November 4, 2022

SUBMITTED ELECTRONICALLY

Internal Revenue Service
CC:PA:LPD:PR (Notice 2022-51)
Room 5203
P.O. Box 5203, Ben Franklin Station
Washington, D.C. 20044

The Honorable Lily L. Batchelder
Assistant Secretary for Tax Policy
Department of Treasury
1500 Pennsylvania Ave., NW
Washington, D.C. 20220

Mr. William M. Paul
Principal Deputy Chief Counsel and Deputy Chief Counsel
Internal Revenue Service
1111 Constitution Ave., NW
Washington, D.C. 20224

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

Dear Ms. Batchelder and Mr. Paul:

Thank you for providing the Solar Energy Manufacturers for America Coalition (SEMA)[1] the opportunity to provide comments pursuant to Notice 2022-51 regarding the prevailing wage, apprenticeship, domestic content, and energy content communities requirements for increased or bonus credit (or deduction) amounts under the respective provisions of the Code.

## I. Background

[1] https://semacoalition.org/about

Our members are a diverse group of solar manufacturers throughout the entire solar supply chain that either have a significant manufacturing presence in the United States, or intend to start or shift significant portions of their manufacturing operations to the U.S. following passage of the IRA. They are focused on establishing a strong, secure, and resilient solar manufacturing supply chain to meet our current and future deployment needs in the U.S. and globally while creating good-paying manufacturing jobs.

As the U.S. Department of Treasury (Treasury) and the Internal Revenue Service (IRS) work to develop and issue future IRA guidance, we hope the law's implementation will result in a policy environment that will spur a U.S. solar manufacturing renaissance. Given that solar is poised to be the world's leading source of energy by 2040, we must ensure that the IRA's implementation will result in reducing U.S. reliance on overseas supply chains to meet our future clean energy needs. With an approach that appropriately considers the important role that current and future solar manufacturers will play in building out the U.S. solar energy sector, we believe that we can have a secure, sustainable, and resilient U.S.-based solar manufacturing supply chain in the very near future.

With this perspective in mind, we have prioritized questions and issues under this section that will have the greatest impact on SEMA members and the future of the U.S. solar manufacturing industry.

## II. Request for Comments

### .03 Domestic Content Requirement

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

> **(a) Does the term "component of a qualified facility" need further clarification? If so, what should be clarified and is any clarification needed for specific types of property, such as qualified interconnection property?**
> **(b) Does the determination of "total costs" with regard to all manufactured products of a qualified facility that are attributable to manufactured products (including**

**components) that are mined, produced, or manufactured in the United States need further clarification? If so, what should be clarified? Is guidance needed to clarify the term "mined, produced, or manufactured"?**

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

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

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

When creating a domestic content bonus, Congress made it clear it did not want to subsidize solar components made with a majority of components manufactured overseas. That would be counterintuitive and not aligned with the intention of the domestic content provision, as well as § 45X, which is designed to incentivize and onshore a resilient solar supply chain that would secure U.S. energy independence for decades to come. Consequently, it is critical for the Treasury and the IRS to develop and issue guidance with respect to "manufactured product," "end product," "component of a qualified facility," "total costs," and "mined, produced, or manufactured" that comports with congressional intent on reducing reliance on components manufactured overseas.

The IRA directs the Treasury and the IRS to use *all* relevant provisions of 49 § CFR 661 to determine domestic origin. Under this provision, the process to determine whether an item is domestic is: to identify the end product; determine whether the end product is steel or iron or a manufactured end product; identify end product components; and apply the appropriate legal test to end product components.

We believe the solar facility should be considered the end product. Pursuant to § 661.3, an end product "directly incorporates constituent components at the final assembly location" and is "ready to provide its intended end function or use without any further manufacturing or assembly change(s)." Given that a solar facility, when completed, is ready to provide its intended function without further manufacturing, it should be considered the end product. Comparable examples within the FTA regulations include transportation terminals, depots, garages, and security systems.

Pursuant to § 661.3, a component is such that "is directly incorporated into the end product at the final assembly location." Because modules are directly incorporated into the solar facility at a job site, solar modules should be considered components of a solar facility.

Under 49 CFR § 661.5, all of the manufacturing process for the end product, in this case the solar facility, must take place in the U.S. and all of the components, in this case solar modules, must be of U.S. origin.

For a solar module to be of U.S. origin, all manufacturing processes of the solar module and the solar cell must occur in the U.S. Per § 661.11, a component is considered to be manufactured if subcomponents have been substantially transformed or merged into a new and functionally different article. Furthermore, § 661.3 defines manufacturing as a new product that is functionally different from that which would result from mere assembly of materials.

The essential function of a solar module – to convert sunlight into electricity – results from solar cells. It is well-established that substantial transformation occurs when a solar cell is made from a silicon wafer – and not when a solar module is made from solar cells. Solar cells are considered to be "highly manufactured" – making it less likely that subsequent processing adds significant value. We want to incentivize the domestic manufacturing of the solar supply chain; thus, if silicon wafers are substantially transformed into photovoltaic cells abroad, a module containing those cells should not qualify for a domestic content bonus.

Only requiring solar module assembly for meeting the domestic content test could severely undermine the ability of solar manufacturers to reshore the supply chain and create good-paying jobs throughout the country. Module assembly adds less value and does not bring the functionality brought into the component by a solar cell. By contrast, the process of manufacturing a cell from a wafer is complex and highly valuable. We must create an incentive that will help secure this critical supply chain for our nation's clean energy future.

We cannot afford to allow foreign-made solar components to undercut domestically manufactured solar products. If photovoltaic cells are substantially transformed overseas, a module should fail any domestic content test. When creating a domestic content bonus, Congress never intended to subsidize a solar panel made with a majority of foreign components. That would be counterintuitive and not aligned with the intention of the domestic content provisions, as well as § 45X. They created a domestic content bonus to incentivize the establishment of a circular solar supply chain that would secure U.S. energy independence for decades to come.

Lastly, the Treasury and the IRS' approach to issuing guidance for this provision, should ultimately incentivize domestic manufacturing upstream of module assembly that will expedite the development of a secure, sustainable, and resilient U.S.-based solar manufacturing supply chain consistent with congressional intent. To do so, the value of polysilicon, ingots, and wafers should be considered as a bonus when calculating the required percentage for domestically manufactured products. In addition, the cost basis must exclude steel, iron, labor, and other construction material costs in order to maximize the value – and incentivize the production – of a 100% Made-in-America solar module.

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

> **(a) Does the determination of "overall costs" and increases in the overall costs with regard to construction of a qualified facility need further clarification? If so, what should be clarified? (b) What factors should the Secretary include in guidance to clarify when an exception to the requirements under section §§ 45(b)(10)(D) and 45Y(g)(12)(D) applies? What existing regulatory or guidance frameworks, such as the Federal Acquisition Regulation (FAR) and Build America Buy America (BABA) guidance, may be useful for developing guidance to grant exceptions under §§ 45(b)(10)(D) and 45Y(g)(12)(D)?**
> **(c) Do the "sufficient and reasonably available quantities" and "satisfactory quality" standards need further clarification? If so, what should be clarified?**

To provide some balance and ensure the availability of solar modules of U.S. origin based on the above analysis and support solar deployment, the Treasury and the IRS could follow precedent due to a current lack of supply of solar modules with U.S.-manufactured solar cells and other components. FTA regulations include a waiver process for non-availability in the event there is no domestic source or simply a sole source. The Treasury and the IRS should issue a waiver for the need for U.S. cells, while keeping domestic content requirements to include domestically assembled modules, until there is sufficient cell capacity. In this scenario, sufficient domestic cell manufacturing capacity means both vertically-integrated and non-vertically integrated

module manufacturers would be able to procure domestically manufactured cells for a substantial number of modules they assemble in the U.S. and then sell in the U.S. market. We believe that this can happen within three-five years.

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

See comments in response to question 2.