

Submitting Comments related to Notice 2022-51 Section 2 .01 Prevailing Wage Requirement.

We have provided comments related to the following items:

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

Comment: Propose that penalty does not apply if engage for cost certification? Section (iv) allows for payment within 180 days after Secretary makes determination. If taxpayer realizes deficiency, is there a time limit in which they have to correct?

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

Comment: Do we want to propose a cost certification/document by an accounting firm? How long do records have to be kept?

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

Comment: How will the prevailing wage requirements be applied for designers utilizing Section 179D? Will they be evaluated based on only the employees/contractors within their organization or directly contracted since architects and engineers (for example) do not have any influence on the wages of the laborers at the job site employed/contracted by others?

.02 Apprenticeship Requirement

(1) Section 45(b)(8)(C) provides that ...

Comment: Determine based on hours worked by journeymen and apprentices? In other words based on FTEs?

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

Comment: If program doesn't reply within 5 days, need a way to document correspondence and failure of response. Do you have to make request via certified mail or something?

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

Comment: How will the apprenticeship requirements be applied for designers utilizing Section 179D? Will they be evaluated based on only the employees/contractors within their organization or directly contracted since architects and engineers (for example) do not have any influence on the wages of the laborers at the job site employed/contracted by others?

.03 Domestic Content Requirement

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

Comment: Completion date and PIS date could be different depending on when the connection is made and energy flows vs. construction completed.

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

Comment: Seems reasonable.

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

Comment: Need certification as in 49 CFR 661.6.

(3)(a) Does the determination of “overall costs” and ...

Comment: Need clarification of “overall costs” meaning? Is it hard costs, all costs, etc.?

(3)(c) Do the “sufficient and reasonably available quantities” and...

Comment: Not sure what those terms mean. Who determines what is reasonably available or satisfactory quality?

.04 Energy Community Requirement

(1) Section 45(b)(11)(A) provides an increased credit amount for ...

Comment: Should be similar to OZ rules for straddling the lines.

(3) Which source or sources of information ...

Comment: Census tract data could be used for MSA determination. Should not be a Micropolitan Statistical Area.

(5) For each of the three categories of energy communities...

Comment: Need a date by which it is should be measured. Is it measured at construction commencement, at a specific time like 2022 or does it change as census data changes? Argue for certainty – especially for PTC.

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

Section 45(b)(6)(A) provides ...

Comment: With respect to an energy property that was installing electrochromic glass, which, by design, is not intended to generate electricity, be considered a qualified facility for the purposes of being eligible to receive the increased credit?