November 4, 2022

Holly Porter
Associate Chief Counsel (Passthroughs & Special Industries)
U.S. Internal Revenue Service
1111 Constitution Avenue NW
Washington, DC 20224

Re: Notice 2022-51, Request for Comments on Prevailing Wage, Apprenticeship, Domestic Content, and Energy Communities Requirements Under the Act Commonly Known as the Inflation Reduction Act of 2022

Dear Ms. Porter:

As the leading trade association representing the manufacturers of electrical and medical imaging equipment, the National Electrical Manufacturers Association (NEMA) provides the attached comments in response to the October 11, 2022 notice inviting public input on prevailing wage, apprenticeship, domestic content, and energy communities requirements under the act commonly known as the Inflation Reduction Act of 2022.

NEMA represents more than 325 electrical equipment and medical-imaging manufacturers that make safe, reliable, and efficient products and systems. Member companies support more than 370,000 American manufacturing jobs in 6,100 locations across all 50 states. NEMA companies play a key role in transportation systems, building systems, lighting, utilities, and medical-imaging technologies and will thereby serve a critical role in the implementation of the Infrastructure Investment and Jobs Act (IIJA). These industries produce $130 billion in shipments and $38 billion in exports of electrical equipment and medical imaging technologies per year.

NEMA's comments on the domestic content requirement are attached. Effective, understood, and attainable domestic content requirements are critical to ensuring the Inflation Reduction Act supports U.S. workers and companies.

If you have any questions on these comments, please contact Madeleine Bugel of NEMA at Madeleine.Bugel@nema.org.

Sincerely,

Spencer Pederson
Vice President, Public Affairs

Section 3.03 Request for Comments; Domestic Content Requirement

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

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

The precedent set in 49 C.F.R. § 661 is well established and understood by manufacturers and consumers. Specifically, 49 C.F.R. § 661.5(d) is acceptable criteria for a product to be considered a United States manufactured product contained and should be used to determine if the requirements of §§ 45(b)(9)(B) and 45Y(g)(11)(B) are met. This regulation clarifies that a component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents. Sections 45(b)(9)(b) and 45Y(g)(11)(B) require a manufactured product which is a component of a qualified facility must be produced in the United States for a taxpayer to qualify for the bonus credit amount. These sections do not, however, explain when a component is considered of U.S. origin. Use of 49 C.F.R. § 661.5(d) will therefore clarify a component is considered of U.S. origin if it is manufactured in the United States, thus supporting U.S. jobs and economic activity.

Additionally, it should be clarified in any rules or guidance that adding software or firmware can constitute a manufacturing process. The process of adding software or firmware substantially transforms a product and adds significant value.

(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?

Bills of material, legal review, and affiliated documents can be maintained by taxpayers to substantiate the certification that manufactured products or components are manufactured in the United States.

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

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

Yes, see comment 3.03(1)(a).

(b) Does the determination of "total costs" with regard to all manufactured products of a qualified facility that are attributable to manufactured products (including components) that are mined, produced, or manufactured in the United States need

further clarification? If so, what should be clarified? Is guidance needed to clarify the term “mined, produced, or manufactured”?

The Federal Acquisition Regulation (FAR) can be used for guidance on how to define total costs. Relying upon FAR 52.225-9(a), for manufactured products purchased by a taxpayer, the total cost of the product should be the acquisition cost, including transportation cost and any applicable duty. For products manufactured by the taxpayer, total costs should be all costs associated with the manufacturing, including labor, transportation, allocable overhead, and material.

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

To be consistent with the Office of Management and Budget’s Guidance Memo M-22-11 issued April 18, 2022, it should be clarified that a manufactured product does not have to meet the iron and steel requirements. The OMB guidance provides that there are different and distinct requirements tests for the three different classifications of materials: (1) iron or steel; (2) manufactured products; and (3) construction materials. Each article, material, or supply is to be classified into just one of the three categories and must meet the requirements of only that singular category.

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

See comment to 3.03(1)(a). To be consistent with 49 C.F.R. § 661.5, a taxpayer should not consider where subcomponents are manufactured to determine whether a component is a domestic manufactured product.

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

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

There are many existing waivers for products and programs under both the Federal Acquisition Regulation (FAR) and the Build America Buy America Act. Each of these waivers should be reviewed and if the justification for the existing waivers satisfies the requirements in §§ 45(b)(10)(D) and 45Y(g)(12)(D) an exception should be granted under §§ 45(b)(9)(B) and

45Y(g)(10)(B). This will ensure continuity between the different domestic content requirement schemes and save taxpayers resources when evaluating the requirements of the Inflation Reduction Act.

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

The long-established rules of federal procurement policy and national trade policy under the Trade Agreements Act of 1979 (TAA) benefit U.S. manufacturers as they provide substantial opportunities to sell into foreign markets. As the domestic content requirements are developed, they should be mindful that the adoption of overly restrictive definitions will unnecessarily hinder U.S. trade relationships.