

## Comment from Tesla, Inc.

Tesla, Inc. (“Tesla”) appreciates the opportunity to respond to the Internal Revenue Service’s (“IRS”) request for comments regarding the Inflation Reduction Act of 2022 (“IRA”) pursuant to Notice 2022-51 focused on prevailing wage, apprenticeship, domestic content, and energy communities requirements. Please see attached submission.

November 4, 2022

## Response to [Notice 2022-51](#)

Tesla, Inc. (“Tesla”) appreciates the opportunity to respond to the Internal Revenue Service’s (“IRS”) request for comments regarding the Inflation Reduction Act of 2022 (“IRA”) pursuant to Notice 2022-51 focused on prevailing wage, apprenticeship, domestic content, and energy communities requirements.

### I. Background

Tesla’s mission is to accelerate the world’s transition to sustainable energy. To accomplish its mission, Tesla designs, develops, manufactures, and sells high-performance fully electric vehicles and energy generation and storage systems, installs, and maintains such systems, and sells solar electricity.

Tesla currently produces and sells four fully electric, zero emission vehicles (ZEVs): the Model 3 mid-sized sedan, the Model Y compact sport utility vehicle (SUV), the Model S full-size sedan and the Model X mid-size SUV. As the Environmental Protection Agency (EPA) recognized in its [2021 Automotive Trends Report](#), Tesla had the lowest carbon dioxide emissions (0 g/mi) and highest fuel economy (119 miles per gallon equivalent) of all large vehicle manufacturers in Model Year (MY) 2020. Tesla also received its MY2023 [EPA certification](#) of conformity for the Semi Class 8 High Roof Day Cab with [deliveries scheduled](#) to begin in December 2022.

Tesla is also deeply committed to ensuring the U.S. remains a leader in [advanced manufacturing](#). All Tesla vehicles sold in North America are manufactured in the U.S. In 2022, the Tesla Model Y ranked as [the most American-made car](#), based on overall contributions to the U.S. economy, and the Model 3 ranked just below as the second most American-made car on the market. The National Highway Traffic Safety Administration (NHTSA) similarly [confirms](#) that 100% of the vehicle, engine, and transmission assembly in each Tesla vehicle sold domestically occurs in the U.S. In addition, Tesla’s [U.S. supply chain continues to expand](#) and spans across more than 40 states, including Alabama, Georgia, Ohio, Indiana, and Michigan.

In the U.S., Tesla conducts vehicle manufacturing and assembly operations at its factories in Fremont, CA and Austin, TX and produces electric drivetrains and manufactures advanced battery packs, as well as Tesla’s energy storage products, at its Gigafactory Nevada in Sparks, NV. Tesla also builds and services highly automated, high-volume manufacturing machinery at its facility in Brooklyn Park, MN, and operates a tool and die facility in Grand Rapids, MI. Additionally, Tesla produces solar energy and vehicle DC-fast charging products at its Gigafactory New York in Buffalo, NY.

Tesla supports the [Administration’s goal](#) of the U.S. reaching net-zero greenhouse gas emissions by at least 2050. If implemented successfully, the climate technology-related tax provisions of the IRA will help facilitate consumer adoption and the rapid deployment of electric vehicles, solar and storage at [levels necessary](#) for decarbonization in service of this goal.

Below, find Tesla’s responses, as appropriate, to the Department’s Request for Comments.

## **II. Questions Raised by the Treasury Department and the IRS**

### **.01 Prevailing Wage Requirement.**

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

When determining documentation and substantiation methods, Tesla encourages Treasury exercises caution in requiring a certified payroll regime. For ease of use and access, instead, the Treasury Department should allow self-certification upon submission of filing. This approach enables maximum participation by taxpayers and prevents overly burdensome reporting.

Further, certified payroll regimes in which payroll reports are submitted to the agency every week would be misaligned with a tax credit that will be claimed many months or more than a year later. Under such a misaligned structure, contractors would report compliance with prevailing wage for projects for which a taxpayer may ultimately decide not to request a tax credit.

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

Tesla has routinely complied with prevailing wage requirements and is committed to maintaining a strong compliance record. To this end, Tesla encourages Treasury to provide clarity as to whether the applicable prevailing wage requirements will result from a new IRS process or as an extension of existing Department of Labor enforcement and oversight of Davis-Bacon wage requirements. As the Department of Labor has an active rulemaking on updating the Davis-Bacon and Related Acts, Tesla requests Treasury clarification regarding changes to Davis-Bacon regulations may impact compliance.

Further, Tesla encourages the Treasury Department provide clear delineation of what is considered covered work and non-covered work under each credit. Clarity here is critical, particularly for projects under Section 48C that may include installation, alteration, repair, and ongoing maintenance requirements. For example, project maintenance can include activities, such as over-the-air firmware updates, that do not occur at the physical project location.

### **.02 Apprenticeship Requirement.**

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

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

Tesla encourages Treasury to utilize or build upon existing regimes for facilitating reporting requirements. For example, the California method for reporting using forms [DAS 140 and DAS 142](#) is an existing reporting method that has been successfully used to source apprentices and track compliance with apprenticeship requirements or good faith compliance efforts.

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

We encourage the Treasury Department to only require taxpayers to provide compliance documentation upon request.

### **.03 Domestic Content Requirement.**

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

**(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?**

Records kept in the ordinary course of business--such as contractual documents or certifications provided by suppliers regarding the origin/source of the components--should be sufficient for determining compliance.

**(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.**

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

Tesla requests further Treasury clarification regarding whether each manufactured product included in a project must meet the adjusted percentage threshold or whether the weighted average of the project must meet the adjusted percentage threshold. In other words, if one manufactured product does not meet the applicable threshold, but another manufactured product used in the project exceeds the threshold such that the weighted average of the entire project exceeds 40% domestic content, the project should qualify.

Section 45Y(g)(11)(B)(i) outlines the requirement for a qualified facility as "any steel, iron, or manufactured product which is a component of such facility... was produced in the United States (as determined under section 661 of title 49, Code of Federal Regulations)."

Pursuant to Section 661.5(d), a manufactured product is considered "produced in the US" if:

1. Manufacturing process is in the U.S.
2. All the components are U.S. origin, with U.S. origin defined as "manufactured in the United States, regardless of the origin of its subcomponents."

Section 45Y(g)(11)(B)(iii) further defines the requirement of manufactured product beyond what is included in Buy America and (i), "the manufactured products which are components of a qualified facility upon completion of construction shall be deemed to have been produced in the United States if not less than the adjusted percentage... of the total costs of all such manufactured products of such facility are attributable to manufactured products (including components) which are mined, produced, or manufactured in the United States." This is stating that all the manufactured products of the facility will be considered "produced in the U.S." if 40% of the costs of all the manufactured products is U.S.

There is inconsistency between (i) and (iii). Under (i), a manufactured product is U.S. if all its components are U.S. (as defined by reference to Buy America). However, under (iii), all the manufactured products meet the domestic content requirement if 40% of the costs of all the manufactured products is U.S.

If the intent is to apply these requirements to the entirety of the project, then the individual manufactured products do not need to qualify under Buy America. Instead, the percentage should be applied across all manufactured products in the project.

#### **.04 Energy Community Requirement.**

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

Tesla recommends that the “located in” threshold should be based on whether the project’s 9-1-1 address is located in an eligible Census tract. If any portion of a project is located in a qualifying census tract, the entire project should be eligible as part of a qualifying energy community.

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

Closure of coal-fired power plants can be based on generation owner’s reports to EIA on Form 860, power plant de-certification filings at state utility commissions, regional transmission organizations, and the Federal Energy Regulatory Commission.

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

Tesla requests Treasury or another federal agency provides and maintains an official map of eligible energy communities to ensure a consistent dataset that taxpayers and project developers can utilize.

### **III. CONCLUSION**

Tesla appreciates the opportunity to respond to the Department of Treasury’s Request for Comments. Successful implementation of the Inflation Reduction Act will drive significant new deployment of electric vehicles, solar energy and battery storage; mitigate greenhouse gas emissions; and protect the country’s public health and welfare by [transitioning away](#) from internal-combustion technology. Tesla looks forward to continuing engagement with the Department of Treasury and the IRS to ensure these benefits of the IRA are fully realized.

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