5 Greenway Plaza, Suite 110, Houston, Texas 77046-0521
P.O. Box 27570, Houston, Texas 77227-7570
Phone 713.215.7000

November 4, 2022

Internal Revenue Service
CC:PA:LPD:PR (Notice 2022-51)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Re: **IRS Notice 2022-51**

Ladies and Gentlemen:

We are writing in response to IRS Notice 2022-51 (Notice), which requested comments on general as well as specific questions pertaining to the prevailing wage, apprenticeship, domestic content, and energy community requirements for increased or bonus credit (or deduction) amounts under Sections[1] 30C, 45, 45L, 45Q, 45U, 45V, 45Y, 45Z, 48, 48C, 48E, and 179D, as added or amended by the Inflation Reduction Act of 2022 (P.L. 117-169, 136 Stat. 1818 (Aug. 16, 2022)) (IRA).

Occidental Petroleum and its affiliates (together, Oxy) are industry leaders in carbon capture, direct air capture, and carbon sequestration. Oxy has over 40 years' experience permanently sequestering large quantities of carbon dioxide via its enhanced oil recovery (EOR) operations and developed the first EPA-approved monitoring, reporting, and verification (MRV) plan for geologic carbon dioxide sequestration. Oxy operates 36 EOR projects using carbon dioxide injection to produce incremental oil from mature fields in the Permian Basin oil fields of West Texas and New Mexico—more than any other company in the world. Oxy's Low Carbon Ventures group is developing technologies and projects to capture carbon dioxide from industrial sources and remove carbon dioxide from the atmosphere via direct air capture (DAC). Oxy has a reputation for excellence in designing and operating industrial-scale carbon dioxide capture projects and DAC facilities.

This letter focuses principally on the questions set out in the Notice pertaining to the prevailing wage and apprenticeship requirements as they relate to Section 45Q and the domestic content requirement as it relates to Section 45. However, the principles underlying our responses should be generally applicable to each of the Sections requiring taxpayers to comply with the

[1] All "section" references are to the Internal Revenue Code of 1986, as amended by the IRA.

prevailing wage and apprenticeship requirements or the domestic content requirement to qualify for increased or bonus credits (or deduction).

A. Questions Regarding the Prevailing Wage Requirements

Question 1: *Is guidance necessary to clarify how the Davis-Bacon prevailing wage requirements apply for purposes of Section [45Q(h)(3)(A)]?*

Section 45Q(h)(3)(A) generally provides that a taxpayer will satisfy the prevailing wage requirements with respect to any qualified facility and any carbon capture equipment placed in service at such facility if the taxpayer ensures that any laborers and mechanics employed by the taxpayer, or any contractor or subcontractor, in the construction, alteration, or repair of such facility or equipment 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 and equipment are located as most recently determined by the Secretary of Labor, in accordance with subchapter IV of chapter 31 of title 40, United States Code (Davis-Bacon).

A taxpayer's compliance with the prevailing wage requirements is, unless required by other applicable law, voluntary in nature and solely for purposes of such taxpayer earning the increased credits under Section 45Q. Accordingly, guidance should clarify that taxpayers need not comply with the full extent of Davis-Bacon, and the rules and regulations promulgated thereunder, solely to earn the increased credits under Section 45Q. Such guidance would be consistent with the statutory language of Section 45Q(h)(3)(A), which solely requires the payment of prevailing wages and does not require a taxpayer's compliance with all of the requirements of Davis-Bacon.

Guidance should further clarify that, although the U.S. Department of Labor (DOL) will be responsible for determining what constitutes the applicable prevailing wage, and will continue to enforce those rules for DOL purposes, the IRS will be responsible for determinations relating to eligibility and qualification for increased credits under Section 45Q.

Question 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?*

Section 45Q(h)(3)(B) incorporates by reference the correction and penalty mechanism of Section 45(b)(7)(B)(i).

For those taxpayers attempting to comply with the prevailing wage requirements to earn increased credits under Section 45Q, a wage determination for the applicable trade covering the locality where the work is to be performed may not be available for use by the taxpayer (or its contractors or subcontractors). In such case, it would be unreasonable to expect the taxpayer to

either postpone work until an applicable wage determination is available or forgo the opportunity to earn the increased credits. There should be a process by which the taxpayer can commence work and within a reasonable time thereafter apply to the DOL for an applicable wage determination. From when work commences until the DOL issues the requested applicable wage determination, the taxpayer should be able to pay its laborers and mechanics at commercially reasonable rates but no less than the basic minimum wage rate applicable to the locality in which the work is to be performed. For example, the taxpayer may be permitted to use other existing DOL wage determinations for comparable trades in or around the applicable locality. The Treasury and IRS should further consider that the taxpayer not be at risk of disqualification from earning the increased credits or subject to penalty if it is later determined that the taxpayer paid such laborers and mechanics at a rate less than that of the DOL's applicable wage determination, so long as the taxpayer pays to such laborers and mechanics the amount described under Section 45(b)(7)(B)(i)(I) within 180 days after the DOL issues the applicable wage determination. This 180-day period would be consistent with the period set out under Section 45(b)(7)(B)(iv).

Guidance should also establish specific rules and standards for the imposition, measurement, and mitigation of fines and penalties after it is determined that a taxpayer (or its contractors or subcontractors) has failed to comply with the prevailing wage requirements. For example, it would be unjust for a taxpayer to be disqualified from earning the increased credits or to be treated as having intentionally disregarded the prevailing wage requirements under Section 45(b)(7)(B)(iii), if the taxpayer relied in good faith on the DOL's wage determination, cooperated in any audit or other proceeding conducted by the DOL and timely cured any deficiency that resulted therefrom. Another example is where the taxpayer exercised reasonable diligence in complying with the prevailing wage requirements, reasonably relied in good faith on its contractors' and subcontractors' representations of compliance, and timely cured any non-compliance. In each of these examples, the taxpayer's good faith efforts to comply with the prevailing wage requirements and timely compliance with the correction and penalty procedures should be factors weighing in favor of finding that the taxpayer did not intentionally disregard the prevailing wage requirements.

Lastly, guidance should expressly provide that any Section 45Q credits that have been claimed are not subject to revocation, recapture, rescission, etc. if the taxpayer timely complies with the requirements of the correction and penalty mechanism of Section 45(b)(7)(B)(i).

Question 3: *What documentation or substantiation should be required to show compliance with the prevailing wage requirements?*

Recordkeeping is a material component in an employer's compliance with the prevailing wage requirements. The guidance should set forth the standard of recordkeeping that taxpayers are to follow to establish compliance with the prevailing wage requirements. A taxpayer should be able to demonstrate its compliance with the prevailing wage requirements by relying on, for example, regular payroll records showing the pay rates, hours worked, and deductions taken; daily

sign-in and out sheets or other records of hours worked; benefit contribution reports (if applicable); and other payroll records that the taxpayer maintains in the ordinary course of its business. The taxpayer should be able to demonstrate compliance by its contractors and subcontractors through contract provisions that inform the contractor of the contractor's obligation to comply with the prevailing wage requirements and to require its subcontractors (if any) to comply with such requirements. In the absence of such contract provisions, the taxpayer should be able to rely in good faith on the certification of a contractor that demonstrates the contractor's compliance and the compliance of its subcontractors with the prevailing wage requirements, absent actual knowledge that such certification is untrue. For example, in the absence of contract provisions, a report that contains information and certification similar to the current Davis-Bacon reporting form, WH-347, should be sufficient for a taxpayer to demonstrate the compliance of a contractor or subcontractor. Reference to Form WH-347, however, is made only with respect to its contents and is not intended to suggest that the usage of Form WH-347 is required, that it must be maintained regularly, or that laborers and mechanics need to be paid weekly, unless required by other applicable law.

Question 4: *Is guidance for purposes of [Section 45Q(h)(3)(A)] needed to clarify the treatment of [any qualified facility and any carbon capture equipment placed in service at such facility] that has been placed in service but does not undergo alteration or repair during a year in which the prevailing wage requirements apply?*

Guidance is necessary to clarify various issues related to the application of the prevailing wage requirements in connection with "construction," "alteration," and "repair." First, guidance is necessary to clarify that Section 45Q(h)(3)(A) does not require a taxpayer (or its contractors or subcontractors), to continue to employ the laborers or mechanics who performed construction, alteration or repair work after such work is completed, whether in the same year or a different year. Second, guidance is necessary to clarify that, unless otherwise required by other applicable law, the prevailing wage requirements do not apply to a taxpayer after the completion of the relevant work for which the laborer or mechanic was employed, even if the taxpayer chooses to continue to employ such laborer or mechanic after such work is completed, whether in the same year or a different year. Third, guidance is necessary to clarify that building services (such as janitorial services, building security, garbage removal, and other similar services associated with the day-to-day operations of a facility) and regularly recurring, routine maintenance of a qualified facility or carbon capture equipment is not covered by the prevailing wage requirements. Fourth, guidance is necessary to clarify that neither the manufacture of any component parts, whether manufactured in connection with the construction, alteration, or repair of a qualified facility or carbon capture equipment, nor the use of such component parts in the operation of such facility or equipment shall be subject to the prevailing wage requirements. Finally, guidance is necessary to confirm that the prevailing wage requirements only pertain to the construction, alteration, and repair of a qualified facility or carbon capture equipment that is performed onsite.

Question 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.*

(a) Scope of construction, alteration or repair

Guidance is needed to clarify whether the work by a taxpayer (or its contractors or subcontractors) is for the "construction," "alteration," or "repair" of a qualified facility or carbon capture equipment, as opposed to adjacent non-qualified equipment (e.g., transportation pipeline). Additionally, guidance should define "alteration" and "repair" of a qualified facility or carbon capture equipment to be in the nature of expenditures that the taxpayer is required to capitalize into basis under Section 263 and the regulations promulgated thereunder.

(b) No alteration to the nature of the employment relationship

Although a taxpayer is required to comply with the prevailing wage requirements in order to earn the increased credits under Section 45Q, guidance is needed to clarify that the prevailing wage requirements do not alter the nature of the employment relationship between the taxpayer (or its contractors or subcontractors) and its laborers and mechanics. For example, guidance should clarify that a taxpayer is not required to enter into any project labor agreement, engage in collective bargaining with any labor organization claiming jurisdiction over any trade to be utilized in the construction, alteration or repair of a qualified facility or carbon capture equipment, or enter into an express or implied employment agreement with any laborer or mechanic engaged to perform any such construction, alteration or repair solely for purposes of earning the increased credits under Section 45Q. The need for similar guidance in the context of the apprenticeship requirements is discussed further below.

B. Questions Regarding the Apprenticeship Requirements

Question 1: *Section 45(b)(8)(C) provides that each taxpayer, contractor, or subcontractor who employs four or more individuals to perform construction, alteration, or repair work with respect to a qualified facility must employ one or more qualified apprentices from a registered apprenticeship program to perform that work. What factors should the Treasury Department and the IRS consider regarding the appropriate duration of employment of individuals for construction, alteration, or repair work for purposes of this requirement?*

Section 45Q(h)(4) incorporates by reference the apprenticeship requirements of Section 45(b)(8). As with the prevailing wage requirements of Section 45Q(h)(3), a taxpayer's compliance with the apprenticeship requirements of Section 45Q(h)(4), unless required by other applicable law, is voluntary in nature and solely for the purpose of such taxpayer earning the increased credits under Section 45Q.

In many cases, the duration of the construction, alteration or repair work that will be performed by a qualified apprentice with respect to any carbon capture equipment or the qualified facility at which such carbon capture equipment is installed will be shorter than the amount of time that the qualified apprentice needs to spend in order to complete the training mandated under the applicable curriculum of a registered apprenticeship program. Section 45(b)(8)(A) requires that a taxpayer ensure that 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) be performed by qualified apprentices. This requirement is subject, under Section 45(b)(8)(B), to any applicable requirements for apprentice-to-journeyworker ratios of the DOL or an applicable State apprenticeship agency. These requirements accomplish the goal of having a minimum number of the total labor hours needed for the construction, alteration or repair work to be performed by qualified apprentices. Accordingly, under the "participation requirement" of Section 45(b)(8)(C), a taxpayer, or its contractors or subcontractors, should only be required to employ one or more qualified apprentices for the duration of the construction, alteration or repair work for which such qualified apprentices were hired. The taxpayer (and its contractors and subcontractors) should not be under an obligation for the continued training, employment, and/or payment of a qualified apprentice after the work for which such qualified apprentice was hired has been completed.

As discussed below in the context of the "good faith exception," the foregoing requirements must be subject to the availability of registered apprenticeship programs and qualified apprentices in the applicable trades within a reasonable geographic proximity to where the work will be performed.

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

(a) What, if any, clarification is needed regarding the good faith effort exception?

Clarification is needed with respect to how taxpayers can demonstrate that they (and their contractors and subcontractors) attempted in good faith to satisfy their obligations under the apprenticeship requirements if no registered apprenticeship program exists within the geographic location or an insufficient number of qualified apprentices in applicable trades can be hired within a reasonable commuting distance of where the relevant work is to be performed. This lack of a registered apprenticeship program or insufficiency of qualified apprentices in applicable trades may render it impossible for the taxpayer and its contractors and subcontractors to satisfy the

apprenticeship requirements. Under these circumstances, it would be unfair to impose any penalty on the taxpayer.

Our response to Question 3 below discussed the documentation a taxpayer should be able to rely on to demonstrate its good faith effort.

(b) What factors should be considered in administering and promoting compliance with this good faith effort exception?

In applying the good faith effort exception, the Treasury Department and the IRS should consider treating a taxpayer as having satisfied the good faith effort exception if: (1) no registered apprenticeship program exists within the geographic location where the relevant work is to be performed, (2) a registered apprenticeship program is unable to identify and refer a sufficient number of qualified apprentices in applicable trades that reside within a reasonable commuting distance to where the work is to be performed, (3) a registered apprenticeship program or its sponsor(s) refuses to cooperate or makes improper or unlawful demands, including, but not limited to, demands to engage in collective bargaining, or (4) the taxpayer or a contractor or subcontractor can otherwise demonstrate that it attempted to comply with the apprenticeship requirements but was otherwise unable to do so due to circumstances outside of its control. Furthermore, neither a taxpayer nor any of its contractors or subcontractors should be required to create or maintain a registered apprenticeship program, enter into project labor agreements, engage in collective bargaining, or otherwise enter into employment agreements with or for the benefit of any laborers or mechanics before being able to establish that it has attempted in good faith to satisfy the apprenticeship requirements.

(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?

The DOL's RAPIDS database or a State Apprenticeship Agency's database is insufficient to demonstrate compliance with the apprenticeship requirements. Although a taxpayer or its contractors or subcontractors may be able to use these databases to confirm whether an identified apprentice is a qualified apprentice, these databases may not contain all or the most up-to-date information and would be insufficient on their own to demonstrate compliance with the apprenticeship requirements. As similarly discussed with respect to the prevailing wage requirement, a report that contains information and certification similar to the current Davis-Bacon reporting form, WH-347, would allow a taxpayer or its contractors or subcontractors to record the participation and labor hours of qualified apprentices and journeypersons and to certify their compliance with the apprenticeship requirements. Again, reference to Form WH-347 is made only with respect to its contents and is not intended to suggest that the usage of Form WH-347 is required, that it must be maintained regularly, or that laborers and mechanics need to be paid

weekly, unless required by other applicable law. A taxpayer, its contractors, and subcontractors should be reasonably authorized to rely on the certification of their lower-tier contractors and subcontractors regarding their compliance with this requirement.

Question 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?*

As discussed above with respect to the prevailing wage requirements, recordkeeping is a material component in an employer's compliance with the apprenticeship requirements. The information and records needed to demonstrate compliance with the apprenticeship requirements will largely be maintained by the taxpayer or its contractors and subcontractors. A taxpayer will generally maintain sufficient payroll records, including payroll journals, time cards or similar records of hours worked, earnings statements that specify the hours worked, quarterly and annual payroll tax forms, and other payroll records that the taxpayer maintains in the ordinary course of its business that could be relied upon to establish compliance with the apprenticeship requirements. Any guidance or regulations issued with regard to such recordkeeping should take into account that payroll practices differ and therefore should set forth recommendations as opposed to mandating particular documents to be maintained. As also discussed above with respect to the prevailing wage requirements, a taxpayer should be able to demonstrate compliance by its contractors and subcontractors through contract provisions that inform the contractor of the contractor's need to comply with the apprenticeship requirements and to require its subcontractors (if any) to comply with such requirements. In the absence of such contract provisions, the taxpayer should also be able to rely in good faith on the certification a contractor provides to demonstrate the contractor's compliance and the compliance of its subcontractors with the apprenticeship requirements, absent actual knowledge that such certification is untrue.

With respect to demonstrating a taxpayer's compliance with the good faith effort exception, any guidance or regulations issued should, again, set forth recommendations as opposed to mandating particular documents to be maintained. For example, a taxpayer should be able to rely on its written documentation created during its course of dealing with a registered apprenticeship program. Alternatively, the taxpayer should be able to rely on its written statements maintained in its records detailing its efforts to locate and engage qualified apprentices in and around the locality in which the work is to be performed. The taxpayer also should be able to rely in good faith on the certification a contractor provides to demonstrate the contractor's or its subcontractor's good faith efforts to similarly locate and engage qualified apprentices, absent actual knowledge that such certification is untrue.

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

(a) Guidance regarding penalties

Guidance should establish specific rules and standards for the imposition, measurement and mitigation of penalties after it is determined that a taxpayer or its contractors or subcontractors has failed to comply with the apprenticeship requirements. For example, standards should be established to address the situation where a taxpayer exercises reasonable diligence in ensuring its compliance with apprenticeship requirements or relies in good faith on its contractors' and subcontractors' representations of compliance. Another example involves when a taxpayer that fails to satisfy the apprenticeship requirements makes timely payment of the penalty amount provided for under Section 45(b)(8)(D)(i)(II). A taxpayer's reasonable diligence in ensuring its compliance, good faith reliance on the certifications of its contractors or subcontractors, or timely compliance with the penalty provisions of Section 45(b)(8)(D)(i)(II) should be factors weighing in favor of finding that the taxpayer did not intentionally disregard the apprenticeship requirements for purposes of imposing the increased penalty of Section 45(b)(8)(D)(iii). Furthermore, guidance should also expressly provide that any tax credits claimed by a taxpayer are not subject to revocation, recapture, rescission, etc. unless the taxpayer fails to timely satisfy any penalties imposed under Section 45(b)(8)(D).

Guidance should also clarify that if a taxpayer elects to timely pay the penalty amount provided for under Section 45(b)(8)(D)(i)(II) in lieu of satisfying the apprenticeship requirements, the taxpayer will not be deemed to have intentionally disregarded the apprenticeship requirements and will be treated as having satisfied the apprenticeship requirements.

(b) Apprentice-to-journeyworker ratio

Guidance should provide a method for determining the ratio of total labor hours to hours of qualified apprentices and identify acceptable sources for determining the apprentice-to-journeyworker ratios of the Department of Labor or an applicable State apprenticeship agency for purposes of Sections 45Q(h)(4) and 45(b)(8)(B).

C. Questions Regarding the Domestic Content Requirement

Question 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?

Although Section 45(b)(9)(B) refers to the Federal Transit Administration (FTA) regulations found at 49 C.F.R. Part 661, those regulations apply to "end products" comprising multiple components, rather than "components" of a qualified facility as required by Section

45(b)(9). As a result, simply adopting the definitions and procedures prescribed in FTA regulations of Part 661 is likely to cause confusion. A recommended approach would be to adopt definitions and procedures revising the applicable FTA regulations in a manner that accounts for this distinction, such that items that would be treated as an "end product" under the FTA's regulations are treated as "components" for purposes of determining compliance with the domestic content requirement.

Additionally, the FTA requirements of Part 661 contain a waiver process allowing certain products or purchases to be exempted from the requirements on either an individual or class basis where the item sought is domestically unavailable. While final regulations should adopt a similar process for determining whether components are domestically unavailable, providing taxpayers a self-certification option in the meantime will encourage more immediate compliance with the domestic content requirement. Recommended guidance with respect to domestically unavailable components is discussed further below in response to Question 2(d).

(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?

Section 45(b)(9)(B)(ii) states that steel or iron products should be treated consistently with how those products are treated under the FTA regulations found at 49 C.F.R. 661.5. Guidance should provide that, for purposes of Section 45(b)(9)(B)(ii), steel and iron components are treated as domestic if all manufacturing processes from melting of ore or scrap forward take place in the United States, except metallurgical processes involving refinement of steel additives, irrespective of the source of any raw materials. Guidance should also provide that the steel and iron requirements only apply to steel and iron products incorporated into a qualified facility as a component. Where steel and iron products are incorporated into a qualified facility as subcomponents of a manufactured product component, only the requirements governing that manufactured product component should apply. These limitations on the scope of the steel and iron requirements are consistent with the FTA requirements for steel and iron products, and expressly incorporating them into guidance for the domestic content bonus credit will eliminate potential confusion.

Question 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?

Guidance is needed to clarify the definition of "component of a qualified facility." The term "component" should be defined to mean any article, material, or supply, whether manufactured or unmanufactured, that is directly incorporated into a qualified facility at the facility location, and should exclude any subcomponent. Other terms to be defined should include "manufactured product component" and "steel and iron component". A "manufactured product component" is recommended to be defined as any component produced as a result of a manufacturing process (i.e., any process that alters the form or function of materials or of elements of a product integrating such materials or elements into a single product). The term "steel and iron component" is recommended to be defined as any structural component of a qualified facility that is primarily made of steel or iron. A definition for the term "domestically unavailable component" is also recommended and discussed in response to Question 2(d). These recommended definitions are intended to address the difference in purpose between the domestic content requirement and the FTA regulations, as discussed above in response to Question 1(a).

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

Section 45(b)(9)(C)(i) prescribes the percentage of manufactured product components of which a qualified facility (other than an offshore wind facility) must be composed to qualify for the bonus credit as 40 percent. A qualified facility's percentage of manufactured product components should be calculated by dividing the cost of domestic manufactured product components over the cost of all manufactured product components other than domestically unavailable components. A "domestically unavailable component" should be defined to be any component determined by the taxpayer in good faith not to be available in sufficient and reasonably available quantities of a satisfactory quality in the United States for delivery during the schedule required by the taxpayer (or other person constructing the qualified facility). This proposed approach would be consistent with the text of the statute, which requires the adjusted percentage be calculated as a percentage of the total cost of manufactured products incorporated into the qualified facility as components, rather than as a percentage of the total cost of all components.

Additionally, the cost of a component used for calculating whether the adjusted percentage threshold is satisfied will vary depending on whether the component is purchased from a supplier or directly manufactured by the taxpayer. For purchased components, the cost should be deemed equal to the purchase price of the component. For components manufactured by the taxpayer, the cost should be deemed to include all labor and materials costs incorporated into the component, including allowances for administrative and overhead expenses as well as profit. This proposed

approach with respect to the cost of a component would be consistent with the treatment of components under the FTA regulations.

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

Guidance should clarify that a manufactured product component is considered domestic if the manufacturing process for the product takes place in the United States, irrespective of the origin of any subcomponents.

Question 5: *Please provide comments on any other topics relating to the domestic content requirements that may require guidance.*

Section 45(b)(9)(A) provides that when a "qualified facility" meets the domestic content requirements, the total credit available to be claimed by the taxpayer will be increased by 10 percent. Guidance should clarify that "qualified facility" is defined to include any "repowered facility." The term "repowered facility" should be defined to include any facility treated as originally placed in service for U.S. federal income tax purposes even though it contains some used components of property. Defining qualified facilities to include repowered facilities would be consistent with the IRA's underlying policy of encouraging investment in various green energy projects and will encourage additional compliance with the domestic content requirement.

Guidance should further clarify that, with respect to repowered facilities, the domestic content requirement will be satisfied if the cost of the components installed as part of the repower project satisfies such requirement excluding the costs of any used components that remain a part of the qualified facility. It will be unreasonably burdensome or impossible for a taxpayer to determine the origin of a repowered facility's used components. Excluding such used components from the determination of whether the domestic content requirement is satisfied is consistent with the policy underlying the domestic content requirement of encouraging facility owners and developers to give preference to domestic products when purchasing components for future projects.

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Oxy appreciates the opportunity to provide these comments in response to Notice 2022-51. If you have any questions regarding this submission, please contact Jennifer L. Buchanan at (713) 366-5365 or Jennifer_Buchanan@oxy.com.

Sincerely,

Jennifer L. Buchanan

cc: David B. Blair