allocable to a long-term contract accounted for using the PCM include amortization of SRE expenditures under § 174(a)(2)(B), rather than the capitalized amount of such expenditures, and that such amortization is treated as incurred for purposes of determining the percentage of contract completion as deducted. The amendments would not apply to expenditures previously capitalized under § 59(e)(2)(B) or

under former § 174(b), or to independent research and development expenditures, as defined in § 460(c)(5), which are not allocable contract costs. Research or experimental expenditures that are not independent research and development expenditures, however, would remain subject to allocation under § 460(c)(1) regardless of whether they are SRE expenditures.

SECTION 9. COST SHARING REGULATIONS AT § 1.482-7

.01 *Purpose.* The Treasury Department and the IRS are providing this interim guidance to provide taxpayers with information about a proposed revision to § 1.482-7(j)(3)(i) in forthcoming proposed regulations.

.02 *Background.* Section 1.482-7(j)(3)(i) addresses cost sharing transaction payments (CST Payments) between controlled participants in a cost sharing arrangement (CSA) that are made to ensure that each controlled participant's share of intangible development costs (IDCs) is in proportion to its share of reasonably anticipated benefits from exploitation of the developed intangibles (RAB share). Section 1.482-7(j)(3)(i) generally provides that CST Payments reduce deductible IDCs borne by the controlled participant to which the CST Payments are owed. Any amount of CST Payment in excess of such deductible IDCs is treated as in consideration for the use of land and tangible property furnished for purposes of the CSA by the controlled participant to which the CST Payment is owed. CST Payments generally are considered the payor's costs of developing intangibles at the location where such development is conducted. *See also* § 1.482-7(j)(3)(iii), *Example 1.*

.03 *Anticipated revisions to § 1.482-7(j)(3)(i).*

(1) The Treasury Department and the IRS anticipate issuing proposed regulations that would replace the second through fourth sentences of § 1.482-7(j)(3)(i) with rules providing that CST Payments owed to a controlled participant reduce:

(a) The amount of the category of IDCs borne directly by that participant that are required to be charged to capital account, and

(b) The amount of the category of IDCs borne directly by that participant that are not described in section 9.03(1)(a) of this notice and that are deductible.

(2) CST Payments not in excess of the payor's RAB share of the total amount of the IDCs in both categories described in section 9.03(1)(a) and (b) of this notice reduce the amount of each such category of IDCs in the same proportion that the total amount of the IDCs in each category bears to the total amount of IDCs in both categories. CST Payments in excess of the payor's RAB share of the total amount of IDCs in both categories described in section 9.03(1)(a) and (b) of this notice will be treated as income.

.04 *Examples.* The examples provided below illustrate the anticipated revisions to § 1.482-7(j)(3)(i).

(1) *Example 1.*

(a) *Facts.* U.S. Parent (USP) and its wholly owned Foreign Subsidiary (FS) form a CSA to develop a miniature widget, the Small R. Based on RAB shares, USP agrees to bear 40% and FS agrees to bear 60% of the IDCs incurred during the term of the agreement. USP incurs \$100,000 of IDCs to perform research in the United States annually and FS incurs \$100,000 of IDCs to perform research in country X annually. USP's IDCs are required under U.S. Federal income tax rules to be charged to capital account and amortized ratably over the 5-year applicable § 174 amortization period beginning with the midpoint of the taxable year in which such expenditures are paid or incurred, and FS's IDCs incurred in country X are required under U.S. Federal income tax rules to be charged to capital account and amortized ratably over the 15-year applicable § 174 amortization period beginning with the midpoint of the taxable year in which such expenditures are paid or incurred.

(b) *Analysis.* Of the total IDCs of \$200,000, USP's share is \$80,000 ($\$200,000 \times 40\%$) and FS's share is \$120,000 ($\$200,000 \times 60\%$) so that FS must make a payment to USP of \$20,000 ($\$120,000 - \$100,000$). The CST Payment reduces USP's IDCs in the United States that are required to be charged to capital account by \$20,000. Accordingly, USP is required to charge \$80,000 to capital account, all of which is required to be amortized over 5 years, while FS is required to charge \$120,000 to capital account, \$100,000 of which is required to be amortized over 15 years, and \$20,000 of which is required to be amortized over 5 years.

(2) *Example 2.*

(a) *Facts.* The facts are the same as in Example 1, except that the \$100,000 of IDCs borne by USP consist of (1) \$5,000 of IDCs incurred by USP in the United States that are required to be charged to capital account and amortized ratably over the 5-year applicable § 174 amortization period beginning with the midpoint of the taxable year in which such expenditures are paid or incurred, (2) \$5,000 of deductible IDCs, and (3) \$90,000 of arm's length

rental charge, as described in § 1.482-7(d)(1)(iii), for the use of USP's facility in the United States.

(b) *Analysis.* As in Example 1, of the total IDCs of \$200,000, USP's share is \$80,000 and FS's share is \$120,000, so that FS must make a payment to USP of \$20,000. The \$20,000 CST Payment from FS to USP will first be treated as reducing the \$5,000 of IDCs that are required to be charged to capital account and the \$5,000 of deductible IDCs pro rata to the extent of FS's RAB share of such IDCs. Because the IDCs required to be charged to capital account make up 50% of the combined amount of IDCs chargeable to capital account and the deductible IDCs directly borne by USP (i.e., $\$5,000 = 50\% \times \$10,000$), and because FS's RAB share of the total amount of IDCs in both categories is \$6,000 (i.e., $60\% \times \$10,000$), \$3,000 of the \$20,000 CST Payment reduces USP's IDCs chargeable to capital account, \$3,000 of the CST Payment reduces USP's deductible IDCs, and the remaining \$14,000 ($\$20,000 - \$6,000$) of the CST Payment is treated as income.

(3) *Example 3.*

(a) *Facts.* The facts are the same as in Example 1, except that the \$100,000 of IDCs borne by USP consist of (1) \$15,000 of IDCs incurred by USP in the United States that are required to be charged to capital account and amortized ratably over the 5-year applicable § 174 amortization period beginning with the midpoint of the taxable year in which such expenditures are paid or incurred, (2) \$45,000 of deductible IDCs, and (3) \$40,000 of arm's length rental charge, as described in § 1.482-7(d)(1)(iii), for the use of USP's facility in the United States.

(b) *Analysis.* As in Example 1, of the total IDCs of \$200,000, USP's share is \$80,000 and FS's share is \$120,000, so that FS must make a payment to USP of \$20,000. The \$20,000 CST Payment from FS to USP will first be treated as reducing the \$15,000 of IDCs that are required to be charged to capital account and the \$45,000 of deductible IDCs pro rata to the extent of FS's RAB share of such IDCs. Because the IDCs required to be charged to capital account make up 25% (that is, $\$15,000 / (\$15,000 + \$45,000)$) of the combined amount of IDCs chargeable to capital account and deductible IDCs directly borne by USP, and because the deductible IDCs make up 75% (that is, $\$45,000 / (\$15,000 + \$45,000)$) of the combined amount of IDCs chargeable to capital account and deductible IDCs directly borne by USP, 25% of the \$20,000 CST Payment, or \$5,000, reduces USP's IDCs chargeable to capital account, and 75%, or \$15,000, reduces USP's deductible IDCs. Because all \$20,000 of the CST Payment is applied against deductible IDCs directly borne by USP and IDCs incurred by USP that are chargeable to capital account, there is no amount of the CST Payment that is treated as income.

SECTION 10. APPLICABILITY DATES

.01 *In general.* It is anticipated that the forthcoming proposed regulations will provide that rules consistent with the rules described in sections 3 through 9 of

this notice would apply for taxable years ending after September 8, 2023. Except as otherwise provided in this section 10.01, prior to the publication date of the forthcoming proposed regulations in the Federal Register, a taxpayer may choose to rely on the rules described in sections 3 through 9 of this notice, including for expenditures paid or incurred in taxable years beginning after December 31, 2021, provided the taxpayer relies on all the rules in sections 3 through 9 of this notice and applies them in a consistent manner. However, taxpayers may not rely on the rules in section 7 of this notice for SRE expenditures paid or incurred with respect to property that is contributed to, distributed from, or transferred from a partnership.

.02 *Additional procedural guidance.* The Treasury Department and IRS intend to issue guidance in the Internal Revenue Bulletin (*see* § 601.601(d) of the Procedural Rules) to provide procedures for taxpayers to obtain automatic consent to change methods of accounting to comply with this notice. Until the issuance of such procedural guidance, taxpayers may rely on section 7.02 of Rev. Proc. 2023-24 to change their methods of accounting under § 174 to comply with this notice. The Treasury Department and IRS anticipate issuing updated procedures that will address situations in which taxpayers have, prior to the issuance of this notice, changed methods of accounting to comply with § 174 as amended by the TCJA but whose treatment of SRE expenditures is not entirely consistent with this notice. Unless specifically authorized by the Commissioner of Internal Revenue or by statute, a taxpayer may not request, or otherwise make, a retroactive change in method of accounting by filing an amended return. *See* Rev. Rul. 90-38, 1990-1 C.B. 57; Rev. Rul. 2023-8, 2023-18 I.R.B. 801.

SECTION 11. REQUEST FOR COMMENTS

.01 *Comments regarding guidance provided in this notice.* The Treasury Department and the IRS request comments on issues arising from the interim guidance set forth in this notice. In addition to general comments regarding the

provisions of this notice, the Treasury Department and the IRS request comments to address the following issues:

(1) *Scope of § 174 (section 4 of this notice).*

(a) Whether additional guidance is needed regarding identifying expenditures allocable to SRE activities and allocating such expenditures to SRE activities.

(b) Whether simplified methods or safe harbors should be provided for identifying expenditures allocable to SRE activities and allocating such expenditures to SRE activities. If so, what methods or safe harbors should be provided? Are special methods needed for government research contracts?

(2) *Software development (sections 4 and 5 of this notice).*

(a) The definition of computer software is based on section 2 of Rev. Proc. 2000-50 and § 1.197-2(c)(4)(iv). Is there a more appropriate definition under the Financial Accounting Standards Board Accounting Standards Codifications (ASCs) or an appropriate industry standard that should be used instead? If so, what ASC or industry standard definition should be used? Additionally, to what extent should ASC guidance or an appropriate industry standard be used to determine activities that are software development activities, and costs that are software development costs, for purposes of § 174?

(b) What examples of costs that are, or are not, software development costs would be helpful to include in the forthcoming proposed regulations?

(c) Are special rules and examples needed to determine what activities related to developing a website would be software development?

(3) *Research performed under contract (section 6 of this notice).*

(a) Should the rules for determining whether a party to a research contract has SRE expenditures under § 174 be similar to the funded research rules under § 41(d)(4)(H)?

(b) Are special rules needed for service or manufacturing production contracts with the government, including § 460 long-term contracts?

(c) Are there other factors that should be considered in determining whether a party to a research contract has SRE expenditures?

(d) Are special rules or safe harbors needed to determine if research performed under a contract is foreign research (for example, where a research recipient pays the research provider for research that is performed by the research provider both inside and outside the U.S.)?

(e) Are special rules needed for contracts with related foreign research providers and recipients?

(4) *Disposition, retirement, or abandonment of property (section 7 of this notice).* What, if any, changes to the rules in section 7 of this notice are appropriate to address potential abuses?

(5) *Long-term contracts under § 460 (section 8 of this notice).* In the case of SRE expenditures allocable to long-term contracts accounted for under the PCM set forth in § 460, do estimated total allocable contract costs include all SRE expenditures that directly benefit or are incurred by reason of the performance of the long-term contract or, alternatively, only that portion of the SRE expenditures expected to be amortized during the term of the contract? Under the first alternative, a taxpayer would be required to report any remaining portion of the contract price not previously reported by the tax year following the tax year in which the contract is completed, notwithstanding that some portion of the SRE expenditures remain unamortized. See § 460(b)(1).

.02 *Comments regarding rules not included in this notice.* The Treasury Department and the IRS continue to study issues that are not addressed in this notice, including but not limited to whether the general requirements governing record retention under § 1.6001-1 are adequate for purposes of substantiating expenditures under § 174, whether the definition of “pilot model” under § 1.174-2(a)(4) should be amended, and whether and how § 59(e) applies to § 174 expenditures. In addition to requests for comments on these issues, the Treasury Department and the IRS request comments on the following specific issues not addressed by this notice:

(1) Under what circumstances should unamortized SRE expenditures continue to be amortized or accelerated with

respect to property that is contributed to, distributed from, or transferred from a partnership?

(2) Under what circumstances should unamortized SRE expenditures continue to be amortized or accelerated with respect to property of a partnership that is a party to a merger, consolidation, division, or liquidation, or that otherwise terminates under § 708 and the regulations thereunder? Is there potential for abuse as a result of allowing a deduction for unamortized SRE expenditures in the final year of a partnership that liquidates or otherwise terminates? If so, what rules are appropriate to address such abuse?

(3) Should special rules apply to start-up companies or small taxpayers? If so, how should § 174 be applied in such cases?

(4) Sections 280C(c)(1)(B) and 56(b)(2)(A) each refer to an “amount allowable as a deduction” for qualified research expenses or basic research expenses (in the case of § 280C(c)(1)(B)), and § 174(a) (in the case of § 56(b)(2)(A)). On the one hand, § 174(a)(1) (as amended by the TCJA) does not allow a deduction for qualified research expenses or basic research expenses because such expenses are required to be charged to capital account. On the other hand, § 174(a)(2) allows an amortization deduction with respect to the capitalized amount of such expenses. Should the “amount allowable as a deduction” references in §§ 280C(c)(1)(B) and 56(b)(2)(A) be interpreted to refer to the amortization deduction allowed under § 174(a)(2) or to \$0, which is the deduction allowed for the qualified research expenses or basis research expenses under § 174(a)(1)? The Treasury Department and IRS request comments on this interpretation and how to resolve any potential issues that might arise by applying the same interpretation to both §§ 280C(c)(1)(B) and 56(b)(2)(A).

.03 *Procedures for submitting comments.*

(1) *Deadline.* Written comments should be submitted by November 24, 2023. Consideration will be given, however, to any written comment submitted after November 24, 2023, if such consideration

will not delay the issuance of the forthcoming proposed regulations.

(2) *Form and manner.* The subject line for the comments should include a reference to Notice 2023-63. All commenters are strongly encouraged to submit comments electronically. However, comments may be submitted in one of two ways:

(a) Electronically via the Federal eRulemaking Portal at www.regulations.gov (type IRS-2023-0040 in the search field on the [regulations.gov](http://www.regulations.gov) homepage to find this notice and submit comments); or

(b) By mail to: Internal Revenue Service, CC:PA:LPD:PR (Notice 2023-63), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, D.C., 20044.

(3) *Publication of comments.* The Treasury Department and the IRS will publish for public availability any comment submitted electronically or on paper to its public docket on www.regulations.gov.

SECTION 12. EFFECT ON OTHER DOCUMENTS

As a result of the TCJA amendments to § 174 and the rules in sections 3 through 5 of this notice, section 5 of Rev. Proc. 2000-50 is obsolete.

SECTION 13. DRAFTING AND CONTACT INFORMATION

The principal author of this notice is Bruce Chang of the Office of the Associate Chief Counsel (Income Tax and Accounting). Other personnel from the Treasury Department and the IRS participated in its development. For further information regarding this notice, please contact Mr. Chang at (202) 317-4870 (not a toll-free number). For further information regarding corporate matters in section 7 of this notice, please contact Austin Diamond-Jones of the Office of Associate Chief Counsel (Corporate) at (202) 317-5085 (not a toll-free number). For further information regarding section 9 of this notice, please contact Annette Ofori of the Office of Associate Chief Counsel (International) at (202) 317-4910 (not a toll-free number).

Part IV

Increased Credit or Deduction Amounts for Satisfying Certain Prevailing Wage and Registered Apprenticeship Requirements

REG-100908-23

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: This document contains proposed regulations regarding increased credit or deduction amounts available for taxpayers satisfying prevailing wage and registered apprenticeship (collectively, PWA) requirements established by the Inflation Reduction Act of 2022 (IRA). These proposed regulations would affect taxpayers intending to satisfy the PWA requirements for increased Federal income tax credits or deductions. These proposed regulations would also affect taxpayers intending to satisfy the prevailing wage requirements for increased Federal income tax credit amounts that do not have associated apprenticeship requirements. Additionally, these proposed regulations would affect taxpayers who initially fail to satisfy the PWA or prevailing wage requirements and subsequently comply with the correction and penalty procedures in order to be deemed to satisfy the PWA or prevailing wage requirements. Finally, the proposed regulations address specific PWA or prevailing wage record-keeping and reporting requirements. The proposed regulations would affect taxpayers intending to claim increased credit or deduction amounts pursuant to the IRA, including those intending to make elective payment elections for available credit amounts, and those intending to transfer increased credit amounts. This document

also provides notice of a public hearing on the proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by October 30, 2023. A public hearing on these proposed regulations is scheduled to be held on November 21, 2023, at 10 a.m. ET. Requests to speak and outlines of topics to be discussed at the public hearing must be received by October 30, 2023. If no outlines are received by October 30, 2023, the public hearing will be cancelled. Requests to attend the public hearing must be received by 5 p.m. ET on November 17, 2023. The public hearing will be made accessible to people with disabilities. Requests for special assistance during the hearing must be received by November 16, 2023.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically via the Federal eRulemaking Portal at <https://www.regulations.gov> (indicate IRS and REG-100908-23) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the “Comments and Requests for a Public Hearing” section. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comments submitted to the IRS’s public docket. Send paper submissions to: CC:PA:LPD:PR (REG-100908-23), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, the Office of Associate Chief Counsel (Passthroughs & Special Industries) at (202) 317-6853 (not a toll-free number); concerning submissions of comments or the public hearing, Vivian Hayes at (202) 317-6901 (not a toll-free

number) or by email to publichearings@irs.gov (preferred).

SUPPLEMENTARY INFORMATION:

Background

I. Overview

This document contains proposed regulations to amend the Income Tax Regulations (26 CFR part 1) under sections 30C, 45, 45L, 45U, 45V, 45Y, 45Z, 48C, 48E, and 179D of the Internal Revenue Code (Code) and proposed amendments to the Income Tax Regulations (26 CFR part 1) under sections 45Q and 48 (proposed regulations). The Inflation Reduction Act of 2022 (IRA), Public Law 117-169, 136 Stat. 1818 (August 16, 2022), amended sections 30C, 45, 45L, 45Q, 48, 48C, and 179D to provide increased credit or deduction amounts for taxpayers who satisfy certain requirements and added sections 45U, 45V, 45Y, 45Z, and 48E to the Code to provide new credits, which also contain provisions for increased credit amounts for taxpayers who satisfy certain requirements. Increased credit amounts are available under sections 30C, 45, 45Q, 45V, 45Y, 45Z, 48, 48C, and 48E, and an increased deduction is available under section 179D, for taxpayers satisfying certain prevailing wage and registered apprenticeship (PWA) requirements. Increased credit amounts are available under sections 45L and 45U for taxpayers satisfying certain prevailing wage requirements.¹ The IRA includes correction and penalty provisions available in certain situations if taxpayers have failed to satisfy the PWA requirements, and they are not otherwise eligible for the increased credit or deduction because they do not qualify for an exception.

The increased credit amounts are also generally available under sections 45, 45Y, 48, and 48E with respect to certain facilities with a maximum net output (or capacity for energy storage technology under

¹ The increased credit provisions in sections 45L and 45U do not contain apprenticeship requirements. For simplicity, where possible, the preamble to the proposed regulations uses the acronym PWA to refer to the prevailing wage and apprenticeship requirements generally, including the prevailing wage requirements in sections 45L and 45U.

section 48E) of less than one megawatt (One Megawatt Exception). Additionally, increased credit and deduction amounts are available under sections 30C, 45, 45Q, 45V, 45Y, 48, 48E and 179D if beginning of installation or beginning of construction (BOC) occurs before January 29, 2023 (BOC Exception).

II. Prior Guidance

On October 24, 2022, the Treasury Department and the IRS issued Notice 2022-51, 2022-43 I.R.B. 331, requesting comments on aspects of the increased credits and deduction amounts enacted by the IRA, including the PWA provisions. Section 3.01 of Notice 2022-51 requested comments regarding the applicability of subchapter IV of chapter 31 of title 40 of the United States Code, which is commonly known as the Davis-Bacon Act; the special correction and penalty procedures generally provided for under section 45(b)(7)(B); any documentation or substantiation that should be required to show compliance with the prevailing wage requirements; and any other topics relating to the prevailing wage requirements that may require guidance. Section 3.02 of Notice 2022-51 requested comments addressing factors to be considered in regard to the appropriate duration of employment of individuals for construction, alteration, or repair work for purposes of the Participation Requirement; clarification regarding the Good Faith Effort Exception; factors to be considered in administering and promoting compliance with the Good Faith Effort Exception; whether methods exist to facilitate reporting requirements for the Good Faith Effort Exception; documentation or substantiation taxpayers maintain or could create to demonstrate compliance with the apprenticeship requirements or the Good Faith Effort Exception; and any other topics relating to the apprenticeship requirements that may require guidance. Comments received in response to Notice 2022-51 were considered in the drafting of these proposed regulations.

On November 30, 2022, the Treasury Department and the IRS published Notice 2022-61, 87 FR 73580, corrected in 87 FR 75141 (Dec. 7, 2022). Notice 2022-61 provided guidance on the PWA requirements that generally apply under sections 30C, 45, 45L, 45Q, 45U, 45V, 45Y, 45Z, 48, 48C, and 48E, and 179D. Additionally, Notice 2022-61 established the 60-day period described in sections 30C(g)(1)(C)(i), 45(b)(6)(B)(ii), 45Q(h)(2), 45V(e)(2)(A)(i), 45Y(a)(2)(B)(ii), 48(a)(9)(B)(ii), 48E(a)(2)(A)(ii)(II) and (a)(2)(B)(ii)(II), and 179D(b)(3)(B)(i). Specifically, Notice 2022-61 started the 60-day period applicable for determining if taxpayers qualify for the increased credit or deduction amounts by satisfying the BOC Exception. To be eligible for the BOC Exception, as indicated in Notice 2022-61, taxpayers must have begun construction or installation of a facility (as defined in Notice 2022-61) before January 29, 2023. Finally, Notice 2022-61 provided guidance for determining the beginning of construction under sections 30C, 45, 45Q, 45V, 45Y, 48, and 48E, and the beginning of installation under section 179D.

III. Inflation Reduction Act

A. In general

Prior to enactment of the IRA, the Code provided for certain temporary credits and deductions with respect to energy related facilities, projects, equipment, and investments under sections 30C, 45, 45L, 45Q, 48, 48C, and 179D. Congress had extended these provisions multiple times and for varying types of qualified facilities, energy projects, equipment, and investments. The IRA further amended these sections, generally adjusting the credit or deduction amounts, expiration dates, and qualifying activities. Under the IRA, Congress also enacted new credits under sections 45U, 45V, 45Y, 45Z, (production tax credits) and 48E (investment tax credit).

The IRA provides increased credit or deduction amounts that generally apply

for taxpayers who satisfy (i) certain PWA requirements regarding the construction, installation, alteration, or repair of a qualified facility, qualified property, qualified project, or qualified equipment, or with respect to certain facilities, (ii) the One Megawatt Exception, or (iii) the BOC Exception. Generally, if a taxpayer satisfies the PWA requirements or meets the One Megawatt Exception or the BOC Exception, the amount of credit or deduction determined is equal to the otherwise determined amount of the underlying credit or deduction multiplied by five.

B. PWA provisions

1. In General

The principal PWA requirements are set forth in section 45(b)(6), (7), and (8). In general, section 45(b)(6) provides the increased credit amount for taxpayers satisfying the PWA requirements or meeting one of the exceptions, section 45(b)(7) provides the prevailing wage requirements (Prevailing Wage Requirements), and section 45(b)(8) provides the apprenticeship requirements (Apprenticeship Requirements).²

Section 45 provides a credit for taxpayers producing and selling electricity from renewable resources to unrelated persons during the taxable year (section 45 credit). The section 45 credit is generally equal to 0.3 cents multiplied by the kilowatt hours of electricity (i) produced by the taxpayer from qualified energy resources and at a qualified facility during the 10-year period beginning on the date the facility was originally placed in service, and (ii) sold by the taxpayer to an unrelated person during the taxable year. If a taxpayer satisfies the PWA requirements, the One Megawatt Exception, or the BOC Exception, then the credit determined under section 45(a) for electricity produced at a qualified facility is multiplied by five.

2. Prevailing Wage Requirements

Under section 45(b)(6), in the case of a qualified facility that satisfies the PWA

² The prevailing wage requirements in sections 30C(g), 45L(g), 45Q(h), 45U(d), 45V(e), 48(a)(10), 48C(e), and 179D(b) are substantially similar to the requirements provided under section 45(b)(7). Sections 45Y(g)(9) and 45Z(f)(6)(A) adopt by cross-reference the Prevailing Wage Requirements under section 45(b)(7). Section 48E(d)(3) adopts by cross-reference the Prevailing Wage Requirements under section 48(a)(10). Section 48(a)(10) provides for a special 5-year recapture rule that applies for purposes of the prevailing wage requirements with respect to sections 48 and 48E.

requirements of section 45(b)(7) and (b) (8), the One Megawatt Exception, or the BOC Exception, the credit under section 45(a) “shall be equal to such amount multiplied by five.” Section 45(b)(7)(A) provides that with respect to any qualified facility, the taxpayer shall ensure that any laborers and mechanics employed by the taxpayer or any contractor or subcontractor in – (i) the construction of such facility, and (ii) with respect to any taxable year, for any portion of such taxable year that is within the 10-year period beginning on the date the qualified facility is originally placed in service, the alteration or repair of such facility, shall be 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.

3. Correction and Penalty Related to Failure to Satisfy Prevailing Wage Requirements

Under section 45(b)(7)(B), a taxpayer who is not eligible for the One Megawatt Exception or the BOC Exception and fails to satisfy the Prevailing Wage Requirements under section 45(b)(7)(A) is “deemed” to have satisfied those requirements if, for “any laborer or mechanic who was paid wages at a rate below the [required prevailing rate] for any period” during any year of the construction, alteration, or repair of the facility, the taxpayer makes a correction payment to the laborer or mechanic and pays a penalty to the Secretary of the Treasury or her delegate (Secretary). Under section 45(b)(7)(B)(i) (I), the amount of the correction payment is the sum of (i) the difference between the amount of wages paid to the laborer or mechanic during the period and the amount of wages required to be paid to the laborer or mechanic during that period in order to meet the Prevailing Wage Requirements; and (ii) interest on the amount under (i) at the underpayment rate established under

section 6621 (determined by substituting “6 percentage points” for “3 percentage points” in section 6621(a)(2)) for the applicable period.

Under section 45(b)(7)(B)(i)(II), the amount of the penalty is “\$5,000 multiplied by the total number of laborers and mechanics who were paid wages at a rate below the [prevailing wage] rate described in [section 45(b)(7)(A)] for any period” during the year. Deficiency procedures do not apply “with respect to the assessment or collection” of this penalty pursuant to section 45(b)(7)(B)(ii).

Under section 45(b)(7)(B)(iii), if the Secretary determines that the failure to satisfy the Prevailing Wage Requirements is due to “intentional disregard” of those requirements, then the correction payment to the laborer or mechanic is three times the amount that would otherwise be determined under section 45(b)(7)(B)(i)(I), and \$10,000 is substituted for \$5,000 in calculating the penalty under section 45(b)(7)(B)(i)(II).

Section 45(b)(7)(B)(iv) provides that, “pursuant to rules issued by the Secretary, in the case of a final determination by the Secretary with respect to any failure . . . to satisfy [the Prevailing Wage Requirements],” the correction and penalty provisions do not apply, “unless the payments . . . are made by the taxpayer on or before the date which is 180 days after the date of such determination.”

4. Apprenticeship Requirements

Under section 45(b)(8), in order to satisfy the Apprenticeship Requirements, certain requirements with respect to labor hours, apprentice-to-journeyworker ratios, and participation by apprentices must be satisfied.³

a. Labor Hours Requirement

Section 45(b)(8)(A)(i) provides that “[t]axpayers shall ensure that, with respect to construction of any qualified facility, 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 shall, subject to [section 45(b)(8)(B)] be performed by qualified apprentices” (Labor Hours Requirement).

For purposes of the Labor Hours Requirement, section 45(b)(8)(A)(ii) provides that the applicable percentage is: (i) in the case of a qualified facility the construction of which begins before January 1, 2023, 10 percent, (ii) 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 (iii) in the case of a qualified facility the construction of which begins after December 31, 2023, 15 percent.

Section 45(b)(8)(E)(i) defines “labor hours” as the “total number of hours devoted to the performance of construction, alteration, or repair work by any individual employed by the taxpayer or by any contractor or subcontractor, and includ[ing] any hours worked by foremen, superintendents, owners, or persons employed in a bona fide executive, administrative, or professional capacity (within the meaning of those terms in part 541 of title 29, Code of Federal Regulations).” 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) defines a registered apprenticeship program as an apprenticeship program 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 of the Code of Federal Regulations.⁴

b. Ratio Requirement

Under section 45(b)(8)(B), the Labor Hours Requirement is subject to any applicable requirements for apprentice-to-journeyworker ratios of the U.S.

³ Sections 30C(g)(3), 45Q(h)(4), 45V(e)(4), 45Y(g)(10), 45Z(f)(7), 48(a)(11), 48C(e)(6), 48E(d)(4), and 179D(b)(5) cross-reference the apprenticeship requirements in section 45(b)(8). Sections 45L and 45U do not have apprenticeship requirements.

⁴ Effective November 25, 2022, 29 CFR part 29 is no longer divided into subparts A and B because subpart B (Industry Recognized Apprenticeship Programs) was rescinded in a final rule published on September 26, 2022 (87 FR 58269).

Department of Labor (DOL) or the applicable State apprenticeship agency (Ratio Requirement).

c. Participation Requirement

Under section 45(b)(8)(C), 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 (Participation Requirement).

5. Exceptions to Apprenticeship Requirements

a. In general

Under section 45(b)(8)(D)(i), a taxpayer is not treated as failing to satisfy the Apprenticeship Requirements in section 45(b)(8) if: (i) the taxpayer satisfies the requirements described in section 45(b)(8)(D)(ii) (Good Faith Effort Exception), or (ii) in the case of any failure by the taxpayer to satisfy the Labor Hours Requirement under section 45(b)(8)(A) and the Participation Requirement under section 45(b)(8)(C), the taxpayer makes a penalty payment to the Secretary (Apprenticeship Cure Provision).

b. Good Faith Effort Exception

Under the Good Faith Effort Exception provided by section 45(b)(8)(D)(ii), a taxpayer is deemed to have satisfied the Apprenticeship Requirements with respect to a qualified facility if the taxpayer has requested qualified apprentices from a registered apprenticeship program, as defined in section 3131(e)(3)(B), and: (i) 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 (ii) the registered apprenticeship program fails to respond to such request within five business days after the date on which such registered apprenticeship program received such request.

c. Apprenticeship Cure Provision

Under section 45(b)(8)(D)(i)(II), if the Good Faith Effort Exception does not apply, then the taxpayer will not be treated as failing to satisfy the Labor Hours Requirement or the Participation Requirement if the taxpayer makes a penalty payment to the Secretary in an amount equal to the product of \$50 multiplied by the total labor hours for which the Labor Hours Requirement or the Participation Requirement was not satisfied with respect to the construction, alteration, or repair work on the qualified facility. Under section 45(b)(8)(D)(iii), if the Secretary determines that the failure was due to intentional disregard of the Labor Hours Requirement or Participation Requirement, then the penalty amount increases to \$500 multiplied by the total labor hours for which the requirement was not satisfied.

C. One Megawatt Exception

Under the One Megawatt Exception in section 45(b)(6)(B)(i), a qualified facility that has a maximum net output of less than one megawatt (as measured in alternating current) is eligible for the increased credit amount. A qualified facility's nameplate capacity determines whether the facility meets the One Megawatt Exception. Similar exceptions apply for a qualified facility under sections 45Y(a)(2)(B)(i) and 48E(a)(2)(A)(ii)(I) with a maximum net output of less than one megawatt (as measured in alternating current); a qualified project under section 48(a)(9)(B)(i) with a maximum net output of less than one megawatt of electrical (as measured in alternating current) or thermal energy; and energy storage technology under section 48E(a)(2)(B)(ii)(I) with a capacity of less than one megawatt.

D. Beginning of Construction Exception

Under the BOC Exception in section 45(b)(6)(B)(ii), a qualified facility the construction of which began prior to the date that is 60 days after the Secretary publishes guidance with respect to the requirements of section 45(b)(7)(A) and (8) is eligible for the increased credit amount in section 45(b)(6). On November 30, 2022, the IRS and the Treasury Department published Notice 2022-61, providing guidance with respect to the PWA requirements in section 45(b)(7)(A) and (8), including initial guidance for determining the beginning of construction for section 45 and other credits and the beginning of installation under section 179D. Therefore, if a taxpayer began construction or installation of a facility⁵ before January 29, 2023, then the taxpayer is eligible for the increased credit amount without satisfying the PWA requirements, provided the taxpayer is otherwise eligible for the credit. Similar exceptions apply under sections 30C, 45Q, 45V, 45Y, 48, 48E, and 179D.

For purposes of determining when construction or installation begins, Notice 2022-61 incorporates by reference the notices issued under sections 45, 45Q, and 48 (collectively, IRS Notices).⁶ The IRS Notices describe two methods of establishing that construction of a facility has begun: (i) starting physical work of a significant nature (Physical Work Test), and (ii) paying or incurring five percent or more of the total cost of the facility (Five Percent Safe Harbor).

The IRS Notices, as clarified and modified by Notice 2021-41, 2021-29 I.R.B. 17, provide that for purposes of the Physical Work Test and Five Percent Safe Harbor, taxpayers must demonstrate either continuous construction or continuous efforts (Continuity Requirement) regardless of whether the Physical Work Test or the Five Percent Safe Harbor was used to establish the beginning of construction. Whether a taxpayer meets the Continuity Requirement under either test is determined by the relevant facts and circumstances.

⁵ Notice 2022-61 defines "facility" as qualified facility, property, project, or equipment.

⁶ Notice 2013-29, 2013-20 I.R.B. 1085 (section 45); Notice 2020-12, 2020-11 I.R.B. 495 (section 45Q); Notice 2018-59, 2018-28 I.R.B. 196 (section 48).

The IRS Notices, as subsequently clarified and modified, also provide for a “Continuity Safe Harbor” under which a taxpayer will be deemed to satisfy the Continuity Requirement provided a qualified facility is placed in service no more than four calendar years after the calendar year during which construction of the qualified facility began for purposes of sections 45 and 48, and no more than six calendar years after the calendar year during which construction of the qualified facility or carbon capture equipment began for purposes of section 45Q. For purposes of the Continuity Safe Harbor, certain offshore projects and projects built on Federal land under sections 45 and 48 satisfy the Continuity Requirement if such a project is placed into service no more than 10 calendar years after the calendar year during which construction of the project began.

Until the Treasury Department and the IRS issue further guidance on determining when construction or installation begins, taxpayers may continue to rely on the guidance provided in Notice 2022-61 and the IRS Notices. Specifically, to determine when construction begins for purposes of sections 30C, 45V, 45Y, and 48E, principles similar to those under Notice 2013-29 regarding the Physical Work Test and Five Percent Safe Harbor apply, and taxpayers satisfying either test will be considered to have begun construction. In addition, principles similar to those provided in the IRS Notices regarding the Continuity Requirement for purposes of sections 30C, 45V, 45Y, and 48E apply. Whether a taxpayer meets the Continuity Requirement under either test is determined by the relevant facts and circumstances. Similar principles to those under section 3 of Notice 2016-31 regarding the Continuity Safe Harbor also apply for purposes of sections 30C, 45V, 45Y, and 48E. Taxpayers may rely on the Continuity Safe Harbor with respect to those sections, provided the facility is placed in service no more than four calendar years after the calendar year during which construction began.

For purposes of section 179D, installation of energy efficient commercial building property has begun if a taxpayer generally satisfies principles similar to the two tests described in section 2.02 of

Notice 2022-61 regarding the beginning of construction under Notice 2013-29 (Physical Work Test and Five Percent Safe Harbor). The relevant facts and circumstances will ultimately determine whether a taxpayer has begun installation.

For purposes of sections 45, 45Q, and 48, the IRS Notices will continue to apply under each respective Code section, including application of the Physical Work Test and Five Percent Safe Harbor, and the rules regarding the Continuity Requirement and Continuity Safe Harbors.

IV. Davis-Bacon Act

The Davis-Bacon Act (40 U.S.C. 3141 *et seq.*) (DBA), enacted in 1931, requires the payment of minimum prevailing wages determined by the DOL to laborers and mechanics working on contracts entered into by Federal agencies and the District of Columbia that are in excess of \$2,000 and are for the construction, alteration, or repair of public buildings and public works. The Copeland Act, Public Law 73-324 (40 U.S.C. 3145), was enacted in 1934 to add a requirement that contractors working on contracts covered by the DBA submit weekly certified payroll records to the contracting agency for work performed on the contract. Congress has included DBA requirements in other laws, often referred to as the Davis-Bacon Related Acts (Related Acts), under which Federal agencies provide assistance for construction projects through grants, loans, insurance, and other methods.

The Wage and Hour Division of the DOL is responsible for administering the DBA and has adopted regulations for the determination of prevailing wages as well as compliance with and enforcement of DBA labor standards requirements under 29 CFR parts 1, 3, and 5.

Section 3142 of the DBA requires that Federal agencies entering into contracts covered by the DBA include the requirements of the DBA in the contract, including the requirement to incorporate the applicable wage determinations that set forth the prevailing wages to be paid to laborers and mechanics performing work, and the Copeland Act, 40 U.S.C. 3145, sets forth the requirement to submit certified weekly payroll records to the contracting Federal agency. Under regulations implementing

the DBA (29 CFR parts 1 and 5), the contracting agency and the Wage and Hour Division have responsibility to ensure compliance with prevailing wage requirements by engaging in periodic audits or investigations of contracts, including examination of payroll data.

The Wage and Hour Division determines the wage rates that are “prevailing” for purposes of section 3142(b) of the DBA for each classification of covered laborers and mechanics on similar projects in the geographic area in which work is to be performed. A prevailing wage is the combination of the basic hourly rate and any fringe benefit rate listed on the wage determination. The Wage and Hour Division generally makes its determinations of the prevailing rates based on survey information provided by contractors and other interested parties. The prevailing wage determinations made by the Wage and Hour Division are published on the DOL-approved website for wage determinations (currently <https://www.sam.gov>).

Under the DBA, contracting agencies follow specified procedures for incorporating wage determinations into covered contracts. The applicable prevailing wage determination generally applies for the duration of the contract.

In accordance with the DBA, certain apprentices may be paid wages at a lower wage rate than journeyworker laborers and mechanics. Under 29 CFR 5.5(a)(4), an apprentice from a registered apprentice program may be paid at not less than the rate specified in the registered program for the apprentice’s level of progress in the apprenticeship program, expressed as a percentage of the journeyworker hourly rate specified in the applicable wage determination. Apprentices may also be paid bona fide fringe benefits in accordance with the provisions of the registered apprenticeship program, but if the registered apprenticeship program does not specify bona fide fringe benefits, apprentices must be paid the full amount of bona fide fringe benefits listed on the wage determination for the applicable classification.

Sections 3143 and 3144 of the DBA also provide for certain enforcement authority and remedies to ensure compliance with payment of prevailing wage

rates. When a contracting agency or the Wage and Hour Division finds there has been an underpayment of wages, the contracting agency and the Wage and Hour Division can seek to recover the underpayments from the contractor responsible, including but not limited to the prime contractor. If the underpayment of wages to laborers and mechanics is not promptly remedied, then the contracting agency may withhold payments that are otherwise due under the contract or under another contract with the same prime contractor in order to compensate the laborers and mechanics for the underpayments. Contractors who have been found to have disregarded their obligations to employees and subcontractors, including by violating prevailing wage requirements, may also be subject to debarment from future Federal contracts under 40 U.S.C. 3144(b) and 29 CFR 5.12.

Explanation of Provisions

I. Overview

A. Incorporation of certain DBA guidance

Under section 45(b)(7)(A), the increased credit is available with respect to a qualified facility if a taxpayer ensures that laborers and mechanics are “paid wages at rates not less than the prevailing rates. . . in accordance with [the DBA].” The phrase “in accordance with” means “in agreement or harmony with; in conformity to; according to.”⁷ In interpreting the “in accordance with” language, the Treasury Department and the IRS propose to incorporate in these regulations certain requirements of the DBA that are relevant for the purposes of section 45(b)(7)(A) and the intent of the IRA, and that are necessary for, and consistent with, sound tax administration.

Under the DBA, a contractor must agree to pay prevailing wages at the commencement of the project as a condition of a Federal contract award. Conversely, under section 45, the requirements related

to payment of prevailing wages are generally triggered at the beginning of construction and continue during the entire course of a project, but the requirement becomes binding only when a tax return claiming the increased credit is filed. The Code does not require taxpayers who do not seek an increased credit under section 45(b)(6) to pay prevailing wages in the construction, alteration, or repair of a facility.

The proposed regulations seek to strike the appropriate balance in determining when DBA requirements are relevant for purposes of the PWA requirements and when they are not. The proposed regulations would incorporate DBA statutory and regulatory guidance that is relevant for purposes of claiming the increased tax credit and consistent with sound tax administration. For example, the proposed regulations would largely adopt DBA guidance relating to wage determinations and the meaning of pertinent terms such as “laborer” and “mechanic”; “construction, alteration, or repair”; “wages”; and “employed”. The proposed regulations would not adopt DBA guidance if the result of doing so would not be in furtherance of sound tax administration or the aims of the IRA. For example, the proposed regulations would not incorporate the rules under the DBA regarding provisions required to be included in contracts, those provisions related to the reporting of certified payroll records by contractors to contracting agencies, and the various enforcement processes that are available to the DOL and the contracting agencies to address noncompliance. Additionally, the DBA’s \$2,000 monetary coverage threshold has not been incorporated.⁸

The statutory language of the IRA does not reflect any intent to include exceptions from the PWA requirements, other than the One Megawatt Exception and the BOC Exception. Consequently, the Treasury Department and the IRS have not proposed a rule exempting Tribal governments or the Tennessee Valley Authority (TVA) from the PWA requirements in section 45. The Treasury Department and the

IRS request comments on the need for any exceptions, including for Tribal governments or the TVA, from the PWA requirements in addition to those expressly described in the statute. Such comments should detail the specific circumstances requiring the proposed exception as well as how its design would limit its application only to those circumstances.

In addition, the Treasury Department and the IRS will hold Tribal consultation specifically to address the prevailing wage and apprenticeship requirements in these proposed regulations, which will inform the development of the final regulations. See part VI. of the Special Analyses section.

B. Applicability of PWA requirements to the taxpayer

The proposed regulations would provide that in order to earn the increased credit under section 45(b)(6) by satisfying the PWA requirements, the taxpayer would be solely responsible for: (i) ensuring that the relevant laborers and mechanics are paid wages not less than the prevailing rate whether employed directly by the taxpayer, or by a contractor, or a subcontractor, and (ii) ensuring that the Apprenticeship Requirements are satisfied. The proposed regulations would also provide that the taxpayer would be solely responsible for the PWA record-keeping requirements, the correction and penalty provisions under the Prevailing Wage Requirements, and the Good Faith Effort Exception and penalty provisions under the Apprenticeship Requirements. However, nothing in these proposed regulations is intended to supersede requirements that might otherwise apply to a taxpayer, contractor, or subcontractor by State or Federal law.

Generally, the proposed regulations would define the term “taxpayer” to mean any taxpayer as defined in section 7701(a)(14), including applicable entities described in section 6417(d)(1)(A). This will generally be the entity that claims the credit (as increased under

⁷ *In accordance with*, OXFORD ENGLISH DICTIONARY, <https://www.oed.com/search/dictionary/?scope=Entries&q=in+accordance+with> (last visited Aug. 8, 2023); see *Accordance*, MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY (11th ed. 2006) (“agreement, conformity”).

⁸ *The Treasury Department and the IRS interpret the One Megawatt Exception as addressing small business taxpayers who would be excluded under the \$2,000 minimum contract requirement under the DBA.*

section 45(b)(6)), or makes an election under section 6417 with respect to such credit amount on a Federal income tax return. The section 45 credit, including the increased credit amount available under section 45(b)(6), is an eligible credit subject to the newly enacted section 6418. Section 6418 allows “eligible taxpayers” to elect to transfer certain credits to unrelated taxpayers rather than using the credits against their Federal income tax liabilities. In the case of credits transferred under section 6418, these proposed regulations would provide that the term “taxpayer” also means the eligible taxpayer that determines the eligible credit to be transferred and makes a transfer election under section 6418 to transfer any specified credit portion (including 100 percent) of an eligible credit determined with respect to any eligible credit property of such eligible taxpayer for any taxable year.

Section 6418(a) provides that, in the case of an eligible taxpayer that elects to transfer all (or any specified portion) of an eligible credit determined with respect to the taxpayer for any taxable year to an unrelated transferee taxpayer, the transferee taxpayer specified in such election (and not the eligible taxpayer) is treated as the taxpayer with respect to such credit (or such portion thereof).

The Treasury Department and the IRS published proposed regulations in the **Federal Register** (88 FR 40496 (June 21, 2023)) that would implement the statutory provisions of section 6418 (6418 Proposed Regulations). As explained in the 6418 Proposed Regulations, the Treasury Department and the IRS view inclusion of the word “determined” as instructive. Only credits determined with respect to an eligible taxpayer can be transferred by the eligible taxpayer. The 6418 Proposed Regulations would provide that Code sections relating to the determination of an eligible credit, such as sections 49 and 50(b), generally impact the amount of an eligible credit that an eligible taxpayer can transfer. A transferee taxpayer is generally not subject to those Code sections, but a transferee taxpayer is subject to Code

sections that would limit the amount of an eligible credit that is allowed, such as sections 38(c) and 469. In making a transfer election, the 6418 Proposed Regulations also would require an eligible taxpayer to report the determined credit as part of the taxpayer’s return, including filing properly completed credit source forms, a properly completed Form 3800, *General Business Credit*, and a schedule showing the amount of eligible credit transferred for each eligible credit property.

The 6418 Proposed Regulations also would apply with respect to the entire credit determined under section 45, where the amount of credit determined would include increased credit amounts available under section 45(b)(6). As the rules for determining an eligible credit apply to the eligible taxpayer and not the transferee taxpayer under section 6418, these proposed regulations would provide consistency with respect to the rules relating to the determination of the section 45 credit. Thus, while a transferee taxpayer would claim a transferred eligible credit (or portion thereof) on a tax return, the requirements of section 45 relevant to determining the credit, including the correction and penalty provisions described in section 45(b)(7)(B) and 45(b)(8)(D), would remain with the eligible taxpayer who determined the credit. The Treasury Department and the IRS request comments on the application of the PWA penalty and cure provisions, including to transferees and eligible taxpayers, in the context of transferred credits.

II. *Prevailing Wage Requirements Under Section 45(b)(7)(A)*

A. *In general*

Section 45(b)(7)(A) requires that taxpayers who are seeking an increased credit ensure that laborers and mechanics employed by the taxpayer, or any contractor or subcontractor in the construction, alteration, or repair of a facility are paid wages at rates that are not less than the prevailing rates determined by the DOL in accordance with the DBA.⁹ The

proposed regulations would provide that a taxpayer would satisfy the Prevailing Wage Requirements with respect to the construction, alteration, or repair of a facility by ensuring that all laborers and mechanics employed by the taxpayer, or any contractor or subcontractor, in the construction, alteration, or repair of a facility are paid wages at rates that are not less than the prevailing rates determined by the DOL in accordance with the DBA.

The proposed regulations would largely incorporate the definitions of contractor and subcontractor from the DBA and would provide that: (i) a contractor would be any person that enters into a contract with the taxpayer for the construction, alteration, or repair of a qualified facility, and (ii) a subcontractor would be any contractor that agrees to perform or be responsible for the performance of any part of a contract entered into with the taxpayer (or contractor) with respect to the construction, alteration, or repair of a facility.

Consistent with the DBA and 29 CFR 5.2, and solely for purposes of the Prevailing Wage Requirements, the proposed regulations would provide that a laborer or mechanic would be considered employed by the taxpayer, contractor, or subcontractor if the individual performs the duties of a laborer or mechanic for the taxpayer, contractor, or subcontractor (as applicable), regardless of whether the individual would be characterized as an employee or an independent contractor for other Federal tax purposes. The definition of employed for purposes of the Prevailing Wage Requirements would generally be different and broader than the definition used elsewhere in the Code, for example with respect to employment taxes, as well as the associated reporting and withholding obligations. Laborers and mechanics who are independent contractors for employment tax purposes may be considered employed for purposes of the Prevailing Wage Requirements. Whether an individual is considered employed for purposes of the Prevailing Wage Requirements and these proposed regulations is not relevant when determining whether an individual is an employee

⁹ The requirement to pay prevailing wages with respect to alteration or repair applies for any portion of a taxable year that is within the 10-year period beginning on the date the qualified facility is placed in service.

or an independent contractor for other Federal tax purposes.

B. Determining the prevailing wage rate

1. In General

Under the proposed regulations, prevailing wage rates would be determined by the DOL in accordance with the DBA when they are issued and published by the DOL as a general wage determination or when issued to a taxpayer as part of a supplemental wage determination or pursuant to a request for a wage rate for an additional classification. The proposed regulations would require taxpayers to use the general wage determination in effect when the construction of the facility begins but would not require taxpayers to update the applicable prevailing wage rates during construction of the facility in the event a new general wage determination is published by the DOL after construction of the facility begins. However, a new general wage determination would be required to be used when a contract is changed to include additional, substantial construction, alteration, or repair work not within the scope of work of the original contract, or to require work to be performed for an additional time period not originally obligated, including where an option to extend the term of a contract for the construction, alteration, or repair is exercised. This is consistent with DOL guidance under the DBA, which generally requires the contracting agency to incorporate the applicable wage determinations as part of the contract that is awarded to the contractor with the applicable rates valid through the duration of the contract. The proposed regulations also would provide that taxpayers would need to update the applicable wage rate(s), as necessary, with respect to any alteration or repair of a facility that begins after the facility has been placed in service. Taxpayers would do this by ensuring that wages are paid for such alteration or repair based on the general wage determination in effect when the alteration or repair begins.

2. General Wage Determinations

The proposed regulations would provide that a general wage determination

would be one issued and published by the DOL that includes a list of wage and bona fide fringe benefit rates determined to be prevailing for laborers and mechanics for the various classifications of work performed with respect to a specified type of construction in a geographic area. Generally, the DOL determines the prevailing rate based on wage rate data submitted by contractors, contractors' associations, labor organizations, public officials, and other interested parties. In general, the proposed regulations would provide that taxpayers would need to use the general wage determination(s) published by the DOL under the DBA on a DOL approved website, to determine the applicable prevailing wage rates. The current approved website for publishing general wage determinations is <https://www.sam.gov>.

The proposed regulations would largely incorporate the definition of wages from 29 CFR 5.2 for the Prevailing Wage Requirements. Under 29 CFR 5.2, wages are defined as the basic hourly rate of pay; any contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan, or program; and the rate of costs to the contractor or subcontractor that may be reasonably anticipated in providing bona fide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program, which was communicated in writing to the laborers and mechanics affected. Whether amounts are wages for purposes of the Prevailing Wage Requirements is not relevant in determining whether amounts are wages or compensation for other Federal tax purposes.

3. Supplemental Wage Determinations and Rates for Additional Classifications

The proposed regulations would provide special procedures for the limited circumstances in which a general wage determination does not provide an applicable wage rate(s) for the work to be performed on the facility. These circumstances include when no general wage determination has been issued for the geographic area or for the specified type of construction, or when the Secretary of

Labor has issued a general wage determination for the relevant geographic area and type of construction, but one or more labor classifications necessary for the construction, alteration, or repair work that will be done on the facility by laborers or mechanics is not listed as part of that determination. The proposed regulations would provide that under these circumstances, a taxpayer, contractor, or subcontractor would need to request a supplemental wage determination or request a prevailing wage rate for an additional classification from the DOL. A taxpayer satisfies section 45(b)(7)(A) by ensuring that laborers and mechanics are paid wages at rates not less than the rates determined by the DOL pursuant to a request for a supplemental wage determination or pursuant to a request for a prevailing wage rate for an additional classification.

The DOL has advised the Treasury Department and the IRS that most taxpayers will likely not need to use the process for requesting a supplemental wage determination or request a rate for an additional classification because of the availability of general wage determinations. The request for a prevailing wage rate for an additional classification would only be appropriate when the work to be performed by the classification is not performed by a classification in the applicable general wage determination and the classification is used in the area by the construction industry. In addition, a prevailing wage rate for an additional classification would only be approved when the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the general wage determination. A request for a prevailing wage rate for additional classification would not be permitted to be used to split, subdivide, or otherwise avoid application of classifications listed in a general wage determination. Under the proposed regulations, the procedures for requesting a supplemental wage determination or a prevailing wage rate for an additional classification from the DOL would correspond to the provisions of 29 CFR 1.5(b) and 5.5(a)(1)(iii).

The Treasury Department and the IRS expect that the construction of some facilities may span two or more adjacent geographic areas, and more than one general wage determination could apply to the

facility. In such circumstances, a taxpayer would be able to satisfy the Prevailing Wage Requirements by ensuring that laborers and mechanics are paid wages at the highest rate for each classification provided under the general wage determinations. A taxpayer would also be permitted to request a supplemental wage determination with respect to the facility and pay the rates determined by the DOL pursuant to the request.

The proposed regulations would also provide a special rule for qualified facilities located offshore so taxpayers would not need to request a supplemental wage determination for offshore facilities. In lieu of requesting a supplemental wage determination for a facility located in an offshore area within the outer continental shelf of the United States, a taxpayer, contractor, or subcontractor would be permitted to rely on the general wage determination for the relevant category of construction that is applicable in the geographic area closest to the area in which the qualified facility will be located.

The process for requesting a supplemental wage determination or a prevailing wage rate for an additional classification provided for in the proposed regulations would be consistent with the process described in Notice 2022-61 while addressing the different context of the PWA regime wherein taxpayers, contractors, and subcontractors, rather than a contracting agency, will seek additional wage rates for purposes of complying with the Prevailing Wage Requirements of section 45. Under the DBA, the request for a project wage determination applicable under 29 CFR 1.5(b) or for a conformance under 29 CFR 5.5(a)(1)(iii) is made by the contracting agency rather than the contractor and will often occur after the contracting agency and the contractor have conferred about the need for the project wage determination or for the conformance of an additional classification. Because there is no contracting agency in the tax credit regime, the proposed regulations would set forth an analogous process for taxpayers, contractors, and subcontractors to request a supplemental wage determination, or a request for a prevailing wage rate for an additional classification, by submitting the request and supporting material

directly to the Wage and Hour Division of the DOL.

The proposed regulations would provide that the request for a supplemental wage determination or a request for a prevailing wage rate for an additional classification would need to include information consistent with the information that is required to be provided by a contracting agency when requesting a project wage determination or a conformance for purposes of the DBA. This information would include a description of the type of work to be performed, the geographic area where the facility is located, the start date for the construction, alteration, or repair of the facility, the labor classification(s) needed for performance of the work on the facility for which wage rates are not available on an applicable general wage determination, pertinent wage payment information that may be available with respect to the classifications, and any information the taxpayer wants the DOL to consider for determining the applicable classifications and prevailing wage rates. After review, the Wage and Hour Division will notify the taxpayer as to the labor classifications and wage rates to be used for the type of work in question in the geographic area in which the facility is located.

The proposed regulations would adopt, by cross reference, the review and appeal procedures available to any interested party under the DBA with respect to wage determinations generally. Any interested party would be able to seek reconsideration and review of a supplemental wage determination, or a prevailing wage rate for an additional classification, by the DOL Administrator of the Wage and Hour Division and appeal any decision of the Administrator of the Wage and Hour Division to the DOL Administrative Review Board.

In general, the Treasury Department and the IRS expect that supplemental wage determinations and requests for prevailing wage rates for an additional classification will be requested no more than 90 days prior to the beginning of the construction, alteration, or repair of the facility, as applicable. However, the Treasury Department and the IRS recognize that taxpayers may not reasonably determine until after construction, alteration, or

repair begins that a supplemental wage determination or request for a prevailing wage rate for an additional classification is necessary. In these instances, the Treasury Department and the IRS would expect taxpayers, contractors, or subcontractors to make a request as soon as practicable after determining the need for a supplemental wage determination or prevailing wage rate for additional classifications. The proposed regulations would provide that when a supplemental wage determination or a prevailing wage rate for an additional classification is issued by the DOL after construction, alteration, or repair of the facility has begun, the applicable prevailing rates would apply retroactively to the date that the applicable construction, alteration, or repair work that is the subject of the request began. The taxpayer would be required to ensure that wages (including bona fide fringe benefits where appropriate) are paid at appropriate prevailing wage rates to all laborers and mechanics performing work on the project from the first day on which work is performed in the classification. The Treasury Department and the IRS request comments on the proposed procedures for requesting supplemental wage determinations and prevailing wage rates for additional classifications.

C. Paying wages in accordance with an applicable wage determination

1. In General

Under the proposed regulations, the applicable wage determination for a type of construction in a geographic area would provide the prevailing wage rates that apply to laborers or mechanics for the construction, alteration, or repair of a facility in that geographic area. The proposed regulations would provide that for purposes of satisfying the Prevailing Wage Requirements, all laborers and mechanics would need to be paid in the time and manner consistent with the regular payroll practices of the taxpayer, contractor, or subcontractor, as applicable. For purposes of satisfying section 45(b)(7)(A), the proposed regulations would provide that a taxpayer would need to ensure that the wages paid to laborers and mechanics employed by the taxpayer, contractor, or

subcontractor on the construction, alteration, or repair of the facility must be “not less than the prevailing rates. . . in the locality in which such facility is located.” The proposed regulations would define the terms: (i) laborer and mechanic, (ii) types of construction, (iii) construction, alteration, or repair, and (iv) locality, generally consistent with the DBA definitions.

The proposed regulations would define the terms “laborer” and “mechanic” as those individuals whose duties are manual or physical in nature. Laborers and mechanics would include apprentices and helpers. Working forepersons who devote more than 20 percent of their time during a workweek to laborer or mechanic duties and who do not meet the criteria for exemption under 29 CFR part 541 would also be considered laborers and mechanics for the time spent conducting laborer and mechanic duties. However, laborers and mechanics would not include individuals whose duties are primarily administrative, executive, or clerical, and persons employed in a bona fide executive, administrative, or professional capacity as those terms are defined in 29 CFR part 541. The Treasury Department and the IRS request comments on the treatment of working forepersons or owners performing the duties of laborers and mechanics under certain circumstances, and other executive or administrative personnel who also perform duties of a manual or physical nature, in the construction, alteration, or repair of a qualified facility.

The proposed regulations would provide that the type of construction would be the general category of construction as established by the DOL for the publication of general wage determinations. Specific types of construction currently include building, residential, heavy, and highway. The Treasury Department and the IRS contemplate that the construction, alteration, or repair of most facilities eligible for the increased credit under section 45(b)(6) would be either building or heavy construction.

The proposed regulations would provide that the term construction, alteration, or repair would generally mean construction, prosecution, completion, or repair as provided under 29 CFR 5.2. Under this definition, construction, alteration, or repair would mean all types of work

performed at the location of the facility and includes, but is not limited to: constructing, altering, remodeling, installing of items fabricated offsite; painting and decorating; and manufacturing or furnishing of materials, articles, and supplies or equipment at the location of the facility. Additionally, the proposed regulations would provide that construction, alteration, or repair would not include maintenance work that occurs after the facility is placed in service. Under the proposed regulations, maintenance would be work that is ordinary and regular in nature and designed to maintain existing functionality of a facility as opposed to an isolated or infrequent repair of a facility to restore specific functionality or adapt it for a different or improved use. Further, the proposed regulations would provide that this definition of construction, alteration, or repair would be solely for purposes of the PWA requirements and has no bearing on any other provision under the Code, including any determination of construction, alteration, repair, or maintenance under section 162 or 263.

The proposed regulations would provide that a locality or geographic area would be the county, independent city, or other civil subdivision of the State in which the facility or secondary site is located. Geographic area would also include offshore areas, including areas located within the outer continental shelf of the United States, and the U.S. territories. If construction, alteration, or repair is performed in multiple counties, independent cities, or other civil subdivisions, then the geographic area would also include all counties, independent cities, or other civil subdivisions in which the work will be performed.

Under section 45(b)(7)(A)(ii), the prevailing wage rates that are required to be paid with respect to such construction, alteration, or repair are determined by reference to “the prevailing rates for construction, alteration, or repair of a similar character in the locality in which such facility is located.” The proposed regulations would also use the DBA’s “site of the work” definition to clarify the scope of the requirement under section 45(b)(7)(A) to pay prevailing wage rates. Under the DBA, the requirement to pay prevailing wages is limited by statute to laborers and

mechanics “employed directly on the site of the work.” 40 U.S.C. 3142. By comparison, section 45(b)(7)(A)(i) and (ii) requires the payment of prevailing wages generally in the “construction of [a qualified] facility” and the “alteration or repair of such facility.” Over the years, the DOL has updated its rules to address developments in the construction industry that have enabled contractors to build large portions of a building or project on one or more secondary sites away from the primary site of the work. The DBA rules now provide that a secondary construction site is considered part of the site of the work, if a significant portion of a building or work is constructed at the secondary site for specific use in the designated building or work and the site either was established specifically for the performance of the covered contract or project or dedicated exclusively, or nearly so, to the covered contract or project. 29 CFR 5.2.

The Treasury Department and the IRS view the DBA’s site of the work requirement to be helpful for purposes of interpreting the language in section 45(b)(7)(A) that the applicable prevailing wage rates for the construction, alteration, or repair of the facility are rates not less than those prevailing “in the locality in which such facility is located.” As with certain construction subject to the DBA, the Treasury Department and the IRS expect that taxpayers similarly may use multiple construction sites in the construction, alteration, or repair of a facility and in certain cases prefabricate large portions of the facility offsite for later installation at the facility’s location. Some of these secondary sites will be dedicated solely to the construction of a facility while others may service multiple clients and facilities. While the language of section 45(b)(7)(A) could be interpreted to support an expansive reading of construction such that all construction of a facility, wherever located and however small, is subject to the Prevailing Wage Requirements, such a reading would result in significantly broader coverage than under the DBA and likely would entail substantial compliance costs and discourage taxpayers from seeking the increased credits or deduction available under the IRA. Thus, the Treasury Department and the IRS understand the DBA approach to

“site of the work” to strike an appropriate balance between the requirements of section 45(b)(7)(A) and existing construction practices and thus propose to largely adopt the DBA approach for purposes of defining the scope of the Prevailing Wage Requirements.

Therefore, under the proposed regulations, taxpayers would be subject to the requirement to ensure that laborers and mechanics are paid not less than prevailing wage rates with respect to the construction, alteration, or repair at the locality in which the facility is located, which would be defined to include any secondary sites where a significant portion of the construction, alteration, or repair of the facility occurs, provided that the secondary site either was established specifically for, or dedicated exclusively for a specific period of time to, the construction, alteration, or repair of the facility.

Under 29 CFR 1.6(b)(1), the prevailing wage rate that applies to laborers or mechanics engaged in the construction, alteration, or repair work at a secondary site is determined by the geographic area of the secondary site. The proposed regulations would similarly provide that when a secondary site is established specifically for, or dedicated exclusively for a specific period of time to, the construction, alteration, or repair of the facility, the prevailing wage rate applicable to laborers and mechanics engaged in the construction, alteration, or repair of the facility at the secondary site would be determined by the applicable wage rate for that laborer or mechanic classification based on the geographic area of the secondary site.

2. Wages for Apprentices

Section 45(b)(8)(E)(ii) provides generally that a qualified apprentice is an individual who is employed by the taxpayer, contractor, or subcontractor and who is participating in a registered apprenticeship program, as defined in section 3131(e)(3)(B). For purposes of the DBA, an apprentice may also include an individual in the first 90 days of probationary employment as an apprentice in a registered apprenticeship program, who is not individually registered in the program, but who has been certified by the DOL’s Office of Apprenticeship or a State apprenticeship

agency (where appropriate) to be eligible for probationary employment as an apprentice.

A registered apprenticeship program is a program that has been registered by the DOL’s Office of Apprenticeship or a recognized State apprenticeship agency, pursuant to the basic standards and requirements in 29 CFR parts 29 and 30. Program registration is evidenced by a Certificate of Registration or other written indicia of registration.

The proposed regulations would adopt 29 CFR 5.5(a)(4)(i) allowing the payment of wages that differ from the applicable prevailing wage rate to apprentices who are participating in a registered apprenticeship program. The proposed regulations would also provide that the calculation of the apprentice wage rate would be in accordance with 29 CFR 5.5(a)(4)(i).

For purposes of determining whether apprentices may be paid the apprentice wage rate rather than the full prevailing wage for other laborers and mechanics of the same classification, the proposed regulations would provide the apprentice must be participating in a registered apprentice program as demonstrated by a written apprenticeship agreement with the registered apprenticeship program containing the terms and conditions of the employment and training of the apprentice. The terms and conditions of the agreement would be required to comply with 29 CFR 29.7. The registered apprenticeship program would be required to be registered with the DOL or a recognized State apprenticeship agency in accordance with 29 CFR parts 29 and 30. If the apprentice is working in a classification that is not in an occupation that is part of the registered apprenticeship program, to satisfy the Prevailing Wage Requirements, the apprentice would need to be paid the full prevailing wage for laborers or mechanics for that classification in that location.

The proposed regulations would provide that taxpayers and contractors or subcontractors who employ apprentices who are not in a registered apprenticeship program or who employ apprentices in excess of applicable ratios permitted by the registered apprenticeship program would need to pay those apprentices the full prevailing wage rate listed for the classification

of the work performed in the applicable wage determination.

D. Correction and penalty provisions

1. General Rule

Under section 45(b)(7)(B)(i) and the proposed regulations, taxpayers would cure a failure to meet the Prevailing Wage Requirements by making the correction and penalty payments described in Section III.B.3. Section 45(b)(7)(B)(i) provides that “[i]n the case of any taxpayer which fails to satisfy the requirement under subparagraph (A)... such taxpayer shall be deemed to have satisfied such requirement under such subparagraph with respect to such facility for any year if, with respect to any laborer or mechanic who was paid wages at a rate below the [prevailing rate] for any period during such year,” the taxpayer makes the applicable correction payments and pays the penalty. The phrase “[i]n the case of any taxpayer which fails to satisfy the requirement under subparagraph (A)...for any period” suggests that a failure to pay prevailing wages immediately triggers the applicability of the correction and penalty provisions if the increased credit is claimed on a return after a facility is placed in service. The proposed regulations would require the payment of prevailing wages at the time work is performed with respect to the construction, alteration, or repair of a facility in order to claim the increased credit. The proposed regulations would also provide that the requirement becomes binding only when the increased credit is claimed on a return. This is consistent with tax administration regarding the underlying credit.

Thus, the correction and penalty payment requirements of section 45(b)(7)(B)(i) would become applicable to a taxpayer upon the occurrence of the taxpayer’s failure to satisfy the Prevailing Wage Requirements of section 45(b)(7)(A), which occurs whenever wages are paid to a laborer or mechanic below the prevailing wage rates. That failures will occur, and the obligation to make correction and penalty payments will have arisen, during the course of the construction, alteration, or repair of a qualified facility must be viewed in the context of taxpayers

not needing to satisfy the Prevailing Wage Requirements in the absence of an increased credit being claimed on a return. Thus, the proposed regulations would provide that the obligation to make correction payments and pay the penalty would not become binding until a return is filed claiming the increased credit, and the proposed regulations would not require payment of the correction payment or the penalty until the time the increased credit is claimed. The earliest time that a taxpayer can make a penalty payment to the IRS is at the time of filing a tax return claiming the increased credit. However, taxpayers would retain the option of making correction payments to laborers and mechanics at any time after the initial payments were made and in advance of the filing of a tax return claiming the increased credit in order to limit the amount of additional interest the taxpayer must pay at the elevated rates set forth in section 45(b)(7)(B)(i)(I)(bb).

In general, taxpayers would be obligated to make any necessary correction payments to any laborer and mechanic on or before the date a return is filed claiming an increased credit amount. A taxpayer would also be obligated to make any penalty payments owed with respect to a failure to meet the Prevailing Wage Requirements at the time a return is filed claiming the increased credit amount. Under the proposed regulations, whether taxpayers make the necessary correction payments and pay the penalty amounts promptly is one of the facts and circumstances that would be considered for purposes of the increased penalties for intentional disregard. The proposed regulations would also provide a deadline for a taxpayer's ability to use the correction and penalty provisions to rectify a failure to comply with the Prevailing Wage Requirements when the IRS makes a final determination that a taxpayer has failed to satisfy the Prevailing Wage Requirements. Under section 45(b)(7)(B)(iv), once the IRS makes a final determination that a taxpayer has failed to satisfy the Prevailing Wage Requirements, the taxpayer must make the correction and penalty payments within 180 days after the final determination to be eligible to for the increased credit. The proposed regulations would clarify that this final determination would

come in the form of a notice sent by the IRS.

As provided in section 45(b)(7)(B)(ii), under the proposed regulations, deficiency procedures would not apply to any penalty payment required to be made in connection with a failure to meet the Prevailing Wage Requirements. The proposed regulations would clarify that although deficiency procedures would not apply to the penalty payment, deficiency procedures would apply to any determination by the IRS disallowing a taxpayer's claim for the increased credit.

2. Special Circumstances Involving Correction and Penalty Payments

Section 45(b)(7)(B)(i) states that a taxpayer will be deemed to satisfy the prevailing wage requirement "if, with respect to any laborer or mechanic who was paid wages at a rate below the rate described in such subparagraph for any period during such year, such taxpayer— makes payment to such laborer or mechanic..." in the amount of the correction payment and makes the required penalty payment to the IRS. The Treasury Department and the IRS are aware that the construction of a qualified facility may occur over the course of several years and some taxpayers who fail to meet the Prevailing Wage Requirements may be unable to locate all laborers and mechanics to which the correction payment must be made. However, section 45(b)(7)(B)(i) does not excuse taxpayers from the requirement to make the correction payment, even if the taxpayer is unable to locate the laborer or mechanic. The proposed regulations would not provide for an exception to the statutory requirement.

The Treasury Department and the IRS expect that taxpayers will be able to establish correction payments even when a former laborer or mechanic cannot be located. In general, States have developed specific rules for the payment of wages to former laborers and mechanics who cannot be located. These rules can include diligence requirements to locate the laborer or mechanic, information reporting obligations to relevant State agencies on the amount of unclaimed wages, and requirements to remit any unclaimed wage amounts to State control as unclaimed

property after defined holding periods. Taxpayers may also be able to establish that correction payments were made by demonstrating compliance with any withholding and information reporting requirements with respect to the payments. The Treasury Department and the IRS request public comments concerning appropriate rules for situations in which laborers and mechanics who are owed wages cannot be located and how taxpayers may establish that they have made the correction payment described in section 45(b)(7)(B)(i)(I).

The Treasury Department and the IRS expect that some taxpayers will have made requests to the DOL for a supplemental wage determination or a prevailing wage rate for an additional classification. It is possible that the DOL's response to these requests will not be issued until after laborers and mechanics have started working on the facility. The laborers and mechanics who are the subject of the requests will have already been engaged in the construction, alteration, or repair, and may have already been paid wages below the rates later determined to be prevailing by the DOL. In this circumstance, the proposed regulations would provide that the taxpayer would not be considered to have failed to meet the Prevailing Wage Requirements with respect to any mechanics or laborers whose wage rate was subject to the request and who were paid below the prevailing wage rate before the determination by the DOL if the taxpayer requests the supplemental wage determination or prevailing wage rate for an additional classification before the beginning of construction (or as soon as practicable after the start of construction) and makes a correction payment within 30 days of the determination to each laborer or mechanic equal to the difference between the amount of wages paid to such laborer or mechanic before the determination and the amount of wages required by the Prevailing Wage Requirements to be paid to such laborer or mechanic during such period. This exception is intended to mitigate a rule that would require taxpayers to make correction and penalty payments for failures to pay a prevailing wage rate that could not be timely determined by the taxpayer.

As previously described, for purposes of transfers pursuant to section 6418, the proposed regulations would clarify that the requirement to make correction and penalty payments would continue to apply to an eligible taxpayer who (i) transfers an increased credit amount under section 45(b)(6) as part of a specified credit portion and (ii) fails to meet the prevailing wage requirement of section 45(b)(7)(A) with respect to such increased credit amount. Additionally, the proposed regulations would provide that the obligation to satisfy the Prevailing Wage Requirements would not become binding on an eligible taxpayer until the earlier of: (i) the filing of the eligible taxpayer's return for the taxable year for which the specified credit portion is determined with respect to the eligible taxpayer, or (ii) the filing of the return of the transferee taxpayer for the year in which the specified credit portion is taken into account.

The proposed regulations would also provide that a taxpayer who determines the underlying credit amount would have no obligation to comply with the correction and penalty provisions if the IRS later determines that the taxpayer was not entitled to the increased credit amount. Additionally, if the taxpayer does not correct and, therefore, is not subsequently granted the increased credit amount, no penalty is assessed under section 45(b)(7)(B).

3. Intentional Disregard

Section 45(b)(7)(B)(iii) provides that if the failure to ensure that the laborers and mechanics are paid at the prevailing wage rate is found to be due to intentional disregard, then the amount of the correction payment is tripled and the amount of the penalty payment is doubled. The proposed regulations would provide that failures to meet the Prevailing Wage Requirements would be due to intentional disregard if they are knowing or willful, which is a determination that must be made by considering all relevant facts and circumstances. The proposed regulations would provide a non-exhaustive list of facts that may be relevant to this determination.

The proposed regulations would explain that the facts and circumstances would include consideration of whether

the failure was part of a pattern of conduct and whether the taxpayer has been required to pay the penalty in previous years. The Treasury Department and the IRS believe that failures that occur despite a taxpayer exercising reasonable diligence weigh against a finding of a knowing or willful failure. Under the proposed regulations, taxpayers would demonstrate reasonable diligence by taking appropriate steps to determine the applicable classifications and wage rates and by seeking to promptly correct any failures when discovered. Last, the proposed regulations would seek to draw from behavior that is generally required of contractors under the DBA and that the Treasury Department and the IRS believe would be best practices of taxpayers seeking to comply with the Prevailing Wage Requirements. These behaviors would include posting prevailing wage rates in a prominent place for the duration of the construction, alteration, or repair or otherwise notifying employees of the applicable prevailing wage rates; incorporating provisions in any contracts entered with contractors that require payment of prevailing wage rates by the contractors and any subcontractors; and undertaking quarterly, or more frequent, reviews of wages paid to laborers and mechanics to ensure that prevailing wages are being paid. The Treasury Department and the IRS request comments on additional criteria that might be used as part of a facts and circumstances analysis of intentional disregard in this context.

The proposed regulations would also provide that there would be a rebuttable presumption against a finding of intentional disregard if the taxpayer makes the correction and penalty payments before receiving a notice of an examination with respect to a return that claimed the underlying increased credit. The presumption of no intentional disregard would be intended to encourage taxpayers who discover a failure to meet the Prevailing Wage Requirements after filing a return to use the correction and penalty provisions promptly.

The Treasury Department and the IRS request comments on intentional disregard, including but not limited to additional criteria that might be used as part

of a facts and circumstances analysis of intentional disregard and the applicability of a presumption against a finding of intentional disregard in certain situations.

4. Penalty Waiver

In general, the IRS may exercise its discretion to waive or decline to assert penalties in the interest of sound tax administration. The proposed regulations would use that discretion to provide limited penalty waivers for instances in which the failures to pay prevailing wages to laborers and mechanics for the construction, alteration, or repair of a facility were small in amount or occurred in a limited number of pay periods. The Treasury Department and the IRS would use the waiver authority in a manner that assists taxpayers seeking to be eligible for the increased credit while remaining consistent with the statutory requirement to ensure that laborers and mechanics are paid at prevailing wage rates.

The Treasury Department and the IRS understand that taxpayers intending to pay prevailing wage rates may make payroll errors. These errors are likely to range in scope and frequency. It is also possible that taxpayers may make classification errors with respect to work that is performed by certain laborers or mechanics. The proposed regulations would seek to account for these likelihoods while continuing to ensure that laborers and mechanics are paid according to the applicable prevailing wage rates.

The proposed regulations would provide that the penalty payment requirement would be waived with respect to the construction, alteration, or repair performed by a laborer or mechanic during a calendar year if (i) the taxpayer makes the required correction payment (back wages and interest) by the earlier of (a) 30 days after the taxpayer became aware of the error or (b) the date on which the tax return claiming the increased credit is filed; and (ii) either: (a) the laborer or mechanic is paid below the prevailing wage rate for not more than 10 percent of all pay periods of the calendar year (or part thereof) during which the laborer or mechanic worked on the construction, alteration, or repair of the facility; or (b) the difference between the amount

the laborer or mechanic was paid for the calendar year (or part thereof) during which the laborer or mechanic worked on the construction, alteration, or repair of the facility and the amount required to be paid by the Prevailing Wage Requirements for the calendar year is not greater than 2.5 percent of the amount required under the Prevailing Wage Requirements. The proposed regulations would use calendar years to measure any failures because taxpayers, contractors, and subcontractors performing construction may have different taxable years and laborers and mechanics are generally paid on a calendar year basis. The Treasury Department and the IRS request comments on the proposed use of calendar years in place of taxable years for this purpose.

Pre-hire project labor agreements may be used to incentivize stronger labor standards and worker protections in the types of construction projects for which taxpayers may seek the increased credit, and having a project labor agreement in place may also help ensure compliance with PWA requirements. For these reasons, the proposed regulations would also provide that the penalty payment requirement would not apply with respect to a laborer or mechanic employed under a project labor agreement that meets certain requirements and any correction payment owed to the laborer or mechanic is paid on or before a return is filed claiming an increased credit amount. The Treasury Department and the IRS request comments on the proposed treatment of project labor agreements, other ways taxpayers might use project labor agreements to meet the PWA requirements, and the definition of a qualifying project labor agreement.

The proposed regulations would use the IRS's general enforcement discretion to allow taxpayers to correct limited failures to pay prevailing wages if the taxpayers pay the mechanics and laborers back wages and interest in a timely manner before the increased credit is claimed. The proposed regulations would not provide for waiver of the penalty after a return has been filed claiming the increased credit. The proposed regulations would seek to create incentives for taxpayers to self-correct and promptly pay prevailing wages.

III. *Apprenticeship Requirements*

A. *In general*

To satisfy the requirements of section 45(b)(8), taxpayers must ensure that, with respect to the construction of any qualified facility, the Labor Hours Requirement, Ratio Requirement, and Participation Requirement are satisfied. The proposed regulations would clarify the interaction among these requirements. The proposed regulations would explain that the Labor Hours Requirement generally would be subject to the Ratio Requirement. The proposed regulations would further explain that the Participation Requirement would apply in addition to the Labor Hour Requirement and the Ratio Requirement. Therefore, in order to meet the requirements of section 45(b)(8), a taxpayer generally would be subject to all three components of the Apprenticeship Requirements. If a taxpayer satisfies the applicable Labor Hours Requirement but fails the Participation Requirement, then the taxpayer would not be eligible for the increased credit unless the taxpayer complies with the penalty provisions of section 45(b)(8)(D) with respect to the total hours that are not met with respect to the Participation Requirement or meets the Good Faith Effort Exception.

1. Labor Hours Requirement

The proposed regulations would reiterate that under the Labor Hours Requirement, the taxpayer must ensure that the “applicable percentage” of the total labor hours are performed by qualified apprentices.

The Treasury Department and the IRS understand that certain jurisdictions and trades have developed pre-apprenticeship programs that are designed to help individuals prepare for and succeed in registered apprenticeship programs but that are not registered with the DOL 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.*). Section 45(b)(8)(E)(ii) defines a 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, which is defined in section 3131(e)(3)(B) as apprenticeship programs that are registered under the National Apprenticeship Act. Thus, under the proposed regulations, pre-apprenticeship programs would not qualify as registered apprenticeship programs for purposes of section 45(b)(8) and hours worked as part of a pre-apprenticeship program would not count towards the Labor Hour Requirement.

2. Ratio Requirement

Under the Ratio Requirement, a taxpayer must ensure that any applicable apprenticeship-to-journeyworker ratio is satisfied. Section 45(b)(8)(B) provides that the applicable apprenticeship-to-journeyworker ratio is determined by reference to the ratios of the DOL or the applicable State apprenticeship agency. Under 29 CFR part 29, registered apprenticeship programs prescribe a numeric ratio of apprentices to journeyworkers in their standards of apprenticeship. This ratio is intended to ensure that there are enough journeyworkers to oversee the work of apprentices. The Treasury Department and the IRS understand that the DOL and State apprenticeship agencies review and approve the prescribed ratio requirements.

As stated in Notice 2022-61, the applicable ratios set by registered apprenticeship programs generally apply on a daily basis. The proposed regulations reiterate this requirement and would provide that the applicable ratio established by the apprenticeship program would need to be satisfied each day during construction, alteration, or repair of the qualified facility for which apprentice labor hours are being claimed. This means that the number of apprentices would not be permitted to exceed the number set forth in the ratio because the ratio sets the minimum number of journeyworkers needed for each apprentice, to ensure adequate safety and supervision. For example, for a 1:1 apprentice to journeyworker ratio, having two apprentices and three journeyworkers on a given day would satisfy the ratio requirement whereas having three apprentices and two journeyworkers on a given day would not.

The proposed regulations would provide that if the Ratio Requirement is not

met on any day, then registered apprentices in excess of the applicable ratio who perform work on a facility would be required to be paid the full prevailing wage rate for the hours worked for purposes of the Prevailing Wage Requirement. Additionally, the hours worked by the apprentices on a day where the applicable ratio was not satisfied would not be counted as apprentice hours for purposes of calculating the applicable percentage under the Labor Hours Requirement.

For purposes of the Ratio Requirement, the proposed regulations would adopt the DOL definition of journeyworker in 29 CFR 29.2, which defines a journeyworker as a laborer or mechanic who has attained a level of skill, abilities and competencies recognized within an industry as having mastered the skills and competencies required for the occupation. A mentor, technician, specialist, or other skilled individual who has documented sufficient skills and knowledge of an occupation, either through formal apprenticeship or through practical on-the-job experience and formal training may also be a journeyworker. The Treasury Department and the IRS request comments on the application of the Ratio Requirement for purposes of satisfying the Apprenticeship Requirement.

3. Participation Requirement

The Treasury Department and the IRS propose to interpret the Participation Requirement as designed to prevent taxpayers from satisfying the Labor Hours Requirement by only hiring apprentices to perform one type of work and instead encourages taxpayers to use apprentices across the full range of work performed with respect to the facility. The proposed regulations would clarify that the Participation Requirement would be satisfied as long as the taxpayer, contractor, or subcontractor employs one or more apprentices to perform work on the facility and would not be a daily requirement. The proposed regulations would also clarify that it would be the responsibility of the taxpayer to ensure that any contractor or subcontractor performing work on the facility with four or more employees who perform such work on the facility has hired one or more apprentices in accordance

with the Participation Requirement of section 45(b)(8)(C). Taxpayers who fail to meet the Participation Requirement would be subject to the penalty provisions of section 45(b)(8)(D) even if the taxpayer otherwise satisfies the applicable Labor Hours Requirement unless the Good Faith Effort Exception applies.

B. Exceptions

1. In General

Section 45(b)(8)(D) and the proposed regulations would allow taxpayers who fail to meet the Apprenticeship Requirements to nonetheless qualify for the increased credit by curing their failures. To cure a failure to meet the Apprenticeship Requirements, taxpayers would be required to satisfy the Good Faith Effort Exception from the Apprenticeship Requirements or pay a penalty if they do not qualify for the Good Faith Effort Exception.

2. Good Faith Effort Exception

Section 45(b)(8)(D)(ii) provides that taxpayers are deemed to satisfy the Apprenticeship Requirements if they have requested qualified apprentices from a registered apprenticeship program and such request has been denied for reasons other than the taxpayer, contractor, or subcontractor's refusal to comply with the program's standards and requirements, or if the program fails to respond within five business days of receiving a request. Notice 2022-61 provided that taxpayers could satisfy the Good Faith Effort Exception if the taxpayer requested qualified apprentices "in accordance with usual and customary business practices for registered apprenticeship programs in a particular industry."

The Treasury Department and the IRS believe that additional guidance explaining the "usual and customary" standard would be useful. The proposed regulations would require the taxpayer, contractor, or subcontractor to make a written request to at least one registered apprenticeship program that has a geographic area of operation that includes the location of the facility, or that can reasonably be expected to provide apprentices to the location of

the facility, trains apprentices in the occupation(s) needed by the taxpayer, contractors, or subcontractors performing construction, alteration, or repair with respect to the facility, and has a usual and customary business practice of entering into agreements with employers for the placement of apprentices in the occupation for which they are training, pursuant to its standards and requirements.

The Treasury Department and the IRS anticipate that a taxpayer may need to submit a request to more than one apprenticeship program in order to meet the Good Faith Effort Exception based on the size of the project, the number of contractors or subcontractors and the anticipated number of labor hours for which apprentices are needed. Although it may be possible for a taxpayer to meet all of its Labor Hours Requirement from one apprenticeship program, it is likely that given the multiple occupations involved in the construction, alteration, or repair of a qualified facility, the taxpayer would need to request apprentices from more than one apprenticeship program in order to satisfy the Labor Hours Requirement and the Participation Requirement with respect to that facility. This is in part because a registered apprenticeship program typically trains apprentices in a single occupation, whereas more than one occupation may be needed to meet the Labor Hours Requirement and the Participation Requirement. A taxpayer, contractor, or subcontractor would be expected to estimate the number of apprentices needed and the occupations for which they are needed, and to submit its request for apprentices accordingly.

The proposed regulations would require the written request to include information concerning the dates of employment, the occupation or classification needed, the location and type of work to be performed, the number of apprentices needed, the number of hours the apprentices will work, and the name and contact information of the person requesting the apprentices. The written request would also be required to include a statement that the request for apprentices is made with an intent to employ apprentices in the occupation for which they are being trained and in accordance with the requirements and standards of the registered apprenticeship program. The Good Faith Effort

Exception's requirement to request qualified apprentices from a registered apprenticeship program would necessitate that the taxpayer ascertain its workforce needs to determine how many qualified apprentices it needs to employ in order to meet the Apprenticeship Requirements, identify registered apprenticeship programs in the occupations needed by the taxpayer and its contractors and subcontractors, and demonstrate capacity to employ apprentices in the occupations for which apprentices are requested.

A denial of a request by a taxpayer, contractor, or subcontractor for a qualified apprentice would not automatically qualify the taxpayer for the Good Faith Effort Exception. The proposed regulations would require the taxpayer, contractor, or subcontractor to submit an additional request within 120 days of a previously denied request. The proposed regulations would also clarify that a denial of a request means that the registered apprenticeship program denied the request in its entirety. A registered apprenticeship program's response that it could partially fulfill the request in the occupation(s) for which it trains apprentices would not constitute a denial of the request with respect to the parts of the request that could be fulfilled.

Under the proposed regulations, the Good Faith Effort Exception would be specific to the request for apprentices made by the taxpayer, contractor, or subcontractor, including the number of apprentice hours for which the request for apprentices has been made to a registered apprenticeship program. Thus, the Good Faith Effort Exception would apply to the specific portion of the request for apprentices that was denied or not responded to and would be subject to the requirement to submit an additional request after 120 days. The Treasury Department and the IRS request comments on this proposed approach.

Consistent with section 45(b)(8)(D)(ii)(I), the proposed regulations would require that the request cannot have been denied because of a refusal of the taxpayer or any contractor or subcontractor to comply with the requirements and standards of the apprenticeship program. For example,

if a registered apprenticeship program requires a requesting employer to enter into an agreement with the registered apprenticeship program, then a denial of the request because the employer refused to enter into the agreement would not be a valid denial for purposes of the Good Faith Effort Exception. Section 45(b)(8)(D)(ii) provides that taxpayers may also be deemed to satisfy the Good Faith Effort Exception if a registered apprenticeship program fails to respond to a request for a qualified apprentice. The proposed regulations explain that an acknowledgement of receipt by a registered apprenticeship program would constitute a response for purposes of section 45(b)(8)(D)(ii)(II), and a taxpayer would be unable to rely upon the Good Faith Effort Exception in such circumstances.

The Treasury Department and the IRS understand that apprenticeship programs are not uniform across industries and localities, including the manner and processes by which apprentices may be requested and supplied for purposes of satisfying the Apprenticeship Requirements. The Treasury Department and the IRS also understand that in many cases employers are sponsors of registered apprenticeship programs and directly employ apprentices. In those instances, a taxpayer, contractor, or subcontractor would likely obtain apprentices to meet the labor hours and participation requirements through their own registered apprenticeship programs rather than requesting apprentices from other registered apprenticeship programs.

In addition, the Treasury Department and the IRS are aware that the DOL's Office of Apprenticeship, as well as State apprenticeship agencies, routinely provide technical expertise on registered apprenticeship program matters, including identifying registered apprenticeship programs, and assisting employers seeking to register their own programs.¹⁰ The Treasury Department and the IRS request comments on whether and how the proposed Good Faith Effort Exception might take into account a situation where a taxpayer contacts the DOL's Office of Apprenticeship or the appropriate State apprenticeship agency regarding their

apprenticeship request, in addition to contacting a specific registered apprenticeship program or programs. The Treasury Department and the IRS also request comments on how the proposed Good Faith Effort Exception will align with current practices with respect to utilization of apprentices in the construction, alteration, or repair of facilities. In particular, the Treasury Department and the IRS request comments on the role of collective bargaining agreements, project labor agreements, and other agreements to satisfy the request for apprentices under the Good Faith Effort Exception.

3. Opportunity to Cure

If a taxpayer does not qualify for the Good Faith Effort Exception under section 45(b)(8)(D)(ii), section 45(b)(8)(D)(i)(II) provides that the taxpayer is not treated as failing to satisfy the requirements of section 45(b)(8)(A) and (C) if the taxpayer pays a penalty to the Secretary. The proposed regulations explain that, with respect to failures to satisfy the Labor Hours Requirement or the Participation Requirement, the amount of the penalty would be equal to \$50 multiplied by the total labor hours for which the taxpayer failed to meet the Labor Hours Requirement and the Participation Requirement. The proposed regulations would provide that the total labor hours by which the taxpayer failed to meet the Labor Hours Requirement would be calculated by subtracting the total labor hours worked by all qualified apprentices consistent with the Ratio Requirement from the total labor hours that should have been worked by qualified apprentices under section 45(b)(8)(A)(ii) to satisfy the applicable percentage.

Section 45(b)(8)(C) does not specify the number of hours that apprentices must work to satisfy the Participation Requirement. The proposed regulations would address this issue by providing that the number of labor hours that an apprentice was required to work for purposes of calculating the penalty for failing to satisfy the Participation Requirement would be equal to the total

¹⁰ Information is available at <https://www.apprenticeship.gov/about-us/apprenticeship-system>.

number of labor hours performed for the taxpayer, contractor, or subcontractor during construction, alteration, or repair of the facility divided by the total number of individuals employed by that taxpayer, contractor, or subcontractor who performed construction, alteration, or repair work on the facility. This calculation would be specific to the taxpayer, contractor, or subcontractor who failed to meet the Participation Requirement. For example, if the taxpayer failed to meet the Participation Requirement, then the penalty would be calculated with reference to the total number of labor hours performed only by those individuals who worked directly for the taxpayer, and would not include the labor hours worked by any individuals who worked directly for a contractor or subcontractor that satisfied the Participation Requirement.

If the taxpayer failed to meet both the Labor Hours Requirement and the Participation Requirement, then the penalty would equal the sum of the penalty for the failure to meet the Labor Hours Requirement plus the penalty for failure to meet the Participation Requirement.

If the failure to meet the Labor Hours Requirement or the Participation Requirement is determined to be the result of intentional disregard, then the amount of the penalty payment is enhanced tenfold – from \$50 to \$500 per labor hour. The proposed regulations would provide that failures to meet the Apprenticeship Requirements would be due to intentional disregard if they are knowing or willful, considering all relevant facts and circumstances. The proposed regulations would provide a non-exhaustive list of facts and circumstances that may be relevant to determining whether the failure was knowing or willful.

The proposed regulations would also provide the penalty payment requirement for failures to meet the Labor Hours Requirement or the Participation Requirement would not apply if there is in place a project labor agreement that meets certain requirements.

The proposed regulations also state that there would be a rebuttable presumption against a finding of intentional disregard if the taxpayer makes the penalty payments before receiving a notice of an examination with respect to the claim for

the increased credit. The presumption of no intentional disregard is intended to incentivize taxpayers who initially fail to meet the Apprenticeship Requirements to make use of the cure provision promptly.

Consistent with the correction and penalty payments under the Prevailing Wage Requirements, the hiring of qualified apprentices is a factor in the taxpayer's eligibility for the increased credit and therefore applicable to determining the credit. Additionally, although the Apprenticeship Requirements must be satisfied contemporaneously with the construction, alteration, or repair of the qualified facility and before the filing of the taxpayer's tax return, the obligation to meet the Apprenticeship Requirements is not binding on the eligible taxpayer until the earlier of: (i) the filing of the eligible taxpayer's return for the taxable year for which the specified credit portion is determined with respect to the eligible taxpayer, or (ii) the filing of the return of the transferee taxpayer for the year in which the specified credit portion is taken into account. As a result, the proposed regulations would provide that a penalty payment that is required to retain the increased credit because of the failure of the eligible taxpayer to satisfy the Apprenticeship Requirements would remain the responsibility of the eligible taxpayer following a transfer of a specified credit portion pursuant to section 6418.

IV. Other Code Sections Applying PWA Provisions for Increased Credit and Deduction Amounts

A. Section 30C

Section 30C provides a credit for the cost of any qualified alternative fuel vehicle refueling property placed in service during the taxable year. For properties placed in service before January 1, 2023, the credit is equal to 30 percent. For properties placed in service after December 31, 2022, the credit is equal to 30 percent (6 percent for property of a character subject to depreciation). If a taxpayer satisfies the PWA requirements or the BOC Exception, then the credit determined under section 30C(a) for any qualified alternative fuel vehicle refueling property of a character subject to an allowance for

depreciation that is part of such project is multiplied by five.

To satisfy the Prevailing Wage Requirements under section 30C(g)(2)(A), a taxpayer must ensure that any laborers and mechanics employed by the taxpayer or any contractor or subcontractor in the construction of any qualified alternative fuel vehicle refueling property that is part 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 the project is located. Section 30C(g)(2)(B) provides that rules similar to section 45(b)(7)(B) apply for purposes of the correction and penalty related to the failure to satisfy the Prevailing Wage Requirements. Section 30C(g)(3) provides that rules similar to section 45(b)(8) apply for purposes of the Apprenticeship Requirements.

The proposed regulations would provide that if a taxpayer satisfies the PWA requirements, then the credit determined under section 30C(a) for any qualified alternative fuel vehicle refueling property of a character subject to an allowance for depreciation that is part of such project would be multiplied by five.

B. Section 45L

Section 45L provides a credit for a qualified new energy efficient home (qualified home) that is constructed by an eligible contractor and acquired by a person from that eligible contractor for use as a residence during the taxable year. Under section 45L(b)(2), a qualified home is a dwelling unit located in the United States, the construction of which is substantially completed after August 8, 2005, and that meets the energy saving requirements of section 45L(c). Under section 45L(b)(1), an eligible contractor is the person who constructed the qualified home, or in the case of a qualified home that is a manufactured home, the manufactured home producer of that home. For a qualified home acquired after December 31, 2022, and before January 1, 2033, that is part of a building eligible to participate in the Energy Star Multifamily New Construction Program and meets the energy saving requirements under section 45L(c)(1)(A), the credit is \$500 (\$2,500 if the taxpayer satisfies the Prevailing Wage Requirements). For a

qualified home acquired after December 31, 2022, and before January 1, 2033, that is part of a building eligible to participate in the Energy Star Multifamily New Construction Program and meets the energy saving requirements under section 45L(c)(1)(B), the credit is \$1,000 (\$5,000 if the taxpayer satisfies the Prevailing Wage Requirements).

To satisfy the Prevailing Wage Requirements under section 45L(g)(2)(A), a taxpayer must ensure that any laborers and mechanics employed by the taxpayer or any contractor or subcontractor in the construction of any qualified home described in section 45L(a)(2)(B) 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 the qualified home is located. Section 45L(g)(2)(B) provides that rules similar to section 45(b)(7)(B) apply for purposes of the correction and penalty related to the failure to satisfy the Prevailing Wage Requirements. There are no Apprenticeship Requirements with respect to section 45L.

The proposed regulations would provide that if a taxpayer satisfies the Prevailing Wage Requirements, then for a qualified home that is part of a building eligible to participate in the Energy Star Multifamily New Construction Program acquired after December 31, 2022, and before January 1, 2033, the credit would be \$2,500 if the qualified home meets the energy saving requirements under section 45L(c)(1)(A), and the credit would be \$5,000 if the qualified home meets the energy saving requirements under section 45L(c)(1)(B).

C. Section 45Q

Section 45Q provides a credit for the capture and sequestration of qualified carbon oxide. The credit is the sum of the specified dollar amount, as provided by section 45Q(a) or (b), multiplied by the metric ton of each qualified carbon oxide specified under section 45Q(a). If a taxpayer satisfies the PWA requirements or the BOC Exception with respect to any qualified facility or any carbon capture equipment placed in service at that facility, then the credit determined under section 45Q(a) is multiplied by

five. For carbon capture equipment that will be placed in service at a qualified facility, the construction of which begins on or after January 29, 2023, the section 45Q(a) credit is multiplied by five only if the PWA requirements are satisfied with respect to both the qualified facility and the carbon capture equipment. For carbon capture equipment, the construction of which begins on or after January 29, 2023, that will be placed in service at a qualified facility, the construction of which began before January 29, 2023, the PWA requirements apply only to the carbon capture equipment.

To satisfy the Prevailing Wage Requirements under section 45Q(h)(3)(A), the attributable taxpayer described in section 45Q(f)(3)(A) and §1.45Q-1(h)(1) must ensure that any laborers and mechanics employed by the taxpayer or any contractor or subcontractor in: (i) the construction of any qualified facility and any carbon capture equipment placed in service at that facility, and (ii) the alteration or repair of that facility or equipment (with respect to any taxable year, for any portion of such taxable year that is within the 12-year period beginning on the date the facility or equipment is originally placed in service), 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 that facility and equipment are located. Section 45Q(h)(3)(B) provides that rules similar to section 45(b)(7)(B) apply for purposes of the correction and penalty related to the failure to satisfy the Prevailing Wage Requirements. Section 45Q(h)(4) provides that rules similar to section 45(b)(8) apply for purposes of the Apprenticeship Requirements.

The proposed regulations would provide rules based on the statutory rules.

D. Section 45U

Section 45U provides a credit for electricity produced by the taxpayer at a qualified nuclear power facility and sold by the taxpayer to an unrelated person during the taxable year. Generally, for taxable years beginning after December 31, 2023, the credit is equal to the amount by which the product of 0.3 cents multiplied by the kilowatt hours of electricity

produced by the taxpayer at a qualified nuclear power facility and sold by the taxpayer to an unrelated person during the taxable year, exceeds the applicable “reduction amount” for such taxable year that is determined under section 45U(b)(2). If a taxpayer satisfies the Prevailing Wage Requirements, then the credit determined under section 45U(a) for a qualified nuclear power facility is multiplied by five.

To satisfy the Prevailing Wage Requirements under section 45U(d)(2)(A), a taxpayer must ensure that any laborers and mechanics employed by the taxpayer or any contractor or subcontractor in the alteration or repair of any qualified nuclear power facility are paid wages at rates not less than the prevailing rates for alteration or repair of a similar character in the locality in which that facility is located. Section 45U(d)(2)(B) provides that rules similar to section 45(b)(7)(B) apply for purposes of the correction and penalty related to the failure to satisfy the Prevailing Wage Requirements. There are no Apprenticeship Requirements with respect to section 45U.

The proposed regulations would provide that if a taxpayer satisfies the Prevailing Wage Requirements, then the credit determined under section 45U(a) for any qualified nuclear power facility would be multiplied by five.

E. Section 45V

Section 45V provides a credit for the production of qualified clean hydrogen by the taxpayer during the taxable year at a qualified clean hydrogen production facility during the 10-year period beginning on the date the facility was originally placed in service. In general, for hydrogen produced after December 31, 2022, the credit is the product of the kilograms of qualified clean hydrogen produced multiplied by the applicable amount. The applicable amount is equal to the applicable percentage of \$0.60, which is determined under section 45V(b)(2). If a taxpayer satisfies either the PWA requirements, or the BOC Exception and the Prevailing Wage Requirements for alterations or repairs occurring after January 29, 2023, then the credit amount determined under section 45V(a) for any

qualified clean hydrogen produced by the taxpayer during the taxable year at a qualified clean hydrogen production facility is multiplied by five. A taxpayer must satisfy the Prevailing Wage Requirements with respect to an alteration or repair that occurs after January 29, 2023, notwithstanding the BOC Exception regarding the construction of that qualified facility.

To satisfy the Prevailing Wage Requirements under section 45V(e)(3)(A), a taxpayer must ensure that any laborers and mechanics employed by the taxpayer or any contractor or subcontractor in: (i) the construction of any qualified clean hydrogen production facility, and (ii) the alteration or repair of that facility (with respect to any taxable year, for any portion of such taxable year that is within the 10-year credit period beginning on the date that the facility was originally placed in service),¹¹ 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 that facility is located. Section 45V(e)(3)(B) provides that rules similar to section 45(b)(7)(B) apply for purposes of the correction and penalty related to the failure to satisfy the Prevailing Wage Requirements. Section 45V(e)(4) provides that rules similar to section 45(b)(8) apply for purposes of the Apprenticeship Requirements.

The proposed regulations would provide that if a taxpayer satisfies either the PWA requirements, or the BOC Exception and the Prevailing Wage Requirements for alterations or repairs occurring after January 29, 2023, then the credit amount determined under section 45V(a) for any qualified clean hydrogen produced by the taxpayer during the taxable year at a qualified clean hydrogen production facility would be multiplied by five.

F. Section 45Y

Section 45Y provides a credit for clean electricity produced by the taxpayer at a qualified facility and sold to an unrelated person, or in the case of a qualified facility which is equipped with a metering

device which is owned and operated by an unrelated person, sold, consumed, or stored by the taxpayer during the taxable year, for facilities placed in service after December 31, 2024. Generally, the credit for any taxable year is the product of the kilowatt hours of electricity multiplied by 0.3 cents. If a taxpayer satisfies the PWA requirements, the One Megawatt Exception, or the BOC Exception, then the applicable amount under section 45Y(a)(2) equals 1.5 cents.

Section 45Y(g)(9) provides that rules similar to section 45(b)(7) apply for purposes of the Prevailing Wage Requirements. Section 45Y(g)(10) provides that rules similar to section 45(b)(8) apply for purposes of the Apprenticeship Requirements.

The proposed regulations would provide that if a taxpayer satisfies the PWA requirements, then the applicable amount under section 45Y(a)(2) would equal 1.5 cents.

G. Section 45Z

Section 45Z provides a credit for clean transportation fuel produced by the taxpayer at a qualified facility after December 31, 2024, and sold to an unrelated person in a manner described in section 45Z(a)(4). Generally, the credit is the product of the applicable amount (determined under section 45Z(a)(2)) per gallon(s) of transportation fuel multiplied by the emission factor for the fuel (determined under section 45Z(b)). If a taxpayer satisfies the PWA requirements (modified for qualified facilities placed in service before January 1, 2025), then the applicable amount determined under section 45Z(a)(2)(B) is \$1.00, otherwise the applicable amount is 20 cents.

In general, section 45Z(f)(6)(A) provides that rules similar to section 45(b)(7) apply for purposes of the Prevailing Wage Requirements. However, section 45Z(f)(6)(B) provides a special rule for qualified facilities placed in service before January 1, 2025. Under section 45Z(f)(6)(B), the Prevailing Wage Requirements do not

apply with respect to construction of that facility but do apply to the alteration or repair of that facility with respect to any taxable year beginning after December 31, 2024, for which the section 45Z credit is allowed with respect to that facility. Section 45Z(f)(7) provides that rules similar to section 45(b)(8) apply for purposes of the Apprenticeship Requirements.

The proposed regulations would provide that if a taxpayer satisfies the PWA requirements, then the applicable amount determined under section 45Z(a)(2)(B) would equal \$1.00.

H. Section 48

Section 48 provides a credit for an energy property placed in service during a taxable year. For properties placed in service after December 31, 2022, the credit is generally six percent of the basis of property described in section 48(a)(2)(A)(i) and two percent of the basis of property described in section 48(a)(2)(A)(ii). If a taxpayer satisfies the PWA requirements, the One Megawatt Exception, or the BOC Exception, then the credit determined under section 48(a) for the basis of each energy property placed in service during the taxable year is multiplied by five.

To satisfy the Prevailing Wage Requirements under section 48(a)(10)(A), a taxpayer must ensure that any laborers and mechanics employed by the taxpayer or any contractor or subcontractor in: (i) the construction of any energy project, and (ii) the alteration or repair of that energy project (for the five-year period beginning on the date such project is originally placed in service), 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 that energy project is located. Section 48(a)(10)(B) provides that rules similar to section 45(b)(7)(B) apply for purposes of the correction and penalty related to the failure to satisfy the Prevailing Wage Requirements. Section 48(a)(10)(C) provides a special recapture rule with respect to alterations

¹¹ Section 45V(e)(3)(A)(ii) requires the payment of wages at prevailing rates "with respect to any taxable year, for any portion of such taxable year which is within the period described in subsection (a)(2)", with respect to the alteration or repair of such facility. There is no "period described in subsection (a)(2)." The Treasury Department and the IRS propose to interpret the reference to "subsection (a)(2)" as a reference to section 45V(a)(1) where the 10-year credit period is identified, and the proposed regulations would apply to the period described in section 45V(a)(1).

or repairs that occur during the five-year period after the energy project is placed in service if that taxpayer does not satisfy the Prevailing Wage Requirements. In general, the section 48(a)(10)(C) recapture is determined under similar rules to those provided for in section 50. Subject to the section 48(a)(10)(C) recapture, the taxpayer is deemed at the time the qualified energy project is placed in service to satisfy the Prevailing Wage Requirements for alterations or repairs for the five-year period beginning after such project is originally placed in service. Section 48(a)(11) provides that rules similar to section 45(b)(8) apply for purposes of the Apprenticeship Requirements.

The proposed regulations would provide that if a taxpayer satisfies the PWA requirements, then the credit determined under section 48 for any qualified energy project would be multiplied by five.

I. Section 48C

Section 48C provides a credit for a qualified investment in a qualifying advanced energy project for that taxable year (Section 48C Credit). The IRA added section 48C(e) to the Code, extending the Section 48C Credit to provide an additional Section 48C Credit allocation of \$10 billion. Generally, the credit amount for Section 48C Credits allocated pursuant to section 48C(e) is equal to six percent of the basis of the eligible property. If a taxpayer satisfies the PWA requirements, then the credit amount determined under section 48C(a) is 30 percent.

To satisfy the Prevailing Wage Requirements under section 48C(e)(5)(A), a taxpayer must ensure that with respect to a qualifying advanced energy project, any laborers and mechanics employed by the taxpayer or any contractor or subcontractor in the re-equipping, expansion, or establishment of a manufacturing 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 the project is located. Section 48C(e)(5)(B) provides that rules similar to section 45(b)(7)(B) apply for purposes of the correction and penalty related to the failure to satisfy the Prevailing Wage Requirements.

Section 48C(e)(6) provides that rules similar to section 45(b)(8) apply for purposes of the Apprenticeship Requirements.

The Treasury Department and the IRS issued Notice 2023-18, 2023-10 I.R.B. 508, and Notice 2023-44, 2023-25 I.R.B. 924, to provide guidance under section 48C(e). These notices provide a process for the IRS to allocate Section 48C Credits. To prevent an overallocation of Section 48C Credits, section 5.07 of Notice 2023-18 requires a taxpayer that applies for a Section 48C Credit allocation at the 30 percent credit amount to confirm that the taxpayer intends to satisfy the PWA requirements. Section 5.07 of Notice 2023-18 additionally requires that when the taxpayer provides notification that it placed the project in service, the taxpayer must also confirm that it satisfied the PWA requirements.

The proposed regulations would provide that if a taxpayer satisfies both the PWA requirements and the PWA confirmation requirements provided in Notice 2023-18 (or any subsequent guidance), then the credit amount for Section 48C Credits allocated pursuant to section 48C(e) would be equal to 30 percent.

J. Section 48E

Section 48E provides a clean electricity investment credit for the investment in qualified facilities and energy storage technology placed in service for the taxable year after December 31, 2024. The credit is generally six percent of the qualified investment. If a taxpayer satisfies the PWA requirements, the One Megawatt Exception, or the BOC Exception, then the credit amount determined under section 48E(a) for a qualified investment is 30 percent.

Section 48E(d)(3) provides that rules similar to section 48(a)(10) apply for purposes of the Prevailing Wage Requirements. Section 48E(d)(4) provides that rules similar to section 45(b)(8) apply for purposes of the Apprenticeship Requirements.

The proposed regulations would provide that if a taxpayer satisfies the PWA requirements, then the credit amount determined under section 48E(a) for a qualified investment would be equal to 30 percent.

K. Section 179D

Section 179D(a) provides a deduction for the cost of energy efficient commercial building property placed in service during the taxable year. Section 179D(f) provides an alternative deduction for energy efficient building retrofit property (alternative deduction). For taxable years beginning after December 31, 2022, section 179D(b) provides that the deduction cannot exceed the excess (if any) of the product of the applicable dollar value, and the square footage of the building, over the aggregate amount of deductions under section 179D(a) and section 179D(f) with respect to the building for the three taxable years immediately preceding the taxable year (or for any taxable year ending during the four-taxable-year period ending with such taxable year, if the deduction is allowed to a person other than the taxpayer). The alternative deduction is an amount equal to the lesser of the “excess” described in section 179D(b) (determined by substituting “energy use intensity” for “total annual energy and power costs”) or the aggregate adjusted basis (determined after taking into account all adjustments with respect to the taxable year other than the reduction under section 179D(e)) of energy efficient building retrofit property placed in service by the taxpayer pursuant to a qualified retrofit plan. The applicable dollar value is \$0.50 increased by \$0.02 (but not above \$1.00) for each percentage point by which the total annual energy and power costs (or energy use intensity, in the case of the alternative deduction) for the building are certified to be reduced by a percentage greater than 25 percent. If a taxpayer satisfies the PWA requirements or the beginning of installation exception, then the applicable dollar value of the deduction determined under section 179D(b)(2) is \$2.50 increased by \$0.10 (but not above \$5.00).

To satisfy the Prevailing Wage Requirements under section 179D(b)(4)(A), a taxpayer must ensure that any laborers and mechanics employed by the taxpayer or any contractor or subcontractor in the installation of any property 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 the property is

located. Section 179D(b)(4)(B) provides that rules similar to section 45(b)(7) (B) apply for purposes of the correction and penalty related to the failure to satisfy the Prevailing Wage Requirements. Section 179D(b)(5) provides that rules similar to section 45(b)(8) apply for purposes of the Apprenticeship Requirements.

The proposed regulations would provide that if a taxpayer satisfies the PWA requirements, then the applicable dollar value of the deduction determined under section 179D(b)(2) would be \$2.50 increased by \$0.10 (but not above \$5.00).

V. Recordkeeping Requirements

A. In general

Section 45(b)(12) authorizes the Secretary to issue such regulations or other guidance as the Secretary determines necessary to carry out the purposes of section 45(b), including regulations or other guidance that provide requirements for recordkeeping or information reporting for purposes of administering the requirements of section 45(b).

Section 6001 provides that every person liable for any tax imposed by the Code, or for the collection thereof, must keep such records as the Secretary may from time to time prescribe. Section 1.6001-1(a) provides that any person subject to income tax must keep such permanent books of account or records, including inventories, as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of such tax. Section 1.6001-1(e) provides that the books and records required by §1.6001-1 must be retained so long as the contents thereof may become material in the administration of any Internal Revenue law.

B. Recordkeeping with respect to Prevailing Wage Requirements

The Copeland Act requires contractors and subcontractors subject to the DBA to submit certified weekly payroll records reflective of work performed on a covered contract to the contracting agency. This requirement to comply with the DBA is statutory and inherent in the

award of a contract and the submission of weekly payroll records becomes part of the terms of the awarded contract. In contrast, under section 45(b)(7)(A), although the requirement to pay prevailing wages is triggered by the beginning of construction and continues over the entire course of a project, the requirement to pay prevailing wages becomes binding only when a tax return claiming the increased credit is filed. Thus, because the increased credit is not claimed until the time of filing a return, which will only occur after a qualified facility is placed in service, the proposed regulations would not adopt the Copeland Act requirement to report payroll records to the IRS on a weekly basis in advance of claiming an increased credit. The Treasury Department and the IRS understand that adoption of the Copeland Act reporting regime for purposes of section 45(b)(7)(A) would not assist the IRS with administering the provision.

Instead, the proposed regulations would provide that taxpayers would be required to establish compliance with the Prevailing Wage Requirements at the time a return claiming the increased credit is filed. The proposed regulations would provide that a taxpayer would be required to do so on such forms and in such manner as the Commissioner provides in IRS forms, publications, or other guidance. The Treasury Department and the IRS expect that taxpayers will be required to report at the time of filing a return the following information: (i) the location and type of qualified facility; (ii) the applicable wage determinations for the type and location of the facility; (iii) the wages paid (including any correction payments) and hours worked for each of the laborer or mechanic classifications engaged in the construction, alteration, or repair of the facility; (iv) the number of workers who received correction payments; (v) the wages paid and hours worked by qualified apprentices for each of the laborer or mechanic classifications engaged in the construction, alteration, or repair of the facility; (vi) the total labor hours for the construction, alteration, or repair of the facility by any laborer or mechanic employed by the taxpayer or any contractor or subcontractor; and (vii) the total credit claimed.

The DBA has comprehensive recordkeeping requirements that assist the DOL in its oversight of Prevailing Wage Requirements. The DBA recordkeeping regime is consistent with what the IRS would ordinarily expect taxpayers to preserve to be able to substantiate that the Prevailing Wage Requirements have been satisfied. The proposed regulations would impose recordkeeping requirements that are generally consistent with the recordkeeping requirements under the DBA regime for purposes of the Prevailing Wage Requirements.

The proposed regulations would require taxpayers to maintain and preserve sufficient records to establish compliance with the requirement that all laborers and mechanics were paid wages at rates not less than the applicable prevailing rates. Records sufficient to establish compliance would include payroll records that reflect the hours worked in each classification and the wages paid to each laborer and mechanic performing construction, alteration, or repair work on the facility (including any correction payments made to each laborer and mechanic). The Treasury Department and the IRS expect that most taxpayers will use contractors and subcontractors in the construction, alteration, or repair of facilities and that construction may occur for several years before a facility is placed in service. The proposed regulations would provide that it would be the responsibility of the taxpayer to maintain payroll records that reflect the wages paid to labors and mechanics engaged in the construction, alteration, or repair of the qualified facility, regardless of whether the laborers and mechanics are employed by the taxpayer, a contractor, or a subcontractor. The proposed regulations would also impose recordkeeping requirements related to correction and penalty payments.

The proposed regulations include a non-exhaustive list of facts and circumstances that would be relevant to the IRS in determining whether a failure to meet the Prevailing Wage Requirements was due to intentional disregard. To demonstrate that a failure was not due to intentional disregard, taxpayers would need to maintain and preserve records sufficient to document the failure and the actions they took to prevent, mitigate, or remedy the

failure (for example, records demonstrating that the taxpayer regularly reviewed payroll practices, included requirements to pay prevailing wages in contracts with contractors, and posted prevailing wage rates in a prominent place on the job site).

The proposed regulations would also waive penalties for certain limited failures. To the extent taxpayers intend to rely on these penalty waiver provisions, they would need to maintain records sufficient to demonstrate when a failure occurred and proof that the taxpayer made the required correction payment.

C. Recordkeeping with respect to Apprenticeship Requirements

The proposed regulations would require taxpayers subject to the Apprenticeship Requirements to maintain sufficient records to establish compliance with the Labor Hours Requirement, Ratio Requirement, and Participation Requirement. Records sufficient to establish compliance with the Apprenticeship Requirements include copies of any written requests for apprentices by the taxpayer, contractor, or subcontractor, any agreement entered by the taxpayer, contractor, or subcontractor with a registered apprenticeship program, documents reflecting any registered apprenticeship program sponsored by the taxpayer, contractor, or subcontractor, documents verifying participation in a registered apprenticeship program by each apprentice, records reflecting the required ratio of apprentices to journeyworkers prescribed by each registered apprenticeship program from which qualified apprentices are employed, records reflecting the daily ratio of apprentices to journeyworkers, and the payroll records for any work performed by apprentices. The proposed regulations provide that it would be the responsibility of the taxpayer to maintain the relevant records for each apprentice engaged in the construction, alteration, or repair on the qualified facility, regardless of whether the apprentice is employed by the taxpayer, a contractor, or a subcontractor.

D. Recordkeeping for credits transferred under section 6418

Because an eligible taxpayer determines any increased credit amount applicable to

the prevailing wage and apprenticeship requirements, the general recordkeeping requirements under these proposed regulations would remain with an eligible taxpayer who transfers a specified credit portion that includes an increased credit amount. The increased credit amount that is determined by an eligible taxpayer would be reported on the applicable forms on the return of the eligible taxpayer. The minimum required documentation to be provided to the transferee taxpayer is a separate requirement under the 6418 Proposed Regulations that does not impact the requirements in these proposed regulations.

VI. Effect on Other Documents

The provisions of sections 3 and 4 of Notice 2022-61 would be obsoleted for facilities, property, projects, or equipment the construction, or installation of which begins after the date the Treasury Decision adopting these regulations as final regulations is published in the **Federal Register**. The proposed regulations would not otherwise affect Notice 2022-61.

VII. Proposed Applicability Date

These regulations are proposed to apply to facilities, property, projects, or equipment placed in service in taxable years ending after the date these regulations are published as final in the **Federal Register** and the construction or installation of which begins after the date these regulations are published as final regulations in the **Federal Register**. However, taxpayers may rely on these proposed regulations with respect to construction or installation of a facility, property, project, or equipment beginning on or after January 29, 2023, and on or before the date these regulations are published as final regulations in the **Federal Register**, provided, that beginning after the date that is 60 days after August 29, 2023, taxpayers follow the proposed regulations in their entirety and in a consistent manner.

Special Analyses

I. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) (PRA) generally

requires that a federal agency obtain the approval of the Office of Management and Budget (OMB) before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit.

The collections of information in these proposed regulations would include reporting, recordkeeping, and third-party disclosure requirements. These collections are required for purposes of claiming an increased credit or deduction amount; and are necessary for the IRS to validate that taxpayers have met the regulatory requirements and are entitled to claim the increased credit amounts. The likely respondents are individual, business, trust and estate filers, and tax-exempt organizations.

The proposed regulations would set forth procedures for requesting supplemental wage determinations and wage rates for additional classifications from the DOL. This collection is approved by OMB under the DOL's Control Number 1235-0034. This IRS proposed regulation does not alter any of the DOL collections approved under this control number.

The proposed regulations would include requirements to keep records sufficient to demonstrate that PWA requirements have been met as detailed in §1.45-12. For purposes of the PRA, the recordkeeping requirements of §1.45-12 are considered general tax records. These general tax records are approved annually under 1545-0074 for individuals/sole proprietors, 1545-0123 for business entities, and 1545-0047 for tax-exempt organizations. IRS will seek OMB approval under a new OMB Control Number (1545-NEW) for the burden for trust and estate filers.

The proposed regulations would include reporting requirements that taxpayers provide a statement with the tax return that claims an increased credit or deduction amount that includes aggregate information as detailed in §1.45-12. The Secretary may issue forms and instructions in future guidance for the purpose of meeting these reporting requirements. These reporting requirements will be covered under 1545-0074 for individuals/sole proprietors, 1545-0123 for business entities. IRS will solicit public comments on this requirement and the associated burden for

trusts and estates filers as reflected below; and will seek OMB approval under a new OMB Control Number (1545-NEW) for trust and estate filers.

The proposed regulations would include third-party disclosures that include notifying laborers and mechanics of the applicable prevailing wage rates as detailed in §1.45-7. The proposed regulations would also include third-party disclosures for taxpayers requesting the dispatch of apprentices from a registered apprenticeship program as detailed in §1.45-8. IRS will solicit public comment on this requirement and associated burden for all filers reflected below; and will seek OMB approval under a new OMB Control Number (1545-NEW) for all filers for the disclosure requirement.

The collections of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act. Commenters are strongly encouraged to submit public comments electronically. Written comments and recommendations for the proposed information collection should be sent to <https://www.reginfo.gov/public/do/PRAMain>, with copies to the Internal Revenue Service. Find this particular information collection by selecting “Currently under Review - Open for Public Comments” then by using the search function. Submit electronic submissions for the proposed information collection to the IRS via email at pra.comments@irs.gov (indicate REG-100908-23 on the Subject line). Comments on the collection of information should be received by October 30, 2023. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility. The accuracy of the estimated burden associated with the proposed collection of information. How the quality, utility, and clarity of the information to be collected may be enhanced. How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and estimates of capital

or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The IRS estimates that 70 trust and estates may claim the increased credit and that it could take approximately 40 hours to compile the data needed for the statement attached to their return.

Estimated total annual reporting and recordkeeping burden for trusts and estates filers: 2,800 hours.

Estimated average annual burden per respondent: 40 hours.

Estimated number of respondents: 70.

Estimated frequency of responses: Annual.

The IRS estimates that 70,000 filers may claim the increased credit and that it could take approximately two hours to display the prevailing wage rates and to request the dispatch of apprentices.

Estimated total annual third-party disclosure burden for all other filers: 140,000 hours.

Estimated average annual burden per respondent: Two hours.

Estimated number of respondents: 70,000.

Estimated frequency of responses: Once.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

II. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a proposal is not likely to have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires the agency to present an initial regulatory flexibility analysis (IRFA) of the proposed rule. The Treasury Department and the IRS have not determined whether the proposed rule, when finalized, will likely have a significant economic impact on a substantial

number of small entities. This determination requires further study. However, because there is a possibility of significant economic impact on a substantial number of small entities, an IRFA is provided in these proposed regulations. The Treasury Department and the IRS invite comments on both the number of entities affected and the economic impact on small entities. Pursuant to section 7805(f), this notice of proposed rulemaking has been submitted to the Chief Counsel of Advocacy of the Small Business Administration for comment on its impact on small business.

A. Need for and objectives of the rule

The proposed regulations would provide guidance to taxpayers intending to satisfy the PWA requirements to qualify for an increased credit or deduction under sections 30C, 45, 45Q, 45V, 45Y, 45Z, 48, 48C, 48E, and 179D and for those taxpayers intending to satisfy the Prevailing Wage Requirements to qualify for the increased credit under sections 45L and 45U. The proposed regulations would provide needed guidance for taxpayers on the use of wage determinations issued by the DOL, on the time and manner for reporting compliance with the PWA requirements, as well as needed definitions. The proposed regulations would also provide guidance concerning correction and penalty payments that can be made by taxpayers who initially fail to satisfy the PWA requirements in order to qualify for the increased credit and deduction amounts.

The Treasury Department and the IRS intend and expect that the increased credit amount of five times the base credit for taxpayers that ensure the payment of paying prevailing wages and hiring apprentices in the construction, alteration, or repair of qualified facilities provides financial incentives that will beneficially impact various industries involved in the production of and investment in clean energy. These proposed regulations would provide clarifying guidance that will assist taxpayers seeking to comply with the statutory prevailing wage and apprenticeship requirements in order to take advantage of the financial incentives. The Treasury Department and IRS expect that the increased credit amounts available to taxpayers as financial incentives will exceed

the costs of the additional recordkeeping and reporting obligations that would be imposed on taxpayers by these proposed regulations.

The Treasury Department and the IRS also expect the financial incentives for taxpayers to ensure payment of prevailing wage rates and using apprentices will deliver benefits across the economy by creating increased opportunities for contractors and subcontractors as well as laborers and mechanics to become involved in clean energy production. Allowing these increased credits and an increased deduction for taxpayers who satisfy prevailing wage and apprenticeship requirements will incentivize expansion of clean energy resources and will reduce economy wide greenhouse gas emissions.

B. Affected small entities

The RFA directs agencies to provide a description of, and where feasible, an estimate of, the number of small entities that may be affected by the proposed rules, if adopted. The Small Business Administration's Office of Advocacy estimates in its 2023 Frequently Asked Questions that 99.9 percent of American businesses meet its definition of a small business. The applicability of these proposed regulations does not depend on the size of the business, as defined by the Small Business Administration. As described more fully in the preamble to this proposed regulation and in this IRFA, section 45 and these proposed regulations may affect a variety of different entities across several different green energy industries as there are 12 different credits with increased credit amount provisions. Although there is uncertainty as to the exact number of small businesses within this group, the current estimated number of respondents to these proposed rules is 70,000 taxpayers as described in the Paperwork Reduction Act section of the preamble. The Treasury Department and the IRS expect to receive more information on the impact on small businesses through comments on this proposed rule.

C. Impact of the rules

The proposed regulations provide rules for how taxpayers can satisfy the

PWA requirements in order to seek the increased credits under section 45 as well as the increased credit or deduction available under sections 30C, 45L, 45Q, 45U, 45V, 45Y, 45Z, 48, 48C, 48E, and 179D. Taxpayers that seek to claim the increased credit or deduction will have administrative costs related to reading and understanding these proposed rules, as well as increased costs for the recordkeeping and reporting requirements necessary to establish compliance with the PWA requirements. The costs will vary across different-sized taxpayers and across the type of facilities and projects in which such taxpayers are engaged.

The Prevailing Wage Requirements would require the taxpayer to obtain the published wage determination issued by the DOL for the county in which the facility is located. To the extent a wage determination does not include a required classification, or if no wage determination has been published, the taxpayer would be required to contact the DOL to obtain a supplemental wage determination or a wage rate for an additional classification. The taxpayer would be required to ensure that any contractor or subcontractor that works on the construction, alteration, or repair of a facility has paid hourly wages in accordance with the wage determination for each classification required to complete such work. In order to be eligible for certain proposed cure provisions, the taxpayer would be required to know or be able to determine whether the laborers and mechanics employed for construction, alteration, or repair of the facility were paid in accordance with the applicable wage determination. Additionally, the taxpayer would be required to retain records sufficient to establish compliance with these proposed regulations for as long as may be relevant. The Treasury Department and the IRS expect that some of the recordkeeping that would be required under these proposed rules will be consistent with recordkeeping requirements already imposed under the DBA and the Fair Labor Standards Act, 29 U.S.C. 201 *et seq.*

For the Apprenticeship Requirements, the taxpayer, contractor, and subcontractor, would be required to contact a registered apprenticeship program for purposes of requesting the dispatch of qualified

apprentices to work on the construction, alteration, or repair of the facility. Whether or not the registered apprenticeship program dispatches apprentices, the taxpayer would be required to retain records to establish compliance with these proposed regulations for as long as may be relevant.

The taxpayer claiming the increased credit would be required to report the payment of prevailing wages and the utilization of apprentices consistent with the forms and instructions of the IRS. Although the Treasury Department and the IRS do not have sufficient data to determine precisely the likely extent of the increased costs of compliance, the estimated burden of complying with the recordkeeping and reporting requirements are described in the Paperwork Reduction Act section of the preamble.

D. Alternatives considered

The Treasury Department and the IRS considered alternatives to the proposed regulations. The proposed regulations were designed to minimize burdens for taxpayers while ensuring that laborers and mechanics are paid the applicable wage rates and that the IRS has sufficient information to administer the increased credits and deduction provisions. The proposed regulations would not adopt the DBA requirement of submitting weekly certified payroll records to the IRS. The Treasury Department and IRS determined that submission of weekly payroll records to the IRS by taxpayers would not assist the IRS with the efficient administration of the increased credit provisions. The Treasury Department and the IRS also considered a requirement that taxpayers submit payroll records for all laborers and mechanics at the time of filing a return that claims an increased credit. The Treasury Department and the IRS determined that per laborer and per mechanic payroll records would not provide the IRS with useful information and would also involve substantial burdens for taxpayers to report such information.

Comments are requested on the requirements in the proposed regulations, including specifically, whether there are less burdensome alternatives that ensure the IRS has sufficient information to administer the increased credit claimed under

section 45 as well as the increased credit and deduction amounts that are claimed under sections 30C, 45L, 45Q, 45U, 45V, 45Y, 45Z, 48, 48C, 48E, and 179D.

E. Duplicative, overlapping, or conflicting Federal rules

For energy facilities built under contracts with the Federal Government, or with Federal financial or other assistance provided under a Davis-Bacon Related Act, the proposed regulations may overlap with the rules under the DBA, 29 CFR parts 1, 5, and 7. In all other instances, the proposed regulations would not duplicate, overlap, or conflict with any relevant Federal rules. The Treasury Department and the IRS invite input from interested members of the public about identifying and avoiding overlapping, duplicative, or conflicting requirements.

III. Section 7805(f)

Pursuant to section 7805(f), this notice of proposed rulemaking has been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of \$100 million (updated annually for inflation). This proposed rule does not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

V. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and

local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

VI. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments) prohibits an agency from publishing any rule that has Tribal implications if the rule either imposes substantial, direct compliance costs on Indian Tribal governments, and is not required by statute, or preempts Tribal law, unless the agency meets the consultation and funding requirements of section 5 of the Executive order.

The Treasury Department and the IRS will hold a consultation with Tribal leaders related to the prevailing wage and apprenticeship requirements in these proposed regulations, which will inform the development of the final regulations.

VII. Regulatory Planning and Review

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

Comments and Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to comments regarding the notice of proposed rulemaking that are submitted timely to the IRS as prescribed in the preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. All comments will be made

available at <https://www.regulations.gov>. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn.

A public hearing has been scheduled for November 21, 2023, beginning at 10 a.m. ET, in the Auditorium at the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. Participants may alternatively attend the public hearing by telephone.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the time to be devoted to each topic by October 30, 2023. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing. If no outline of the topics to be discussed at the hearing is received by October 30, 2023, the public hearing will be cancelled. If the public hearing is cancelled, a notice of cancellation of the public hearing will be published in the **Federal Register**.

Individuals who want to testify in person at the public hearing must send an email to publichearings@irs.gov to have your name added to the building access list. The subject line of the email must contain the regulation number REG-100908-23 and the language TESTIFY in Person. For example, the subject line may say: Request to TESTIFY in Person at Hearing for REG-100908-23.

Individuals who want to testify by telephone at the public hearing must send an email to publichearings@irs.gov to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG-100908-23 and the language TESTIFY Telephonically. For example, the subject line may say: Request to

TESTIFY Telephonically at Hearing for REG-100908-23.

Individuals who want to attend the public hearing in person without testifying must also send an email to publichearings@irs.gov to have your name added to the building access list. The subject line of the email must contain the regulation number REG-100908-23 and the language ATTEND In Person. For example, the subject line may say: Request to ATTEND Hearing in Person for REG-100908-23. Requests to attend the public hearing must be received by 5:00 p.m. EST on November 17, 2023.

Hearings will be made accessible to people with disabilities. To request special assistance during a hearing please contact the Publications and Regulations Branch of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to publichearings@irs.gov (preferred) or by telephone at (202) 317-6901 (not a toll-free number) by at least November 15, 2023.

Statement of Availability of IRS Documents

Guidance cited in this preamble is published in the Internal Revenue Bulletin and is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <https://www.irs.gov>.

Drafting Information

The principal author of these proposed regulations is the Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department and the IRS participated in the development of the proposed regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and record-keeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 1 as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries for §§1.30C-3, 1.45-6 through 1.45-8, 1.45-12, 1.45L-3, 1.45Q-6, 1.45U-3, 1.45V-3, 1.45Y-3, 1.45Z-3, 1.48-13, and 1.179D-3 in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *
Section 1.30C-3 also issued under 26 U.S.C. 30.

* * * * *
Section 1.45-6 also issued under 26 U.S.C. 45.

Section 1.45-7 also issued under 26 U.S.C. 45.

Section 1.45-8 also issued under 26 U.S.C. 45.

Section 1.45-12 also issued under 26 U.S.C. 45.

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Section 1.45L-3 also issued under 26 U.S.C. 45L.

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Section 1.45Q-6 also issued under 26 U.S.C. 45Q.

Section 1.45U-3 also issued under 26 U.S.C. 45U.

Section 1.45V-3 also issued under 26 U.S.C. 45V.

Section 1.45Y-3 also issued under 26 U.S.C. 45Y.

Section 1.45Z-3 also issued under 26 U.S.C. 45Z.

* * * * *
Section 1.48-13 also issued under 26 U.S.C. 48.

* * * * *
Section 1.179D-3 also issued under 26 U.S.C. 179D.

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Par. 2. Sections 1.30C-1 through 1.30C-3 are added to read as follows:

§§1.30C-1 - 1.30C-2 [Reserved]

§1.30C-3 Rules relating to the increased credit amount for prevailing wage and apprenticeship.

(a) *In general.* If any qualified alternative fuel vehicle refueling project placed in service during the taxable year satisfies the requirements in paragraph (b) of this section, the credit determined under section 30C(a) for any qualified

alternative fuel vehicle refueling property of a character subject to an allowance for depreciation that is part of such project is multiplied by five.

(b) *Qualified project requirements.* A qualified alternative fuel vehicle refueling project satisfies the requirements of this paragraph (b) if it is one of the following—

(1) A project the construction of which began prior to January 29, 2023; or

(2) A project that meets the prevailing wage requirements of section 45(b)(7) and §1.45-7, the apprenticeship requirements of section 45(b)(8) and §1.45-8, and the recordkeeping and reporting requirements of §1.45-12.

(c) *Applicability date.* This section applies to projects placed in service in taxable years ending after [date final rule publishes in the **Federal Register**], and the construction of which begins after [date final rule publishes in the **Federal Register**].

Par. 3. Sections 1.45-0 through 1.45-12 are added to read as follows:

Sec.
* * * * *

1.45-0 Table of contents.

1.45-1 - 1.45-5 [Reserved]

1.45-6 Increased credit amount.

1.45-7 Prevailing wage requirements.

1.45-8 Apprenticeship requirements.

1.45-9 - 1.45.11 [Reserved]

1.45-12 Recordkeeping and reporting.

* * * * *

§1.45-0 Table of contents.

This section lists the table of contents for §§1.45-1 through 1.45-12.

§§1.45-1 - 1.45-5 [Reserved]

§1.45-6 *Increased credit amount.*

- (a) In general.
(b) Qualified facility requirements.
(c) Definition of nameplate capacity for purposes of determining maximum net output under section 45(b)(6)(B)(i).
(d) Applicability date.

§1.45-7 *Prevailing wage requirements.*

- (a) In general.
(b) Wage determinations.
(c) Curing a failure to satisfy the prevailing wage requirements.

- (d) Definitions.
- (e) Applicability date.

§1.45-8 Apprenticeship requirements.

- (a) In general.
- (b) Labor hours requirement.
- (c) Application of apprentice-to-journeyworker ratio.
- (d) Participation requirement.
- (e) Exceptions to the Apprenticeship Requirements.
- (f) Definitions.
- (g) Applicability date.

§§ 1.45-9 - 1.45-11 [Reserved]

§1.45-12 Recordkeeping and reporting.

- (a) In general.
- (b) Recordkeeping for prevailing wage and apprenticeship requirements.
- (c) Recordkeeping for prevailing wage requirements.
- (d) Recordkeeping for apprenticeship requirements.
- (e) Applicability date.

§§1.45-1 - 1.45-5 [Reserved]

§1.45-6 Increased credit amount.

(a) *In general.* If a qualified facility (as defined in section 45(d)) satisfies the requirements in paragraph (b) of this section, the amount of the renewable electricity production credit determined under section 45(a) (after the application of sections 45(b)(1) through (5)) is equal to the credit determined under section 45(a) multiplied by five.

(b) *Qualified facility requirements.* A qualified facility satisfies the requirements of this paragraph (b) if it is one of the following –

- (1) A facility with a maximum net output (as determined under paragraph (c) of this section) of less than one megawatt (as measured in alternating current);
- (2) A facility the construction of which began prior to January 29, 2023; or
- (3) A facility that meets the prevailing wage requirements of section 45(b)(7) and §1.45-7, the apprenticeship requirements of section 45(b)(8) and §1.45-8, and the recordkeeping and reporting requirements of §1.45-12.

(c) *Definition of nameplate capacity for purposes of determining maximum net output under section 45(b)(6)(B)(i).* For purposes of determining whether a facility has a maximum net output of less than one megawatt (as measured in alternating current) for purposes of section 45(b)(6)(B)(i), nameplate capacity is determinative. *Nameplate capacity* for an electrical generating unit means the maximum electrical generating output in megawatts (MW) that the unit is capable of producing on a steady state basis and during continuous operation under standard conditions, as measured by the manufacturer and consistent with the definition provided in 40 CFR 96.202. Where applicable, the International Standard Organization (ISO) conditions are used to measure the maximum electrical generating output or usable energy capacity.

(d) *Applicability date.* This section applies facilities placed in service in taxable years ending after [date final rule publishes in the **Federal Register**], and the construction of which begins after [date final rule publishes in the **Federal Register**].

§1.45-7 Prevailing wage requirements.

(a) *In general.* In order for the increased credit under section 45(b)(6)(B)(iii) with respect to any qualified facility to be claimed, the taxpayer must satisfy the requirements of section 45(b)(7) and this section (the “Prevailing Wage Requirements”) by ensuring that all 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 10-year period beginning on the date the facility was placed in service, 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. Prevailing rates are those rates most recently determined by the Secretary of Labor in accordance with 40 U.S.C. chapter 31, subchapter IV (Davis-Bacon Act), and as set forth in paragraphs (b)(2) and (3) of this section. For purposes of determining the increased credit under

section 45(b)(6) for a taxable year, the Prevailing Wage Requirements applicable to alteration or repair work with respect to the taxable year(s) in which the alteration or repair of the qualified facility occurs apply. See paragraph (d) of this section for definitions of terms used in this section.

(b) *Wage determinations—(1) In general.* A taxpayer satisfies the Prevailing Wage Requirements if the taxpayer ensures that laborers and mechanics employed by the taxpayer or any contractor or subcontractor in the construction, alteration, or repair of a facility are paid wages at rates not less than those set forth in the applicable wage determination issued by the Secretary of Labor pursuant to 40 U.S.C. 3142, 29 CFR part 1, and other implementing guidance for the specified type of construction in the geographic area where that facility is located. When the construction, alteration, or repair of a facility occurs in more than one geographic area, the taxpayer, contractor, or subcontractor must use the applicable wage determination for the work performed in each geographic area. Subject to the requirements of this section, the applicable wage determination is a general wage determination described in paragraph (b)(2) of this section (including any additional classifications and wage rates described in paragraph (b)(3) of this section), or a supplemental wage determination described in paragraph (b)(3) of this section.

(2) *General wage determinations.* Except as provided in paragraph (b)(3) of this section, to satisfy the Prevailing Wage Requirements described in paragraph (a) of this section, taxpayers must ensure that laborers and mechanics employed by the taxpayer or any contractor or subcontractor in the construction, alteration, or repair of a facility are paid wages at rates not less than those set forth in the applicable general wage determination(s) published by the U.S. Department of Labor on the approved website. The applicable general wage determination is the wage determination in effect for the specified type of construction in the geographic area when the construction, alteration, or repair of the facility begins.

(3) *Supplemental wage determinations and rates—(i) Use of supplemental wage determinations and rates.* In the event the Secretary of Labor has not published

a general wage determination for the relevant geographic area and type of construction for the facility, or the Secretary of Labor has issued a general wage determination for the relevant geographic area and type of construction, but one or more labor classifications for the construction, alteration, or repair work that will be done on the facility by laborers or mechanics is not listed, the taxpayer must ensure that laborers and mechanics employed by the taxpayer or any contractor or subcontractor in the construction, alteration, or repair of a facility are paid wages at rates not less than those set forth in a supplemental wage determination or in an additional classification and wage rate issued to the taxpayer by the U.S. Department of Labor upon request by the taxpayer, contractor, or subcontractor in accordance with paragraph (b)(3)(ii) of this section. A taxpayer, contractor, or subcontractor may also request a supplemental wage determination if the location of the facility involves work by covered laborers and mechanics that spans more than one contiguous geographic areas.

(ii) *Request for supplemental wage determinations and additional classifications and rates*—(A) *Manner of making request.* A taxpayer, contractor, or subcontractor requesting a supplemental wage determination or additional classification and wage rate under paragraph (b)(3)(i) of this section must submit the request to the U.S. Department of Labor at, U.S. Department of Labor, Wage and Hour Division, Branch of Construction Wage Determinations, Washington, D.C. 20210, by email at IRApr prevailing wage@dol.gov, or such other address as may be prescribed in guidance and instructions issued by the Administrator of the Wage and Hour Division of the U.S. Department of Labor (Wage and Hour Division). A taxpayer, contractor, or subcontractor should make such requests no more than 90 days before the beginning of construction, alteration, or repair, as appropriate (or as soon as practicable after the start of construction, alteration, or repair, in the instance where the taxpayer, contractor, or subcontractor cannot reasonably determine prior to the start of construction, alteration, or repair that a supplemental wage determination or an additional classification and wage rate is necessary). After review, the Wage

and Hour Division will notify the taxpayer, contractor, or subcontractor as to the supplemental wage determination or the labor classifications and wage rates to be used for the type of work in question in the geographic area in which the facility is located.

(B) *Required information.* The request for a supplemental wage determination or additional classification and wage rate must include the following information:

(1) The name of the taxpayer, contractor, or subcontractor requesting the supplemental wage determination or wage rate;

(2) The general wage determination(s), if any, applicable to construction, alteration, or repair of the facility;

(3) A description of the work to be performed, including the type(s) of construction involved and, if the project involves multiple types of construction, information indicating the expected cost breakdown by type of construction;

(4) The geographic area in which the facility is being constructed, altered, or repaired, including the name and address of the facility (if known);

(5) The start date of construction, alteration, or repair at the facility;

(6) The labor classification(s) needed for performance of the work on the facility (excluding those for which wage rates are available on an applicable general wage determination);

(7) The duties to be performed by each such labor classification on the facility;

(8) The proposed wage rate, including any bona fide fringe benefits, for each such labor classification;

(9) Any pertinent wage payment information that may be available;

(10) Any additional relevant information otherwise required by forms and instructions published by the U.S. Department of Labor; and

(11) Any additional information the taxpayer wants the U.S. Department of Labor to consider.

(iii) *Special rule for qualified facilities located offshore.* If a general wage determination is not available, in lieu of requesting a supplemental wage determination for a facility located in an offshore area within the outer continental shelf of the United States, a taxpayer, contractor, or subcontractor may rely on the general

wage determination for the relevant category of construction that is applicable in the geographic area closest to the area in which the qualified facility will be located.

(4) *Reconsideration and review.* A taxpayer may seek reconsideration and review by the Administrator of the Wage and Hour Division of a general wage determination, or a determination issued with respect to a request for a supplemental wage determination or additional classification and wage rate in accordance with the procedures set forth in 29 CFR 1.8 and 5.13 and any subsequent guidance issued by the U.S. Department of Labor. A taxpayer may appeal the decision of the Administrator of the Wage and Hour Division to the U.S. Department of Labor's Administrative Review Board in accordance with the procedures set forth in 29 CFR part 7 and any subsequent guidance issued by the U.S. Department of Labor. Questions regarding wage determinations and rates may be referred to the Administrator of the Wage and Hour Division.

(5) *Timing of wage determination.* The applicable prevailing wage rates on a general wage determination are those in effect at the time construction, alteration, or repair of the facility begins, and generally remain valid for the duration of the work performed with respect to the construction, alteration, or repair of the facility by the taxpayer, contractor, or subcontractor. Taxpayers who perform any alteration or repair of a facility after the facility is placed in service must use the applicable wage determination in effect at the time the alteration or repair work begins. A new wage determination would be required to be used when work on a facility is changed to include additional construction, alteration, or repair work not within the scope of work of the original project, or to require work to be performed for an additional time period not originally obligated, including where an option to extend the term of a contract for the construction, alteration, or repair is exercised. General wage determinations published on the U.S. Department of Labor approved website contain no expiration date and remain valid until revised, superseded, or canceled. Any supplemental wage determination or additional classification and wage rate issued under

paragraph (b)(3) of this section applies from the time the taxpayer begins the construction, alteration, or repair of the facility. If a supplemental wage determination or additional classification and wage rate is issued after construction, alteration, or repair of the facility has begun, the applicable prevailing rates apply retroactively to the date construction began.

(6) *Payment of wages.* All laborers and mechanics working on a qualified facility must be paid in the time and manner consistent with the regular payroll practices of the taxpayer, contractor, or subcontractor. The payment of wages must be made without subsequent deduction or rebate on any account (except such payroll deductions as are required by the law or permitted by regulations issued by the Secretary of Labor), and must consist of the full amount of wages (including bona fide fringe benefits or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the applicable wage determination of the Secretary of Labor. A taxpayer may discharge its wage obligations for the payment of wages by paying the full amount in cash, by making payments to a bona fide fringe benefit provider or incurring costs for bona fide fringe benefits, or by a combination thereof. The taxpayer is solely responsible for ensuring that laborers and mechanics are paid wages not less than the prevailing rate whether employed directly by the taxpayer, a contractor, or a subcontractor in the construction, alteration, or repair of the facility for purposes of claiming the increased credit under section 45(b)(6). The rules set forth in 29 CFR 5.25 through 5.33, and subsequent guidance issued by the U.S. Department of Labor apply with respect to costs for bona fide fringe benefits that may be credited for purposes of the payment of wages.

(7) *Apprentices—(i) Rate of pay.* Apprentices who perform work with respect to the construction, alteration, or repair of a facility consistent with the requirements of section 45(b)(8) and §1.45-8 and individuals in the first 90 days of probationary employment as an apprentice in a registered apprenticeship program who have been certified by the U.S. Department of Labor's Office of Apprenticeship or a State apprenticeship agency to be eligible for probationary

employment as an apprentice, may be paid at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor's Office of Apprenticeship, or with a State apprenticeship agency recognized by the U.S. Department of Labor's Office of Apprenticeship. Every apprentice must be paid at not less than the rate specified by the registered apprenticeship program for the apprentice's level of progress, expressed as a percentage of the journeyworker hourly rate specified for the apprentice's classification in the applicable wage determination. If the apprentice is working in a classification that is not part of the occupation of the registered apprenticeship program, the apprentice must be paid at the full applicable wage rate determination for laborers or mechanics working in that classification. Any individual listed on payroll at an apprenticeship wage, who is not registered with a registered apprenticeship program, must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed to satisfy the Prevailing Wage Requirements. In the event the U.S. Department of Labor's Office of Apprenticeship or a State apprenticeship agency recognized by the U.S. Department of Labor's Office of Apprenticeship withdraws approval of an apprenticeship program, the taxpayer, contractor, or subcontractor will no longer satisfy the Prevailing Wage Requirements by paying apprentices less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) *Bona fide fringe benefits.* To satisfy the Prevailing Wage Requirements, apprentices must be paid bona fide fringe benefits in accordance with the provisions of the registered apprenticeship program. If the apprenticeship program does not specify the payment of bona fide fringe benefits, apprentices must be paid the full amount of bona fide fringe benefits listed on the wage determination for the applicable classification in cash or in kind.

(iii) *Apprenticeship ratio.* The allowance for payment of wages to apprentices at rates less than the applicable prevailing wage rates determined by the U.S.

Department of Labor is subject to any applicable ratio of apprentices to journeyworkers required under the registered apprenticeship program and consistent with section 45(b)(8)(B) and §1.45-8. Any apprentice performing work on the job site in excess of the ratio permitted under the registered program or the ratio applicable to the geographic area of the facility pursuant to 29 CFR 5.5(a)(4)(i) must be paid not less than the applicable wage rate on the wage determination for the work actually performed to satisfy the Prevailing Wage Requirements.

(iv) *Reciprocity of ratios and wage rates.* If a taxpayer, contractor, or subcontractor is performing construction, alteration, or repair work on a facility in a geographic area other than the geographic area in which an apprenticeship program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the geographic area in which the construction, alteration, or repair work is being performed must be observed. If there is no applicable ratio or wage rate for the geographic area of the facility, the ratio and wage rate (expressed in percentages of the journeyworker's hourly rate) specified in the registered apprenticeship program standard must be observed.

(c) *Curing a failure to satisfy the prevailing wage requirements—(1) In general.* If a taxpayer fails to ensure that all laborers and mechanics employed by the taxpayer or any contractor or subcontractor in the construction, alteration, or repair of a qualified facility are paid wages at rates not less than those set forth in the applicable wage determination(s), such taxpayer will be deemed to have satisfied the Prevailing Wage Requirements with respect to such facility for any year if the taxpayer makes the correction and penalty payments provided in paragraphs (c)(1)(i) and (ii) of this section.

(i) *Correction payment.* The taxpayer must pay any laborer or mechanic who was paid wages at a rate below the rate described in paragraph (b) of this section for any pay period during such year an amount equal to the sum of:

(A) The difference between the amount of wages paid to such laborer or mechanic for all hours worked during such period and the amount of wages required to be

paid to such laborer or mechanic pursuant to paragraph (a) of this section for all hours worked during such period; and

(B) Interest on the amount determined under paragraph (c)(1)(i)(A) of this section at the Federal short-term rate as determined under section 6621 but substituting “6 percentage points” for “3 percentage points” in section 6621(a)(2).

(ii) *Penalty payment.* The taxpayer must pay a penalty equal to \$5,000 multiplied by the total number of laborers and mechanics who were paid wages at a rate below the rate described in paragraph (b) of this section for any period during such year.

(iii) *Correction and penalty payments not required if taxpayer ineligible for increased credit under section 45(b)(6)(B)(iii).* If the taxpayer claims the increased credit under section 45(b)(6)(B)(iii) and does not satisfy the Prevailing Wage Requirements for the claimed increased credit amount, then the obligation to make correction and penalty payments under paragraphs (c)(1)(i) and (ii) of this section applies in order for the taxpayer to retain the credit. If the IRS determines that a taxpayer claiming the increased credit under section 45(b)(6)(B)(iii) failed to meet the Prevailing Wage Requirements and the taxpayer does not make the correction and penalty payments provided in paragraphs (c)(1)(i) and (ii) of this section, then no penalty is assessed under paragraph (c)(1)(ii) of this section, and the taxpayer is not entitled to the increased credit under section 45(b)(6)(B)(iii). Taxpayers that are not entitled to claim the increased credit amount may still be entitled to the base amount of the renewable electricity production credit under section 45(a) if they meet the requirements to claim the credit.

(iv) *Correction and penalty payments in the event of a transfer pursuant to section 6418.* To the extent an eligible taxpayer, as defined in section 6418(f)(2), has determined an increased credit amount under section 45(b)(6) and transferred such increased credit amount as part of a specified credit portion, the obligation to make correction and penalty payments under paragraphs (c)(1)(i) and (ii) of this section remains with the eligible taxpayer. The obligation for an eligible taxpayer to satisfy the Prevailing Wage Requirements becomes binding upon the earlier of the

filing of the eligible taxpayer’s return for the taxable year for which the specified credit portion is determined with respect to the eligible taxpayer, or the filing of the return of the transferee taxpayer for the year in which the specified credit portion is taken into account. If the IRS determines that the eligible taxpayer failed to meet the Prevailing Wage Requirements and the eligible taxpayer does not then make the correction and penalty payments provided in paragraphs (c)(1)(i) and (ii) of this section, then no penalty is assessed under paragraph (c)(1)(ii) of this section, and the eligible taxpayer is not entitled to the increased credit amount determined under section 45(b)(6)(B)(iii). Section 6418 and the regulations in this part under section 6418 control for determining the impact of an eligible taxpayer’s failure to cure on any transferee taxpayer. The eligible taxpayer that is not entitled to claim the increased credit amount may still be entitled to the base amount of the renewable electricity production credit under section 45(a) if they meet the requirements to claim the credit.

(v) *Examples.* The provisions of this paragraph (c)(1) may be illustrated by the following examples, which do not take into account any possible application of the enhanced correction and penalty payment requirements in the case of intentional disregard under paragraph (c)(3) of this section, the exception for wages paid before a determination by the U.S. Department of Labor under paragraph (c)(5) of this section, or the penalty waiver under paragraph (c)(6) of this section. In each example, assume that the taxpayer uses the calendar year as the taxpayer’s taxable year.

(A) *Example 1.* Taxpayer A begins construction of a qualified facility on February 3, 2023. The facility is placed in service on October 10, 2023, and A claims the increased credit under section 45(b)(6) on its 2023 tax return. Laborer X was employed in the construction, alteration, or repair of the facility in calendar year 2023 for 20 weeks and was paid on a weekly basis. X was paid wages below the prevailing wage rate for all pay periods in calendar year 2023. All other laborers and mechanics were paid at the prevailing wage rate. The aggregate difference between the amount of wages X was paid and the amount required to be paid under paragraph (a) of this section is \$400 (i.e., X worked 20 weeks during the year and was underpaid by \$20 in each of those weeks). The amount of the correction payment A must make to X is equal to \$400 plus interest from the date of each underpayment at the rate as determined

under section 6621 but substituting “6 percentage points” for “3 percentage points” in section 6621(a)(2). The total number of laborers underpaid for any period in 2023 was one, so the total amount of the penalty payment that A must pay to the IRS to retain the increased credit is \$5,000.

(B) *Example 2.* Taxpayer B begins construction of a qualified facility on January 30, 2023. The facility is placed in service on February 2, 2024. Taxpayer B files a claim for the increased credit under section 45(b)(6) with its 2024 tax return. Taxpayer B paid workers on a biweekly basis. Five laborers employed in the construction of the facility were paid wages below the prevailing wage rates in 2023, with the difference between the amount they were paid and the amount of wages required to be paid under paragraph (a) of this section being \$500 per laborer. One of those laborers remained employed in the construction of the facility in 2024 and was paid wages below the prevailing wage rate, with the difference between the amount the laborer was paid and the amount of wages required to be paid under paragraph (a) of this section being \$100. All other laborers and mechanics involved in the construction, alteration, or repair of the facility were paid at the prevailing wage rates. B must make correction payments of \$500 plus interest from the date of each underpayment at the rate as determined under section 6621 but substituting “6 percentage points” for “3 percentage points” in section 6621(a)(2) to each of the five laborers that were underpaid in 2023, and a correction payment of \$100 plus interest from the date of each underpayment at the rate as determined under section 6621 but substituting “6 percentage points” for “3 percentage points” in section 6621(a)(2) to the laborer that was underpaid in 2024. The total amount of the penalty payment that B must pay to the IRS to retain the increased credit is \$30,000, which includes \$5,000 for each of the laborers underpaid in 2023 and \$5,000 for the one laborer underpaid in 2024.

(C) *Example 3.* Taxpayer B begins construction of a qualified facility on January 30, 2023. The facility is placed in service on February 2, 2024. Taxpayer B files a claim for the increased credit under section 45(b)(6) with its 2024 tax return. Taxpayer B paid workers on a biweekly basis. Laborer X was employed by the taxpayer in the construction of the facility for 22 weeks in 2023 was paid wages below the prevailing wage rates for the first 20 weeks of her employment in the amount of \$500 (i.e., X was underpaid \$50 in each of the 10 biweekly periods). For the last biweekly pay period, Taxpayer B paid X the correct prevailing rate for the work performed during the period, plus \$500 for the amounts that were underpaid in the first 10 periods. All other laborers and mechanics involved in the construction, alteration, or repair of the facility were paid at the prevailing wage rates. Taxpayer B is required to make a correction payment to X in the amount of the interest from the date of each underpayment. To retain the increased credit, B must make a penalty payment of \$5,000 to the IRS with respect to Laborer X.

(2) *Deficiency procedures not to apply.* The penalty payment required by paragraph (c)(1)(ii) of this section may be

assessed and collected without regard to the deficiency procedures provided by subchapter B of chapter 63 of the Code. Any determination by the IRS disallowing a claim for the increased credit under section 45(b)(6) will be subject to the deficiency procedures of subchapter B of chapter 63.

(3) *Intentional disregard*—(i) *Application of section 45(b)(7)(B)(iii)*. If the IRS determines that any failure to satisfy the Prevailing Wage Requirements in paragraph (a) of this section is due to intentional disregard of the requirement—

(A) The correction payment under paragraph (c)(1)(i) of this section is increased to three times the sum determined in paragraph (c)(1)(i) of this section; and

(B) The penalty payment under paragraph (c)(1)(ii) of this section is increased to \$10,000 multiplied by the total number of laborers and mechanics who were paid wages at a rate below the rate described in paragraph (b) of this section for any period during such year.

(ii) *Meaning of intentional disregard*. A failure to ensure that any laborer or mechanic employed in the construction, alteration, or repair of a qualified facility is paid wages at the prevailing wage rate is due to intentional disregard if it is knowing or willful.

(iii) *Facts and circumstances considered*. The facts and circumstances that are considered in determining whether a failure to satisfy the Prevailing Wage Requirements is due to intentional disregard include, but are not limited to—

(A) Whether the failure was part of a pattern of conduct that includes repeated or systemic failures to ensure that the laborers and mechanics were paid wages at or above the applicable prevailing wage rate;

(B) Whether the taxpayer failed to take steps to determine the applicable classifications of laborers and mechanics;

(C) Whether the taxpayer failed to take steps to determine the applicable prevailing wage rate(s) for laborers and mechanics;

(D) Whether the taxpayer promptly cured any failures to ensure that laborers and mechanics were paid wages not less than the applicable prevailing rates;

(E) Whether the taxpayer has been required to make a penalty payment under

paragraph (c)(1)(ii) of this section in previous years;

(F) Whether the taxpayer undertook a quarterly, or more frequent, review of wages paid to mechanics and laborers to ensure that wages not less than the applicable prevailing wage rate were paid;

(G) Whether the taxpayer included provisions in any contracts entered into with contractors that required the contractors and any subcontractors retained by the contractors to pay laborers and mechanics at or above the prevailing wage rates and maintain records to ensure the taxpayer's compliance with recordkeeping requirements set forth in §1.45-12;

(H) Whether the taxpayer posted in a prominent place at the facility or otherwise provided written notice to laborers and mechanics during the construction, alteration, or repair of the facility, of the applicable wage rate(s) as determined by the U.S. Department of Labor for all classifications of work to be performed for the construction, alteration, or repair of the facility, and that in order to be eligible to claim certain tax benefits, employers must ensure that laborers and mechanics are paid wages at rates not less than such wage rates; and

(I) Whether the taxpayer had in place procedures whereby laborers and mechanics could report suspected failures to pay prevailing wages and/or suspected failures to classify workers in accordance with the wage determination of workers to appropriate personnel departments or managers without retaliation or adverse action.

(iv) *Rebuttable presumption of no intentional disregard*. If a taxpayer makes the correction and penalty payments required by paragraphs (c)(1)(i) and (ii) of this section before receiving notice of an examination from the IRS with respect to a claim for the increased credit under section 45(b)(6), the taxpayer will be presumed not to have intentionally disregarded the Prevailing Wage Requirements in paragraph (a) of this section.

(4) *Limitation on the availability of cure*—(i) *180-day limit*. In the case of a final determination by the IRS with respect to any failure by the taxpayer to satisfy the Prevailing Wage Requirements in paragraph (a) of this section, the cure provision in paragraph (c)(1) of this section does not apply unless the correction

and penalty payments described in paragraphs (c)(1)(i) and (ii) of this section are made by the taxpayer on or before the date that is 180 days after the date of such determination.

(ii) *Final determination*. For purposes of paragraph (c)(4)(i) of this section, a final determination occurs on the date the IRS sends to the taxpayer a notice stating that the taxpayer has failed to satisfy the Prevailing Wage Requirements under paragraph (a) of this section.

(5) *Exception for wages paid before a wage determination by the U.S. Department of Labor*. If a taxpayer has requested a supplemental wage determination or an additional classification and wage rate from the U.S. Department of Labor in accordance with paragraph (b)(3)(ii) of this section and the U.S. Department of Labor makes a wage determination after the construction, alteration, or repair of the facility has started, the taxpayer will not be considered to have failed to meet the Prevailing Wage Requirements under paragraph (a) of this section with respect to wages paid to any mechanic or laborer whose wage rate was subject to the request and who was paid below the prevailing wage rate before the determination by the U.S. Department of Labor if the taxpayer makes a payment within 30 days of the determination to each laborer or mechanic equal to the difference between the amount of wages paid to such laborer or mechanic before the determination and the amount of wages required to be paid to such laborer or mechanic pursuant to paragraph (a) of this section during such period.

(6) *Waiver of the penalty*—(i) *Availability of waiver*. The penalty payment required by paragraph (c)(1)(ii) of this section to cure a failure to satisfy the Prevailing Wage Requirements in paragraph (a) of this section is waived with respect to a laborer or mechanic employed in the construction, alteration, or repair of a qualified facility during a calendar year if the taxpayer makes the correction payment required by paragraph (c)(1)(i) of this section by the earlier of 30 days after the taxpayer became aware of the error or the date on which the increased credit is claimed under section 45(b)(6), and:

(A) The laborer or mechanic is paid wages at rates less than the amount

required to be paid under paragraph (b) of this section for not more than 10 percent of all pay periods of the calendar year (or part thereof) during which the laborer or mechanic was employed in the construction, alteration, or repair of the qualified facility; or

(B) The difference between the amount the laborer or mechanic was paid during the calendar year (or part thereof) and the amount required to be paid under paragraph (b) of this section is not greater than 2.5 percent of the amount required to be paid under paragraph (b) of this section.

(ii) *Project labor agreements.* The penalty payment required by paragraph (c) (1)(ii) of this section to cure a failure to satisfy the Prevailing Wage Requirements in paragraph (a) of this section shall not apply with respect to a laborer or mechanic employed in the construction, alteration, or repair work of a qualified facility if the work is done pursuant to a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project (Qualifying Project Labor Agreement) and any correction payment owed to any laborer or mechanic is paid on or before the date on which the increased credit is claimed under section 45(b)(6). In order to be considered a Qualifying Project Labor Agreement, such agreement must at a minimum:

(A) Bind all contractors and subcontractors on the construction project through the inclusion of appropriate specifications in all relevant solicitation provisions and contract documents;

(B) Contain guarantees against strikes, lockouts, and similar job disruptions;

(C) Set forth effective, prompt, and mutually binding procedures for resolving labor disputes arising during the term of the project labor agreement;

(D) Contain provisions to pay prevailing wages;

(E) Contain provisions for referring and using qualified apprentices consistent with section 45(b)(8)(A) through (C) and guidance issued thereunder; and

(F) Be a collective bargaining agreement with one or more labor organizations (as defined in 29 U.S.C. 152(5)) of which building and construction employees

are members, as described in 29 U.S.C. 158(f).

(iii) *Examples.* The provisions of this paragraph (c)(6) may be illustrated by the following examples, which do not take into account any possible application of the enhanced correction and penalty payment requirements in the case of intentional disregard under paragraph (c)(3) of this section or the exception for wages paid before a determination by the U.S. Department of Labor under paragraph (c)(5) of this section. In each example, assume that the taxpayer uses the calendar year as the taxpayer's taxable year.

(A) *Example 1.* Taxpayer A begins construction of a qualified facility on February 1, 2023. The facility is placed in service on October 10, 2023, and A claims the increased credit under section 45(b) (6) on its 2023 tax return filed on April 18, 2024. Taxpayer A employs laborer W in the construction of the facility for a total of 36 weekly pay periods. Taxpayer A pays W at or above the prevailing wage rate for all pay periods except for the pay periods ending on April 8, April 22, and May 20. Under the applicable prevailing wage rate, W should have been paid a total of \$35,000 in 2023, but was instead paid only \$30,000. Taxpayer A ensures that all other laborers and mechanics employed in the construction, alteration, or repair of the facility are paid at the prevailing wage rate. Taxpayer A becomes aware of the failure on June 1, 2023, and on June 19, 2023, A pays W the correction payment required by paragraph (c)(1)(i) of this section. The penalty waiver applies to A. Although the difference between the amount W was paid in 2023 and the amount required to be paid under the applicable prevailing wage rate was \$5,000, which is 14.29% of the amount required to be paid under the applicable prevailing wage rate, W was paid below the prevailing wage rate for only three out of 36 pay periods, or 8.3%. Furthermore, A made the correction payment within 30 days of discovering the failure on June 1, 2023, and before filing the tax return claiming the increased credit on April 18, 2024.

(B) *Example 2.* Taxpayer B begins construction of a qualified facility on February 1, 2024. The facility is placed in service on October 10, 2024, and B claims the increased credit under section 45(b)(6) on its 2024 tax return filed on April 15, 2025. Taxpayer B hires contractor M to assist in the construction, and contractor M employs laborer X in the construction of the facility for a total of 36 pay periods. M pays X at or above the prevailing wage rate for all pay periods except for the pay periods ending on February 24 and March 2. Under the applicable prevailing wage rate, X should have been paid a total of \$50,000 in 2024, but was instead paid only \$49,000. All other laborers and mechanics employed in the construction, alteration, or repair of the facility are paid at the prevailing wage rate. B learns on January 1, 2025, that X was not paid at the prevailing wage rate, and on January 19, 2025, B pays X the correction payment required by paragraph (c)(1)(i) of this section. The penalty waiver applies to B. Y was paid below

the prevailing wage rate for two out of 36 pay periods, or 5.5%, and the difference between the amount X was paid in 2024 and the amount required to be paid under the applicable prevailing wage rate was \$1,000, which is only 2% of the amount required to be paid under the applicable prevailing wage rate. Although B did not learn that M was paying X below the prevailing wage rate until after the end of the year, once B learned of the underpayment, B made the correction payment within 30 days and before filing the tax return claiming the increased credit on April 15, 2025.

(C) *Example 3.* Taxpayer C begins the construction of a qualified facility on April 5, 2024. The facility is placed in service on December 1, 2024, and C claims the increased credit under section 45(b)(6) on its 2024 tax return filed on April 15, 2025. Taxpayer C employs laborer Y in the construction of the facility for a total of 35 pay periods. Due to a failure to classify workers in accordance with the wage determination, C pays Y below the prevailing wage rate for all 35 pay periods. Under the applicable prevailing wage rate, Y should have been paid \$65,000 in 2024, but was instead paid only \$63,500. All other laborers and mechanics employed in the construction, alteration, or repair of the facility were paid at the prevailing wage rate. Taxpayer C becomes aware of the failure on January 10, 2025, and on January 20, 2025, C pays Y the correction payment required by paragraph (c)(1)(i) of this section. The penalty waiver applies to C. Although Y was paid below the prevailing wage rate 100% of the pay periods Y worked in 2024, the difference between the amount Y was paid in 2024 and the amount required to be paid under the applicable prevailing wage rate was \$1,500, which is only 2.3% of the amount required to be paid under the applicable prevailing wage rate. Additionally, once C learned of the underpayment, C made the correction payment within 30 days and before filing the tax return claiming the increased credit on April 15, 2025.

(D) *Example 4.* Taxpayer D begins construction of a qualified facility on August 29, 2024. The facility is placed in service on June 30, 2025, and D claims the increased credit under section 45(b)(6) on its 2025 tax return. Taxpayer D employs laborer Z in the construction of the facility for a total of 25 weekly pay periods in 2025. Taxpayer D pays Z at or above the prevailing wage rate for all pay periods except for the pay periods ending on March 15, May 10, and June 14. Under the applicable prevailing wage rate, Z should have been paid \$25,000 in 2025, but was instead paid only \$20,000. Taxpayer D ensures that all other laborers and mechanics employed in the construction, alteration, or repair of the facility are paid at the prevailing wage rate. Taxpayer D has in place a pre-hire collective bargaining agreement, but the agreement does not contain a provision for referring and using qualified apprentices. Taxpayer D becomes aware of the failure to pay Z at the prevailing wage rate on June 30, 2025, and on July 4, 2025, D pays Z the correction payment required by paragraph (c)(1)(i) of this section. The penalty waiver does not apply to D. The difference between the amount Z was paid in 2025 and the amount required to be paid under the applicable prevailing wage rate was \$5,000, which is 20% of the amount required to be paid under the applicable prevailing

wage rate. Z was paid below the prevailing wage rate for three out of 25 pay periods, or 12%. D does not have in place a qualifying project labor agreement because the pre-hire collective bargaining agreement does not contain a provision for referring and using qualified apprentices as required by paragraph (c) (6)(ii)(E) of this section. Although the correction payment was made within 30 days of discovering the failure on June 30, 2025, and before filing the tax return claiming the increased credit on April 15, 2026, Taxpayer D failed to satisfy the requirements of paragraphs (c)(6)(i)(A) and (B) or paragraph (c) (6)(ii) of this section.

(d) *Definitions.* Solely for purposes of this section, the following definitions apply:

(1) *Bona fide fringe benefits.* The term *bona fide fringe benefits* means fringe benefits described in 29 CFR part 5. Bona fide fringe benefits include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing; unemployment benefits; life insurance, disability insurance, sickness insurance, or accident insurance; vacation or holiday pay; defraying costs of apprenticeship or other similar programs; or other bona fide fringe benefits (each as described in 29 CFR part 5 and other U.S. Department of Labor guidance). Consistent with 29 CFR 5.29, bona fide fringe benefits do not include benefits required by other Federal, State, or local law.

(2) *Construction, alteration, or repair—(i) In general.* The term *construction, alteration, or repair* generally means construction, prosecution, completion, or repair as defined in 29 CFR 5.2. Construction, alteration, or repair does not include work that is ordinary and regular in nature that is designed to maintain and preserve existing functionalities of a facility after it is placed in service. Work designed to maintain and preserve functionality of a facility after it is placed in service includes basic maintenance such as regular inspections of the facility, regular cleaning and janitorial work, replacing materials with limited lifespans such as filters and light bulbs, and the calibration of any equipment. However, such work that occurs before the facility is placed in service may constitute construction for which prevailing wages must be paid in order to claim the increased credit. Maintenance does not include work that improves a facility, adapts it for a different

use, or restores functionality as a result of inoperability. This definition has no bearing on any other sections of the Code, including any determination of construction, alteration, repair, or maintenance under section 162 or 263.

(ii) *Example.* Taxpayer T employs a contractor X to construct a 500 megawatt solar farm that is a qualified facility under section 45. X employs numerous laborers and mechanics during construction and ensures that wages are paid to the laborers and mechanics at not less than the prevailing rate for the geographic area of the solar farm, as set forth in the applicable wage determination. After the solar farm is placed in service, an inverter malfunctions and requires a replacement part. T employs laborers and mechanics to replace the malfunctioning part to restore the inverter's functionality. The replacement work is not considered ordinary maintenance, and T must ensure those laborers and mechanics engaged in the replacement work are paid wages not less than the prevailing rate for the geographic area of the solar farm to satisfy the Prevailing Wage Requirements.

(3) *Contractor.* The term *contractor* means any person that enters into a contract with the taxpayer for the construction, alteration, or repair of a qualified facility.

(4) *Employed.* The term *employed* means performing the duties of a laborer or mechanic for the taxpayer, contractor, or subcontractor (as applicable), regardless of whether the individual would be characterized as an employee or an independent contractor for other Federal tax purposes.

(5) *General wage determination.* The term *general wage determination* means a wage determination issued by the U.S. Department of Labor and published on the approved website. A general wage determination provides the minimum hourly wage rates (both the basic hourly rate of pay and bona fide fringe benefit rates) that the U.S. Department of Labor has determined are prevailing for laborers and mechanics in specified types of construction in a given geographic area.

(6) *Geographic area and locality.* The terms *geographic area* and *locality* mean the county, independent city, or other civil subdivision of the State in

which the facility is located. The terms geographic area and locality also include areas located offshore of the United States and within the outer continental shelf of the United States and the U.S. territories. If construction, alteration, or repair work is performed in multiple counties, independent cities, or other civil subdivisions, the geographic area may include all counties, independent cities, or other civil subdivisions in which the work will be performed. The locality in which a facility is located is the primary construction site of the facility, defined as the physical place or places where the facility will be placed in service and remain. The locality of the facility also includes secondary construction site(s), where a significant portion of the facility is constructed, altered, or repaired provided that such construction is for specific use at that facility and does not simply reflect the manufacture or construction of a product made available to the general public, and provided further that the site is either established specifically for, or dedicated exclusively for a specific period of time to, the construction, alteration, or repair of the facility. A significant portion means one or more entire portion(s) or module(s) of the facility, such as a completed room or structure, with minimal construction work remaining other than the installation and/or final assembly of the portions or modules at the place where the facility will be placed in service and remain. A significant portion does not include materials or prefabricated component parts. A specific period of time means a period of weeks, months, or more, and does not include circumstances where a site at which multiple facilities are in progress is shifted exclusively so to a single facility for a few hours or days in order to meet a deadline. The locality of the facility also includes any adjacent or virtually adjacent dedicated support sites, including job headquarters, tool yards, batch plants, borrow pits, and similar facilities of a taxpayer, contractor, or subcontractor that are established specifically for or dedicated exclusively to the construction, alteration, or repair of the facility, and adjacent or virtually adjacent to either a primary construction site or a secondary construction site.

(7) *Laborer and mechanic.* The terms *laborer* and *mechanic* mean those

individuals whose duties are manual or physical in nature (including those individuals who use tools or who are performing the work of a trade). The terms laborer and mechanic include apprentices and helpers. The terms do not apply to individuals whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in 29 CFR part 541 are not deemed to be laborers or mechanics. Working forepersons who devote more than 20 percent of their time during a workweek to laborer or mechanic duties, and who do not meet the criteria for exemption of 29 CFR part 541, are considered laborers and mechanics for the time spent conducting laborer and mechanic duties.

(8) *Subcontractor*. The term *subcontractor* means any contractor that agrees to perform or be responsible for the performance of any part of a contract entered into with the taxpayer (or the taxpayer's contractor) with respect to the construction, alteration, or repair of a facility.

(9) *Taxpayer*. The term *taxpayer* means any taxpayer as defined in section 7701(a)(14), including applicable entities described in section 6417(d)(1)(A). In the case of a credit transferred under section 6418, the term *taxpayer* means the eligible taxpayer that determines the eligible credit to be transferred and makes a transfer election under section 6418 to transfer any specified credit portion (including 100 percent) of an eligible credit determined with respect to any eligible credit property of such eligible taxpayer for any taxable year.

(10) *Type of construction*. The *type of construction* is the general category of construction as established by the U.S. Department of Labor for the publication of general wage determinations. Specific types of construction may include, but are not limited to, building, residential, heavy, and highway.

(11) *Wages*. The term *wages* generally means wages as defined in 29 CFR 5.2. In general, wages means the basic hourly rate of pay; any contribution irrevocably made by a taxpayer, contractor, or subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan, or program; and the

rate of costs to the taxpayer, contractor, or subcontractor that may be reasonably anticipated in providing bona fide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program, provided the commitment was communicated in writing to the laborers and mechanics affected. Whether amounts are wages for prevailing wage purposes is not relevant in determining whether amounts are wages or compensation for other Federal tax purposes.

(e) *Applicability date*. This section applies to facilities placed in service in taxable years ending after [date final rule publishes in the **Federal Register**], and the construction of which begins after [date final rule publishes in the **Federal Register**].

§1.45-8 Apprenticeship requirements.

(a) *In general*. Except as provided in paragraph (e) of this section, a taxpayer claiming or transferring (under section 6418) the increased credit amount under section 45(b)(6)(B)(iii) with respect to any qualified facility must satisfy the requirements of section 45(b)(8) and this section (the "Apprenticeship Requirements"). The taxpayer is solely responsible for ensuring that the Apprenticeship Requirements are satisfied. See paragraph (f) of this section for definitions of terms used in this section.

(b) *Labor hours requirement*—(1) *Percentage of total hours*. A taxpayer claiming or transferring (under section 6418) the increased credit amount under section 45(b)(6) must ensure that qualified apprentices (hired by the taxpayer, contractor, or subcontractor) perform not less than the applicable percentage of the total labor hours of the construction, alteration, or repair work (including work performed by any contractor or subcontractor) of any qualified facility, subject to the apprentice-to-journeyworker ratio described in paragraph (c) of this section.

(2) *Applicable percentage*. For purposes of paragraph (b)(1) of this section, the applicable percentage is—

(i) 10 percent in the case of a qualified facility, the construction of which begins before January 1, 2023;

(ii) 12.5 percent in the case of a qualified facility, the construction of which begins after December 31, 2022, and before January 1, 2024; and

(iii) 15 percent in the case of a qualified facility, the construction of which begins after December 31, 2023.

(c) *Application of apprentice-to-journeyworker ratio*—(1) *In general*. The labor hours requirement under paragraph (b) of this section is subject to any applicable requirements for apprentice-to-journeyworker ratios of the U.S. Department of Labor or the applicable State apprenticeship agency.

(2) *Ratio*. The allowable ratio of apprentices-to-journeyworkers on the job site in any occupation and its corresponding classification on any day must comply with the applicable apprentice-to-journeyworker ratio of the registered apprenticeship program in accordance with 29 CFR part 29.

(3) *Failure to meet ratio requirements*. For purposes of section 45(b)(8)(B), if on any day the ratio of apprentices to journeyworkers exceeds the ratio established in accordance with paragraph (c)(2) of this section, and subject to the requirements of the registered apprenticeship program, the labor hours performed by any qualified apprentice in excess of the ratio may not be counted as hours performed by apprentices for purposes of the labor hours requirement of paragraph (b) of this section.

(d) *Participation requirement*. 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 work with respect to the construction, alteration, or repair of the facility.

(e) *Exceptions to the Apprenticeship Requirements*. If a taxpayer fails to satisfy the Apprenticeship Requirements in paragraph (a) of this section with respect to the construction of any qualified facility or with respect to the alteration or repair of a facility, the taxpayer will nonetheless be deemed to have satisfied the Apprenticeship Requirements if the taxpayer has made a good faith effort to meet the Apprenticeship Requirements as described in paragraph (e)(1) of

this section (the “Good Faith Effort Exception”) or made the penalty payment provided in paragraph (e)(2) of this section for any failures to which the Good Faith Effort Exception does not apply.

(1) *Good Faith Effort Exception*—(i) *In general.* A taxpayer is deemed to have satisfied the Apprenticeship Requirements of this section with respect to a request for qualified apprentices if the taxpayer meets the following requirements:

(A) *Request for apprentices.* The taxpayer, contractor, or subcontractor must submit a written request for qualified apprentices to at least one registered apprenticeship program, as defined in paragraph (f)(4) of this section, which has a geographic area of operation that includes the location of the facility, or to a registered apprenticeship program that can reasonably be expected to provide apprentices to the location of the facility; trains apprentices in the occupation(s) needed to perform construction, alteration, or repair with respect to the facility; and has a usual and customary business practice of entering into agreements with employers for the placement of apprentices in the occupation for which they are training, pursuant to its standards and requirements. Such request must be in writing and sent electronically or by registered mail.

(1) *Content of request.* The request of the taxpayer, contractor, or subcontractor must include the proposed dates of employment, occupation of apprentices needed, location of the work to be performed, number of apprentices needed, the expected number of labor hours to be performed by the apprentices, and the name and contact information of the taxpayer, contractor, or subcontractor requesting employment of apprentices from the registered apprenticeship program. The request must also state that the request for apprentices is made with an intent to employ apprentices in the occupation for which they are being trained and in accordance with the requirements and standards of the registered apprenticeship program.

(2) *Duration of request.* If the taxpayer, contractor, or subcontractor submits a request in accordance with paragraph (e)(1)(i)(A) of this section and the request is denied or not responded to, the taxpayer will be deemed to have exercised a Good Faith Effort with respect to the request for

a period of 120 days from the date of the request. The taxpayer will not be deemed to have exercised a Good Faith Effort beyond 120 days of a previously denied request unless the taxpayer submits an additional request.

(B) *Denial of request.* If a taxpayer, contractor, or subcontractor submits a request in accordance with paragraph (e)(1)(i)(A) of this section and the request is denied, the taxpayer will be deemed to satisfy the requirements of section 45(b)(8)(A) through (C), 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. The denial of a request is only valid for purposes of establishing a Good Faith Effort with respect to the portion(s) of the request that were denied.

(C) *Failure to respond.* If the registered apprenticeship program fails to respond to a request submitted in accordance with paragraph (e)(1)(i)(A) of this section within five business days after the date on which such registered apprenticeship program received the taxpayer’s (or its contractor or subcontractor) request, then such request is deemed to be denied. Acknowledgement, whether in writing or otherwise, by the registered apprenticeship program of receipt of such request submitted in accordance with paragraph (e)(1)(i)(A) of this section is a sufficient response for purposes of this paragraph (e)(1)(i)(C).

(ii) *Examples.* The provisions of paragraph (e)(1) of this section may be illustrated by the following examples.

(A) *Example 1.* Taxpayer A submits a request to a registered apprenticeship program by email. The registered apprenticeship program responds three days later, but reply emails from the registered apprenticeship program are auto forwarded to taxpayer A’s spam or junk mail folder. Taxpayer A claims that the registered apprenticeship program failed to respond within five business days and claims the good faith effort exception. Taxpayer A would not qualify for the Good Faith Effort Exception of this section because the registered apprenticeship program did respond within five business days.

(B) *Example 2.* Contractor C makes a request for qualified apprentices from a registered apprenticeship program outside the geographic area of the qualified facility and the registered apprenticeship program cannot reasonably be expected to provide

apprentices to the location of the facility. As a result, Contractor C’s request is denied. Contractor C’s request would not qualify for the Good Faith Effort Exception of this section because the registered apprenticeship program could not reasonably be expected to provide apprentices to the location of the facility.

(C) *Example 3.* Contractor D submits a request to a registered apprenticeship program. The registered apprenticeship program requires contractors to enter into an agreement to partner with that registered apprenticeship program. Contractor D refuses to enter into the agreement and as a result, the registered apprenticeship program denies the Contractor D’s request. Contractor D’s request would not qualify for the Good Faith Effort Exception of this section because Contractor D refused to comply with the established standards of the registered apprenticeship program.

(D) *Example 4.* Contractor E enters into an agreement with a registered apprenticeship program with standards of apprenticeship for a specific occupation. Contractor E then requests apprentices from that registered apprenticeship program for a different occupation in which they do not have standards of apprenticeship or an agreement. Contractor E’s request would not qualify for the Good Faith Effort Exception of this section.

(E) *Example 5.* Taxpayer F, a tax equity investor in the partnership that owns the facility, makes a request to a registered apprenticeship program. Taxpayer F’s request is denied because it was not made with an intent to employ apprentices in the occupation for which they are being trained and in accordance with the requirements and standards of the registered apprenticeship program. Rather, the contractor (or subcontractor) that will employ and train the apprentices in the construction, alteration, or repair of the facility is the proper party to request apprentices from the registered apprenticeship program. Taxpayer F’s request would not qualify for the Good Faith Effort Exception of this section.

(F) *Example 6.* Contractor G submits a request for apprentices from a registered apprenticeship program. Contractor’s request states that it seeks to employ four apprentices for a period of 180 days for a total of 4,160 hours (1,040 hours x four apprentices). The registered apprenticeship program informs Contractor G that it can supply two apprentices for the 26 weeks and denies the request for the other two apprentices. Contractor G does not submit any additional requests for apprentices from a registered apprenticeship program after 120 days. Contractor G’s request would qualify for the Good Faith Effort Exception of 693 hours for each of the two requested apprentices that were denied for the 120-day period after the request was submitted (120/180 x 1,040 hours = 693 hours for each denied apprentice). The request would not qualify for the Good Faith Effort Exception of this section after 120 days because Contractor G did not submit an additional request with respect to the portion of the request that was denied.

(2) *Penalty payment*—(i) *In general.* The taxpayer must pay the Internal Revenue Service (IRS) a penalty equal to \$50 multiplied by the total labor hours

for which the requirements described in paragraph (b) or (d) of this section were not satisfied with respect to the construction, alteration, or repair work on such qualified facility to retain the increased credit.

(A) *Total labor hours for which the percentage requirement is not met.* For failures to meet the percentage of total labor hours requirement in paragraph (b) (1) of this section, the total labor hours for which the requirement was not satisfied is calculated as the difference between the total labor hours that would be required to meet the applicable percentage under paragraph (b)(2) of this section and the total labor hours actually worked by all qualified apprentices consistent with the applicable ratio of apprentices to journeyworkers.

(B) *Total labor hours for which the participation requirement is not met.* For failures to meet the participation requirement in paragraph (d) of this section, the total labor hours for which the requirement was not satisfied is calculated as the total labor hours of construction, alteration, or repair worked by all individuals employed by the taxpayer, contractor, or subcontractor who failed to meet the participation requirement of the qualified facility divided by the number of individuals employed by the taxpayer, contractor, or subcontractor who performed construction, alteration, or repair work on the facility.

(C) *Penalty payment not required if taxpayer ineligible for increased credit under section 45(b)(6)(B)(iii).* If the taxpayer claims the increased credit under section 45(b)(6)(B)(iii) and does not satisfy the Apprenticeship Requirements for the claimed increased credit amount, then the obligation to make the penalty payment under paragraph (e)(2)(i) of this section applies. If the IRS determines that a taxpayer claiming the increased credit under section 45(b)(6)(B)(iii) failed to meet the Apprenticeship Requirements and the taxpayer does not make the penalty payment required under this paragraph (e)(2)(i), then no penalty is assessed under this paragraph (e)(2)(i), and the taxpayer is not entitled to the increased credit under section 45(b)(6)(B)(iii). Taxpayers that are not entitled to claim the increased credit amount may still be entitled to the base amount of the renewable electricity

production credit under section 45(a) if they meet the requirements to claim the credit.

(D) *Examples.* The provisions of this paragraph (e)(2)(i) may be illustrated by the following examples, which do not take into account any possible application of the exception for Good Faith Effort Exception under paragraph (e)(1) of this section, the enhanced penalty payment requirement in the case of intentional disregard under paragraph (e)(2)(ii) of this section, or the inapplicability of the penalty in the case of a qualifying project labor agreement under paragraph (e)(2)(v) of this section. In each example, assume that the taxpayer uses the calendar year as the taxpayer's taxable year.

(1) *Example 1.* Taxpayer A begins construction of a qualified facility on April 1, 2023. The facility is placed in service on April 1, 2025, and A claims the increased credit on its 2025 tax return. All individuals who performed the construction, alteration, or repair work were employed directly by taxpayer A, including one qualified apprentice. At the time A claims the increased credit, a total of 50,000 labor hours were spent on the construction, alteration, or repair work of the facility, 6,000 of which were performed by qualified apprentices. Taxpayer A has satisfied the participation requirement because A has employed at least one apprentice. Taxpayer A failed to satisfy the percentage requirement under paragraph (b)(2) of this section because less than 12.5% of the total labor hours were performed by qualified apprentices. Qualified apprentices must have performed at least 6,250 labor hours, so the total labor hours by which the percentage requirement was not satisfied is 250. To cure A's failure to meet the percentage requirement, A must pay a penalty of \$12,500.

(2) *Example 2.* Taxpayer B begins construction of a qualified facility on February 10, 2023. The facility is placed in service on February 10, 2026, and B claims the increased credit on its 2026 tax return. B employs 10 individuals to perform construction, alteration, or repair work of the facility, two of whom are qualified apprentices. Taxpayer B also hires contractor M, who employs five individuals to perform construction, alteration, or repair work of the facility, none of whom are qualified apprentices. At the time B claims the increased credit, a total of 50,000 labor hours were spent on the construction, alteration, or repair work of the facility, 6,500 of which were performed by qualified apprentices. Of the total 50,000 labor hours, 33,000 labor hours were performed by individuals employed by B and 17,000 labor hours were performed by individuals employed by M. B has satisfied the percentage requirement under paragraph (b)(2) of this section because more than 12.5% of the total labor hours were performed by qualified apprentices. B failed to satisfy the participation requirement under paragraph (d) of this section because contractor M employed five individuals but no qualified apprentices. The total labor hours for which the participation requirement was not

satisfied is 3,400, which is equal to the total labor hours performed by individuals employed by M (17,000) divided by the number of individuals employed by M (five). To cure B's failure to meet the Apprenticeship Requirements, B must pay a penalty of \$170,000.

(3) *Example 3.* Taxpayer C begins construction of a qualified facility on January 1, 2024. The facility is placed in service on January 1, 2025, and C claims the increased credit on its 2025 tax return. C employs 15 individuals to perform construction, alteration, or repair work of the facility, none of whom is a qualified apprentice. Taxpayer C also hires contractor N, who employs five individuals to perform construction, alteration, or repair work of the facility, one of whom is a qualified apprentice. At the time C claims the increased credit, a total of 20,000 labor hours were spent on the construction, alteration, or repair work of the facility, 1,000 of which were performed by qualified apprentices. Of the 50,000 total labor hours, 15,000 labor hours were performed by individuals employed by C and 5,000 labor hours were performed by individuals employed by N. C failed to satisfy the percentage requirement under paragraph (b)(2) of this section because less than 15% of the total labor hours were performed by qualified apprentices. Qualified apprentices must have performed at least 3,000 labor hours, so the total labor hours by which the percentage requirement was not satisfied is 2,000. C also failed to satisfy the participation requirement under paragraph (d) of this section because C employed 15 individuals but zero qualified apprentices. The total labor hours for which the participation requirement was not satisfied is 1,000, which is equal to the total labor hours performed by individuals employed by C – 15,000 – divided by the number of individuals employed by C – 15. The total labor hours by which C failed to meet the percentage and participation requirements is 3,000. To cure C's failure to meet the Apprenticeship Requirements, C must pay a penalty of \$150,000.

(4) *Example 4.* Taxpayer D begins construction of a qualified facility on April 1, 2023. The facility is placed in service on January 1, 2024, and D files a claim for the increased credit with its 2024 tax return. D does not employ any individuals to perform construction, alteration, or repair work of the facility, but hires contractors O, P, and Q. Contractor O employs 10 journeyworkers who work 10,000 hours and one qualified apprentice who works 400 hours. Contractor P employs four journeyworkers who work 4,000 hours and five qualified apprentices who work 2,000 hours. Contractor Q employs three journeyworkers who work 3,000 hours and one qualified apprentice who works 400 hours. The registered apprenticeship program for all of the apprentices has prescribed a 1:1 apprentice to journeyworker ratio. For each day, all journeyworkers and apprentices employed by the contractors are on the job site. The contractors have satisfied the participation requirement because they each employed one or more qualified apprentices. The total labor hours are 19,800 hours, and the total hours worked by qualified apprentices are 2,800. However, Contractor P employed one apprentice in excess of the apprentice-to-journeyworker ratio (five qualified apprentices: four journeyworkers) that was prescribed by the apprenticeship program. Because Contractor

P employed one apprentice in excess of the apprentice-to-journeyworker ratio, 400 of the apprentice hours worked by Contractor P do not count towards the labor hour requirement. Thus, Taxpayer D has failed to meet the percentage requirement because only 2,400 hours worked by apprentices are counted for purposes of the percentage requirement. The total labor hours by which D failed to meet the percentage requirement is 75 (19,800 total hours x 12.5% - 2,400 apprentice hours). To cure D's failure to meet the Apprenticeship Requirements, D must pay a penalty of \$3,750.

(ii) *Intentional disregard*—(A) *Application of section 45(b)(8)(D)(iii)*. If the IRS determines that any failure to satisfy the Apprenticeship Requirements in paragraph (b) or (d) of this section is due to intentional disregard of those requirements, the amount of the penalty payment under paragraph (e)(2) of this section is increased to \$500 multiplied by the total labor hours for which the requirements described in paragraph (b) or (d) of this section were not satisfied with respect to the construction, alteration, or repair work on such qualified facility.

(B) *Meaning of intentional disregard*. A failure to satisfy the Apprenticeship Requirements of paragraph (b) or (d) of this section is due to intentional disregard if it is knowing or willful.

(C) *Facts and circumstances considered*. The facts and circumstances that are considered in determining whether a failure to satisfy the Apprenticeship Requirements is due to intentional disregard include, but are not limited to—

(1) Whether the failure was part of a pattern of conduct that includes repeated and systemic failures to comply with the Apprenticeship Requirements;

(2) Whether the taxpayer failed to take steps to determine the applicable percentage of labor hours required to be performed by qualified apprentices;

(3) Whether the taxpayer sought to promptly cure any failures;

(4) Whether the taxpayer has been required to make a penalty payment under paragraph (e)(2) of this section in previous years;

(5) Whether the taxpayer included provisions in any contracts entered into with contractors that required the employment of apprentices by the contractor and any subcontractors consistent with the labor hour requirement of section 45(b)(8)(A) and the participation requirement of section 45(b)(8)(C); and

(6) Whether the taxpayer made no attempt to comply with the Apprenticeship Requirements.

(D) *Rebuttable presumption of no intentional disregard*. If a taxpayer makes the penalty payment required by paragraph (e)(2) of this section before receiving notice of an examination from the IRS with respect to a claim for the increased credit under section 45(b)(6), the taxpayer will be presumed not to have intentionally disregarded the Apprenticeship Requirements in paragraphs (b) and (d) of this section.

(iii) *Deficiency procedures to apply*. The penalty payment required by paragraph (e)(2) of this section is subject to deficiency procedures of subchapter B of chapter 63 of the Code.

(iv) *Penalty payments in the event of a transfer pursuant to section 6418*.

To the extent an eligible taxpayer, as defined in section 6418(f)(2), has determined an increased credit amount under section 45(b)(6) and transferred such increased credit amount as part of a specified credit portion, the obligation to make a penalty payment under paragraph (e)(2)(i) of this section remains with the eligible taxpayer. The obligation for an eligible taxpayer to satisfy the Apprenticeship Requirements becomes binding upon the earlier of the filing of the eligible taxpayer's return for the taxable year for which the specified credit portion is determined with respect to the eligible taxpayer, or the filing of the return of the transferee taxpayer for the year in which the specified credit portion is taken into account. If the IRS determines that the eligible taxpayer failed to meet the Apprenticeship Requirements and the eligible taxpayer does not then make the penalty payments provided in paragraph (e)(2)(i) of this section, then no penalty is assessed under paragraph (e)(2)(i) of this section, and the eligible taxpayer is not entitled to the increased credit amount determined under section 45(b)(6)(B)(iii). Section 6418 and the regulations in this part under section 6418 control for determining the impact of an eligible taxpayer's failure to cure on any transferee taxpayer.

(v) *Project labor agreements*. The penalty payment required by paragraph (e)(2)(i) of this section to cure a failure to satisfy

the Apprenticeship Requirements in paragraphs (b) and (d) of this section shall not apply with respect to the construction, alteration, or repair work of a qualified facility if the work is done pursuant to a Qualifying Project Labor Agreement as defined in § 1.45-7(c)(6)(ii).

(f) *Definitions*. Solely for purposes of this section, the following definitions apply:

(1) *Journeyworker*. The term *journeyworker* means an individual who has attained a level of skill, abilities, and competencies recognized within an industry as having mastered the skills and competencies required for the occupation. Use of the term may also refer to a mentor, technician, specialist or other skilled individual who has documented sufficient skills and knowledge of an occupation, either through formal apprenticeship or through practical on-the-job experience and formal training.

(2) *Labor hours*. The term *labor hours* means the total number of hours devoted to the performance of construction, alteration, or repair work by any individual employed by the taxpayer or by any contractor or subcontractor. Labor hours do not include hours worked by foremen, superintendents, owners, or persons employed in bona fide executive, administrative, or professional capacities (as defined in 29 CFR part 541).

(3) *Qualified apprentice*. The term *qualified apprentice* means an individual who is employed by the taxpayer or by any contractor or subcontractor who is participating in a registered apprenticeship program. Participating in a registered apprentice program means the apprentice has entered into a written agreement with a registered apprenticeship program containing the terms and conditions of the employment and training of the apprentice and has been registered as an apprentice with the U.S. Department of Labor's Office of Apprenticeship or a State apprenticeship agency during the time period in which work is performed by the apprentice for the taxpayer, contractor, or subcontractor.

(4) *Registered apprenticeship program*. A *registered apprenticeship program* means a program that has been registered by the U.S. Department of Labor's Office of Apprenticeship or a recognized

State apprenticeship agency, pursuant to the National Apprenticeship Act and its implementing regulations for registered apprenticeship at 29 CFR parts 29 and 30, as meeting the basic standards and requirements of the Department of Labor for approval of such program for Federal purposes. Registration of a program is evidenced by a Certificate of Registration or other written indicia.

(5) *State apprenticeship agency*. The term *State apprenticeship agency* means an agency of a State government that has responsibility and accountability for apprenticeship within the State and that has been recognized and authorized by the U.S. Department of Labor's Office of Apprenticeship to register and oversee apprenticeship programs and agreements for Federal purposes.

(6) *Taxpayer*. The term *taxpayer* has the same meaning as in §1.45-7(d)(9).

(g) *Applicability date*. This section applies to facilities placed in service in taxable years ending after [date final rule publishes in the **Federal Register**], and the construction of which begins after [date final rule publishes in the **Federal Register**].

§§1.45-9 - 1.45.11 [Reserved]

§1.45-12 Recordkeeping and reporting.

(a) *In general*. The increased credit must be claimed in such form and manner as may be prescribed in Internal Revenue Service forms or instructions or in publications or guidance published in the Internal Revenue Bulletin. **See §601.601 of this chapter.** Consistent with sections 45 and 6001, a taxpayer claiming or transferring (under section 6418) an increased credit under section 45(b)(6)(A) must retain records sufficient to establish compliance with the applicable requirements in section 45(b)(6)(B), as applicable. In the case of any increased credit transferred under section 6418, the requirement to maintain and preserve sufficient records demonstrating compliance with the applicable prevailing wage and apprenticeship requirements remains with the eligible taxpayer that determined and transferred the credit. For definitions of terms used in this section, *see* §1.45-7(d) with respect to the prevailing wage requirements, and

§1.45-8(f) with respect to the apprenticeship requirements.

(b) *Recordkeeping for prevailing wage and apprenticeship requirements*. With respect to each qualified facility for which a taxpayer is claiming or transferring (under section 6418) an increased credit under section 45(b)(6)(A), unless section 45(b)(6)(B)(i) or 45(b)(6)(B)(ii) applies, the taxpayer must maintain and preserve records sufficient to demonstrate compliance with the applicable prevailing wage and apprenticeship requirements in §§1.45-7 and 1.45-8, respectively. At a minimum, those records include payroll records for each laborer and mechanic (including each qualified apprentice) employed by the taxpayer, contractor, or subcontractor in the construction, alteration, or repair of the qualified facility.

(c) *Recordkeeping for prevailing wage requirements*. In addition to payroll records otherwise maintained by the taxpayer, records sufficient to demonstrate compliance with the applicable prevailing wage requirements in §1.45-7 may include the following information for each laborer and mechanic (including each qualified apprentice) employed by the taxpayer, a contractor, or subcontractor with respect to each qualified facility:

(1) Identifying information, including the name, social security or tax identification number, address, telephone number, and email address;

(2) The location and type of qualified facility;

(3) The labor classification(s) the taxpayer applied to the laborer or mechanic for determining the prevailing wage rate and documentation supporting the applicable classification, including the applicable wage determination;

(4) The hourly rate(s) of wages paid (including rates of contributions or costs for bona fide fringe benefits or cash equivalents thereof) for each applicable labor classification;

(5) Records to support any contribution irrevocably made on behalf of a laborer or mechanic to a trustee or other third person pursuant to a bona fide fringe benefit program, and the rate of costs that were reasonably anticipated in providing bona fide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a plan or program described in

40 U.S.C. 3141(2)(B), including records demonstrating that the enforceable commitment was provided in writing to the laborers and mechanics affected;

(6) The total number of labor hours worked per pay period;

(7) The total wages paid for each pay period (including identifying any deductions from wages);

(8) Records to support wages paid to any apprentices at less than the applicable prevailing wage rates, including records reflecting the registration of the apprentices with a registered apprenticeship program and the applicable wage rates and apprentice-to-journeyworker ratios prescribed by the apprenticeship program; and

(9) The amount and timing of any correction payments and documentation reflecting the calculation of the correction payments.

(d) *Recordkeeping for apprenticeship requirements*. Records sufficient to demonstrate compliance with the applicable apprenticeship requirements in §1.45-8 may include the following information for each apprentice employed by the taxpayer, contractor, or subcontractor with respect to each qualified facility:

(1) Any written requests for the employment of apprentices from registered apprenticeship programs, including any contacts with the U.S. Department of Labor's Office of Apprenticeship or a State apprenticeship agency regarding requests for apprentices from registered apprenticeship programs;

(2) Any agreements entered into with registered apprenticeship programs with respect to the construction, alteration, or repair of the facility;

(3) Documents reflecting the standards and requirements of any registered apprenticeship program, including the applicable ratio requirement prescribed by each registered apprenticeship program from which taxpayers, contractors, or subcontractors employ apprentices;

(4) The total number of labor hours worked by apprentices; and

(5) Records reflecting the daily ratio of apprentices to journeyworkers.

(e) *Applicability date*. This section applies to facilities placed in service in taxable years ending after [date final rule publishes in the **Federal Register**], and

the construction of which begins after [date final rule publishes in the **Federal Register**].

Par. 4. Sections 1.45L-1 through 1.45L-3 are added to read as follows:

§§1.45L-1 - 1.45L-2 [Reserved]

§1.45L-3 Rules relating to the increased credit amount for prevailing wage.

(a) *In general.* With respect to a qualified new energy efficient home described in section 45L(a)(2)(B), the credit determined under section 45L(a)(2)(B)(i) is \$2,500 and the credit determined under section 45L(a)(2)(B)(ii) is \$5,000 if the qualified new energy efficient home described in section 45L(a)(2)(B)—

(1) Meets the requirements under section 45L(c)(1)(A) or 45L(c)(1)(B), as applicable;

(2) Is constructed by an eligible contractor;

(3) Is acquired by a person for use as a residence during the taxable year; and

(4) Satisfies the prevailing wage requirements of section 45(b)(7) and §1.45-7, and the recordkeeping and reporting requirements of §1.45-12.

(b) *Definitions*—(1) *Qualified new energy efficient home.* For purposes of this section, a *qualified new energy efficient home* means a qualified new energy efficient home described in section 45L(b)(2).

(2) *Eligible contractor.* For purposes of this section, an *eligible contractor* means an eligible contractor described in section 45L(b)(1).

(c) *Applicability date.* This section applies to qualified new energy efficient homes acquired for use in taxable years ending after [date final rule publishes in the **Federal Register**], and the construction of which begins after [date final rule publishes in the **Federal Register**].

Par. 5. Section 1.45Q-6 is added to read as follows:

§1.45Q-6 Rules relating to the increased credit amount for prevailing wage and apprenticeship.

(a) *In general.* If the requirements in paragraph (b) of this section are satisfied with respect to any qualified facility or any carbon capture equipment placed

in service at that facility, then the credit determined under section 45Q(a) is multiplied by five.

(b) *Qualified facility and carbon capture equipment requirements.* The requirements of this paragraph (b) are satisfied if any of the following requirements are met —

(1) With respect to a qualified facility the construction of which begins on or after January 29, 2023, and any carbon capture equipment placed in service at such facility, the taxpayer meets the prevailing wage requirements of section 45(b)(7) and §1.45-7 with respect to such facility and equipment, the apprenticeship requirements of section 45(b)(8) and §1.45-8 with respect to the construction of such facility and equipment, and the recordkeeping and reporting requirements of §1.45-12;

(2) With respect to any carbon capture equipment the construction of which begins on or after January 29, 2023, and which is installed at a qualified facility the construction of which began prior to such date, the taxpayer meets the prevailing wage requirements of section 45(b)(7) and §1.45-7 with respect to such equipment, the apprenticeship requirements of section 45(b)(8) and §1.45-8 with respect to the construction of such equipment, and the recordkeeping and reporting requirements of §1.45-12; or

(3) The construction of carbon capture equipment begins prior to January 29, 2023, and such equipment is installed at a qualified facility the construction of which begins prior to January 29, 2023.

(c) *Applicability date.* This section applies to facilities or equipment placed in service in taxable years ending after [date final rule publishes in the **Federal Register**], and the construction of which begins after [date final rule publishes in the **Federal Register**].

Par. 6. Sections 1.45U-1 through 1.45U-3 are added to read as follows:

§§1.45U-1 - 1.45U-2 [Reserved]

§1.45U-3 Rules relating to the increased credit amount for prevailing wage.

(a) *In general.* If a qualified nuclear power facility satisfies the prevailing

wage requirements of section 45(b)(7) and §1.45-7 in the alteration or repair of such facility, and the recordkeeping and reporting requirements of §1.45-12, then the amount of the zero-emission nuclear power production credit for the taxable year is equal to the credit amount determined under section 45U(a) multiplied by five.

(b) *Applicability date.* This section applies to qualified nuclear power facilities that produce and sell electricity during the taxable year and the alteration or repair of which occurs after [date final rule publishes in the **Federal Register**].

Par. 7. Sections 1.45V-1 through 1.45V-3 are added to read as follows:

§§1.45V-1 - 1.45V-2 [Reserved]

§1.45V-3 Rules relating to the increased credit amount for prevailing wage and apprenticeship.

(a) *In general.* If any qualified clean hydrogen production facility satisfies the requirements in paragraph (b) of this section, then the amount of the credit for producing qualified clean hydrogen determined under section 45V(a) with respect to qualified clean hydrogen described in section 45V(b)(2) is equal to the credit amount determined under section 45V(a) multiplied by five.

(b) *Qualified clean hydrogen production facility requirements.* A qualified clean hydrogen production facility satisfies the requirements of this paragraph (b) if it is one of the following —

(1) A facility the construction of which began prior to January 29, 2023, and that meets the prevailing wage requirements of section 45(b)(7) and §1.45-7 with respect to an alteration or repair of the facility that occurs after January 29, 2023 (to the extent applicable), and that meets the recordkeeping and reporting requirements of §1.45-12; or

(2) A facility that meets the prevailing wage requirements of section 45(b)(7) and §1.45-7, the apprenticeship requirements of section 45(b)(8) and §1.45-8, and the recordkeeping and reporting requirements of §1.45-12.

(c) *Applicability date.* This section applies to facilities placed in service in

taxable years ending after [date final rule publishes in the **Federal Register**], and the construction of which begins after [date final rule publishes in the **Federal Register**].

Par. 8. Sections 1.45Y-1 through 1.45Y-3 are added to read as follows:

§§1.45Y-1 - 1.45Y-2 [Reserved]

§1.45Y-3 Rules relating to the increased credit amount for prevailing wage and apprenticeship.

(a) *In general.* If any qualified clean electricity production facility satisfies the requirements in paragraph (b) of this section, the amount of the credit for producing clean electricity determined under section 45Y(a)(2) equals 1.5 cents.

(b) *Qualified clean electricity production facility requirements.* A qualified facility satisfies the requirements of this paragraph (b) if it is one of the following —

(1) A facility with a maximum net output of less than one megawatt (as measured in alternating current);

(2) A facility the construction of which began prior to January 29, 2023; or

(3) A facility that meets the prevailing wage requirements of section 45(b)(7) and §1.45-7, the apprenticeship requirements of section 45(b)(8) and §1.45-8, and the recordkeeping and reporting requirements of §1.45-12.

(c) *Applicability date.* This section applies to facilities placed in service in taxable years ending after [date final rule publishes in the **Federal Register**], and the construction of which begins after [date final rule publishes in the **Federal Register**].

Par. 9. Sections 1.45Z-1 through 1.45Z-3 are added to read as follows:

§§1.45Z-1 - 1.45Z-2 [Reserved]

§1.45Z-3 Rules relating to the increased credit amount for prevailing wage and apprenticeship.

(a) *In general.* If any qualified facility for clean fuel production satisfies the requirements in paragraph (b) of this

section, the clean fuel production credit determined under section 45Z(a) is multiplied by five.

(b) *Qualified facility for clean fuel production.* A qualified facility for clean fuel production satisfies the requirements of this paragraph (b) if it is one of the following —

(1) A qualified facility that begins construction on or after January 29, 2023, and is placed in service after December 31, 2024, that meets the prevailing wage requirements of section 45(b)(7) and §1.45-7, the apprenticeship requirements of section 45(b)(8) and §1.45-8, and the recordkeeping and reporting requirements of §1.45-12; or

(2) A qualified facility that is placed in service before January 1, 2025, that meets the prevailing wage requirements of section 45(b)(7) and §1.45-7, the apprenticeship requirements of section 45(b)(8) and §1.45-8, and the recordkeeping and reporting requirements of §1.45-12, with respect to any alteration or repair of the facility with respect to any taxable year beginning after December 31, 2024, for which the credit is allowed under section 45Z.

(c) *Applicability date.* This section applies to facilities placed in service in taxable years ending after [date final rule publishes in the **Federal Register**], and the construction of which begins after [date final rule publishes in the **Federal Register**].

Par. 10. Section 1.48-13 is added to read as follows:

§1.48-13 Rules relating to the increased credit for prevailing wage and apprenticeship.

(a) *In general.* If a qualified energy project satisfies the requirements in paragraph (b) of this section, the amount of the energy credit determined under section 48(a), after the application of sections 48(a)(1) through (8), and 48(a)(15), is equal to the credit determined under section 48(a) (section 48 credit) multiplied by five.

(b) *Qualified energy project requirements.* A qualified energy project satisfies the requirements of this paragraph (b) if it is one of the following —

(1) A project with a maximum net output of less than one megawatt (as measured in alternating current) or thermal energy;

(2) A project the construction of which began prior to January 29, 2023; or

(3) A project that meets the prevailing wage requirements of section 48(a)(10)(A) and §1.45-7(b)-(d), the apprenticeship requirements of section 45(b)(8) and §1.45-8, and the recordkeeping and reporting requirements of §1.45-12.

(c) *Special rule applicable to general prevailing wage requirements—(1) In general.* In addition to satisfying the prevailing wage requirements under §1.45-7(b) through (d), a taxpayer must ensure that any laborers and mechanics employed (within the meaning of §1.45-7) by the taxpayer or any contractor or subcontractor in the construction of such energy project, and for the five-year period beginning on the date such project is 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 40 U.S.C. chapter 31, subchapter IV. Subject to recapture under paragraph (c)(3) of this section, for purposes of determining the increased credit amount under section 48(a)(9)(B)(iii), the taxpayer is deemed to satisfy the prevailing wage requirements at the time such project is placed in service.

(2) *Exception.* For purposes of satisfying the wage requirements of paragraph (b)(3) of this section, §1.45-7(a) does not apply.

(3) *Recapture.* The increased section 48 credit amount is subject to recapture for any project that does not satisfy the prevailing wage requirements in §1.45-7 with respect to an alteration or repair of such project for the five-year period beginning on the date such project is originally placed in service (but which does not cease to be investment credit property within the meaning of section 50(a) of the Code).

(d) *Applicability date.* This section applies to projects placed in service in taxable years ending after [date final rule publishes in the **Federal Register**], and

the construction of which begins after [date final rule publishes in the **Federal Register**].

Par. 11. Sections 1.48C-1 through 1.48C-3 are added to read as follows:

§§1.48C-1 - 1.48C-2 [Reserved]

§1.48C-3 Rules relating to the increased credit amount for prevailing wage and apprenticeship.

(a) *In general.* If any qualifying advanced energy project satisfies the prevailing wage requirements of section 45(b)(7) and §1.457, the apprenticeship requirements of section 45(b)(8) and §1.45-8, and the recordkeeping and reporting requirements of §1.45-12, the qualifying advanced energy project credit determined under section 48C(a) for any taxable year with respect to credits allocated pursuant to section 48C(e) is an amount equal to 30 percent of the qualified investment for the taxable year.

(b) *Applicability date.* This section applies to qualifying advanced energy projects placed in service in taxable years ending after [date final rule publishes in the **Federal Register**], and the construction of which begins after [date final rule publishes in the **Federal Register**].

Par. 12. Sections 1.48E-1 through 1.48E-3 are added to read as follows:

§§1.48E-1 - 1.48E-2 [Reserved]

§1.48E-3 Rules relating to the increased credit for prevailing wage and apprenticeship.

(a) *In general.* If any clean electricity investment with respect to a qualified

facility or energy storage technology satisfies the requirements in paragraph (b) of this section, the applicable percentage of the qualified clean electricity investment credit determined under section 48E(a) for the taxable year equals 30 percent.

(b) *Qualified clean electricity investment requirements.* A qualified clean electricity investment satisfies the requirements of this paragraph (b) if it is one of the following —

(1) A facility with a maximum net output of less than one megawatt (as measured in alternating current);

(2) A facility the construction of which began prior to January 29, 2023;

(3) A facility that meets the prevailing wage requirements of §1.48-13(c), the apprenticeship requirements of section 45(b)(8) and §1.45-8, and the recordkeeping and reporting requirements of §1.45-12;

(4) Energy storage technology with a capacity of less than one megawatt;

(5) Energy storage technology the construction of which began prior to January 29, 2023; or

(6) Energy storage technology that satisfies the prevailing wage requirements of §1.48-13(c), the apprenticeship requirements of section 45(b)(8) and §1.45-8, and the recordkeeping and reporting requirements of §1.45-12.

(c) *Applicability date.* This section applies to facilities and energy storage technologies placed in service in taxable years ending after [date final rule publishes in the **Federal Register**], and the construction of which begins after [date final rule publishes in the **Federal Register**].

Par. 13. Sections 1.179D-1 through 1.179D-3 are added to read as follows:

§§1.179D-1 - 1.179D-2 [Reserved]

§1.179D-3 Rules relating to the increased deduction for prevailing wage and apprenticeship.

(a) *In general.* If any energy efficient commercial building property, energy efficient building retrofit property, or property installed pursuant to a qualified retrofit plan satisfies the requirements in paragraph (b) of this section, the applicable dollar value for determining the maximum amount of the deduction under section 179D(b)(2) is multiplied by five.

(b) *Certain energy efficient commercial building property requirements.* Energy efficient commercial building property, energy efficient building retrofit property, or property installed pursuant to a qualified retrofit plan satisfies the requirements of this paragraph (b) if it is one of the following —

(1) Property the installation of which began prior to January 29, 2023; or

(2) Property that meets the prevailing wage requirements of section 45(b)(7) and §1.45-7, the apprenticeship requirements of section 45(b)(8) and §1.45-8, and the recordkeeping and reporting requirements of §1.45-12.

(c) *Applicability date.* This section applies to property placed in service in taxable years ending after [date final rule publishes in the **Federal Register**], and the installation of which begins after [date final rule publishes in the **Federal Register**].

Douglas W. O'Donnell,
Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register August 29, 2023, 8:45 a.m., and published in the issue of the Federal Register for August 30, 2023, 88 FR 60018)

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the

new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the

new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.

ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
FR.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.

PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2023–27 through 2023–52 is in Internal Revenue Bulletin 2023–52, dated December 27, 2023.

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¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2023–27 through 2023–52 is in Internal Revenue Bulletin 2023–52, dated December 27, 2023.

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The Introduction at the beginning of this issue describes the purpose and content of this publication. The weekly Internal Revenue Bulletins are available at www.irs.gov/irb/.

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