



November 4, 2022

**SUBMITTED ELECTRONICALLY AND VIA USPS**

Internal Revenue Service  
CC:PA:LPD:PR (Notice 2022-47 and Notice 2022-50)  
Room 5203  
P.O. Box 7604, Ben Franklin Station  
Washington, DC 20044

The Honorable Lily L. Batchelder  
Assistant Secretary for Tax Policy  
United States Department of the Treasury  
1500 Pennsylvania Ave., N.W.  
Washington, DC 20220

Mr. William M. Paul  
Principal Deputy Chief Counsel and Deputy Chief  
Counsel (Technical)  
Internal Revenue Service  
1111 Constitution Ave. N.W.  
Washington, DC 20224

**Re:** *Notice 2022-51 -- Responses to Request for Comments on Domestic Content Requirements Under the Inflation Reduction Act of 2022 (the "IRA")*

Dear Ms. Batchelder and Mr. Paul:

Ojjo, Inc. ("Ojjo") respectfully submits the following comments to the U.S. Department of Treasury ("Treasury") and the Internal Revenue Service (the "IRS") responding to questions raised in Notice 2022-51. Ojjo hereby requests a meeting with Treasury and IRS officials to discuss this letter and Ojjo's recommendations regarding implementation of the domestic content requirements set forth in the IRA § 13101(f), to be codified at 26 U.S.C. § 45(b)(9)–(10), and the IRA § 13701(a), to be codified at 26 U.S.C. § 45Y(g)(11)–(12).

By way of introduction, Ojjo is headquartered in San Rafael, California and is one of the fastest-growing innovation companies in the U.S. utility-scale solar market today. Founded in 2018, Ojjo manufactures custom foundations on which solar trackers are mounted. Ojjo has over 9 Gigawatts (GWs) of active project opportunities across its overall North American pipeline, and is currently being installed on the nation's largest standalone solar and storage project, Gemini Solar, 967 Megawatts (MWs) in Nevada.

Ojjo's technology, called the Earth Truss, is a proprietary, patent-pending system comprised of underground anchors, above ground legs, and a truss cap. The cap is uniquely designed to connect directly with

certain specific manufacturers' versions of solar tracker solutions, creating an integrated system. Rather than a standalone product, Ojjo's Earth Truss foundation is custom designed to function as part of the tracker system where our nationwide team of engineers account for the specific loads required by the tracker, panels, and the project site characteristics. The Earth Truss offers a more efficient use of material than traditional commodity foundations, such as steel beams, because the loads are resisted by the strong axes of Ojjo's structure. The optimized structural configuration of the Earth Truss minimizes embedment depth and leverages the core of Ojjo's invention – a hollow screw anchor that allows for in-process drilling – thereby greatly reducing sub-surface risk and overall project costs. While Ojjo manufactures almost half of its componentry in the U.S. already, certain inputs of the Earth Truss currently are considered manufactured products and are not available in adequate capacities in the U.S., including the casted items such as truss caps.

As discussed below, Ojjo is offering the following recommendations regarding how Treasury guidance should implement the domestic content requirements of the Inflation Reduction Act ("IRA"), resulting in innovation continuing to thrive that rapidly drives solar cost reductions and accelerates deployment in the field.

### **.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. Part 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 IRA sections cited above reference 49 C.F.R. Part 661 as the basis for determining whether a product is produced in the U.S. 49 C.F.R. Part 661 is the Federal Transit Administration ("FTA") regulation implementing the domestic content requirements for recipients of federal funding. FTA has a long history of interpreting these regulations through guidance letters, and 49 C.F.R. § 661.3 provides definitions applicable to the domestic content analysis. Based on the FTA's application of 49 C.F.R. Part 661 and the applicable definitions in 49 C.F.R. § 661.3, domestic content is determined by identifying the: (i) end product, (ii) components, and (iii) subcomponents (which, as discussed further below, need not be U.S. products under 49 C.F.R. Part 661 and the language of the IRA).

As stated in Sections 45(b)(9)(B) and 45Y(g)(11)(B) of the IRA, the "qualifying facility" is the solar power plant. These sections of the IRA then state that steel, iron, and manufactured products that are a "component of a qualified facility" must be produced in the U.S. The components include those articles that are delivered to the job site and fully integrated into the qualified facility, e.g., solar modules, tracker systems, and inverter stations. As stated, and as included in 49 C.F.R. 661, such products can include systems, like a tracker system. Subcomponents include both articles used in the production of components and articles used to integrate components into a qualified facility.

For the purpose of determining whether steel and iron products are produced in the U.S., the IRA states that such determination should be consistent with 49 C.F.R. § 661.5, which includes examples of construction materials made primarily of steel or iron, including structural steel or iron, steel or iron beams and columns, running rail and contact rail. For these types of products, Subsection 661.5 states that all of the manufacturing processes must take place in the U.S. Subsection 661.5, however, notes that steel and iron used as a component or subcomponent of a manufactured product are not considered a construction material made primarily of steel or iron. *Id.* at 661.5(c). Products like the Earth Truss should be considered a component of the tracker system because it is specially designed and manufactured to integrate with the tracker and function as a system. Treasury should confirm in its guidance that products customized to integrate into and function with manufactured products like a tracker are part of a manufactured product system.

(b) 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?

As discussed above, the IRA states that the requirement for domestically-produced steel or iron shall be applied in a manner consistent with 49 C.F.R. 661.5. Treasury’s guidance should make clear that not every product made from steel or iron is covered by the requirement under Subsection 661.5 and the requirements applicable to steel and iron items are limited to commoditized steel and iron piles and beams. The Earth Truss is very different from structural steel or iron, steel or iron beams and columns, running rail and contact rail, which FTA identifies as construction materials made primarily of steel or iron. The examples cited by FTA are commodity products formed and then cut to be used in any construction project. By contrast, the Earth Truss is a non-commodity custom-built product, involving multiple patented parts that is engineered for a specific project and tracker system, offering measurably different functionality than a traditional commoditized steel H-pile or I-beam. Treasury should provide guidance that highly engineered non-commoditized, patented, steel or iron products used in solar facilities, like the Ojjo Earth Truss, are in themselves manufactured products and not construction materials made primarily of iron and steel covered by Subsections 661(b) and (c).

(2) 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) 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)?

Treasury should issue general waivers for products that are not produced (and demonstrably not producible) in sufficient quantity or satisfactory quality for a certain time period, such as five years. Products such as the Earth Truss are comprised of certain components – such as casted, tracker-specific truss caps and ground screw “crimp collar” items – that are not all produced in the U.S. and should be a candidate for such an exception. This is similar to what FTA does and with the Infrastructure Investment and Jobs Act. It is also similar to waivers found in FAR Part 25. Upon making a showing that a product performs a function that is not replicable with products that are domestically available, Treasury should issue an exception for the same type of product for all projects so that taxpayers can rely on the exception and are not required to request exceptions on a per project basis. Treasury should rely on a taxpayer’s certification (subject to audit) that the taxpayer (or its contractor) engaged in good faith efforts to find the inputs for a manufactured product like the Earth Truss in sufficient quantity that are produced in America. Where such efforts demonstrate there is not sufficient manufacturing capacity (including a lack of manufacturing technique to produce product like steel casting) to manufacture items incorporated into a complex system like the Earth Truss, project owners should be able to secure an exception to source these steel items abroad without harming their ability to qualify the entire project under the domestic content rules. Treasury should not solicit public comment before issuing a waiver (similar to what federal agencies must do to issue Buy America waivers) as solar projects are on tight construction schedules and such process would delay project implementation.

(b) Do the “sufficient and reasonably available quantities” and “satisfactory quality” standards need further clarification? If so, what should be clarified?

Treasury should clarify in its guidance that a taxpayer (or its contractor) can exercise its reasonable discretion in determining what products and construction solutions it must procure to meet project objectives.

Provided the taxpayer documents the benefits of a product/solution and can demonstrate that there is insufficient availability of the product in the U.S., or a product offering of the same quality and functionality that can meet the established project schedule, the taxpayer should be able to qualify for an exception from the domestic content requirements for the product or components of it.

Thank you for the opportunity to submit these comments. We appreciate the monumental legislation encompassed within the IRA, and the efforts that your department is making to ensure the long-term success of the solar industry as we provide important contributions to our nation's energy security and overall climate change efforts.

As requested above, Ojjo would appreciate the opportunity to meet with Treasury and the IRS to discuss these issues in greater detail and to answer any questions that you may have. Feel free to contact Helena Kimball at [hkimball@ojjo.com](mailto:hkimball@ojjo.com) or at 603.591.5812 for any follow-up.

Sincerely,

Helena Kimball  
President  
Ojjo

Mike Miskovsky  
Chairman & CEO  
Ojjo