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

Subject: 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

To Whom It May Concern,

NOIA represents and advances a dynamic and growing offshore energy industry, providing solutions that support communities and protect our workers, the public, and our environment. For 50 years, NOIA has been committed to ensuring a strong, viable U.S. offshore energy industry capable of meeting the energy needs of our nation in an efficient and environmentally responsible manner. NOIA member companies are engaged in all facets of offshore energy development, including offshore wind, offshore oil and natural gas, and offshore carbon sequestration. Further, NOIA's members include energy developers and, just as importantly, the businesses - large and small - who do the work of building, supplying, and servicing these projects.

As an organization, NOIA supports efforts to promote investment in offshore wind, carbon capture and storage, and hydrogen. The Inflation Reduction Act (IRA) expanded the tax credits for these technologies. The IRA included provisions related to the availability of the tax credits based upon certain conditions. The IRS has 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 those respective provisions of the Code. NOIA provides the following information in response to the IRS request for comment.

Domestic Content Requirement

Q2. 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.

- (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”?

Please clarify the associated costs for determination of “total costs” with regard to manufactured products. The “total costs” should include material cost, transportation cost (i.e., the costs of transporting manufactured products to the project site), and labor cost (i.e., labor cost of manufacturing components, and contractor/subcontractor labor cost incurred at the project site for actual component construction or final assembly of a qualified facility).

In addition, please clarify the term “manufactured”. We would suggest that “manufactured” is defined as the application of processes to alter the form or function of materials or of elements of the product in a manner adding value and transforming those materials or elements so that they represent a new [end product](#) functionally different from its components, which is consistently with “manufacturing process^[1]” as defined in 49 C.F.R. Part 661.3. The following are examples comprising the manufacturing process: forming, extruding, material removal, welding, soldering, etching, plating, material deposition, pressing, permanent adhesive joining, shot blasting, brushing, grinding, layup, casting, resin application, wire drawing, annealing, twisting and stranding, spooling, rolling, coating, integration, testing, mixing, blending, packaging, enclosing, filing, lapping, finishing, vacuum impregnating, and, in electrical and electronic pneumatic, or mechanical products, the collection, interconnection, and testing of various elements.

- (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?

Please clarify the term of “end product” for purpose of satisfying the domestic content requirements, specially whether the term refers to the entire integrated and interconnected wind/solar project, rather than its constituent parts. The entire wind/solar project needs to be constructed and interconnected to provide its intended end function or use without any further manufacturing or assembly changes. This

^[1] “Manufacturing process means the application of processes to alter the form or function of materials or of elements of the product in a manner adding value and transforming those materials or elements so that they represent a new [end product](#) functionally different from that which would result from mere assembly of the elements or materials.”

interpretation is consistent with the definition of “end product^[2]” under FTA regulations of 49 C.F.R. 661.3.

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

Please clarify that the subcomponent with regard to manufactured products treatment is consistent with FTA 49 C.F.R. 661.5(d)(2)^[3], that the origin of the subcomponents of a component which is a manufactured product is disregarded for the purposes of satisfying the domestic content requirements.

Q5. Please provide comments on any other topics relating to the domestic content requirements that may require guidance.

Please grant nonavailability waivers for domestic content requirements, even if the project does not qualify for direct pay. Nonavailability exemptions can be based on a case-by-case basis, when it can be demonstrated by taxpayer that a domestic product is not available or is not available in reasonably sufficient quantities of at a satisfactory quality^[4]. In this case, the costs of any waiver product will be subtracted from consideration of the total cost of all of the manufactured products that are components of the qualified facility or energy property for purposes of determining whether the adjusted percentage has been met the domestic content bonus requirements. If a steel and iron product, any waived product does not need to meet the steel and iron requirements for purposes of considering whether the domestic content bonus requirements have been satisfied.

Energy Community Requirement

^[2] “End product means any vehicle, structure, product, article, material, supply, or system, which directly incorporates constituent components at the final assembly location, that is acquired for public use under a federally-funded third-party contract, and which is ready to provide its intended end function or use without any further manufacturing or assembly change(s).”

^[3] “All of the [components](#) of the product must be of U.S. origin. A [component](#) is considered of U.S. origin if it is manufactured in the [United States](#), regardless of the origin of its subcomponents.”

^[4] ORECRFP22-1 Preliminary Determination Memorandum (available at [servlet.FileDownload \(ny.gov\)](#)), NYSERDA commissioned a study from consultancy Advisian investigating the availability of steel plate required for monopile foundations for offshore wind turbines and offshore substations. Based on study, NYSERDA concluded that “steel plate with the necessary thickness, dimension, and strength properties used to manufacture monopile foundations cannot be produced or made in the United States in sufficient and reasonably available quantities without incurring unreasonable expense” and found that “requiring all structural iron or steel to be sourced domestically would not be in the public interest”. Additionally, NREL/TP-5000-81602 report of June 2022 (available at [The Demand for a Domestic Offshore Wind Energy Supply Chain \(nrel.gov\)](#)), indicated that “while some U.S. manufacturers will be able to fabricate the smaller steel plates needed for monopile manufacturing, the larger plates will need to be imported because of a current inability to domestically produce plates that size. There is a domestic sourcing issue associated with the type of steel used in monopile foundations (S355ML) with limited suppliers being located in the United States. Finally, the technological capabilities for welding 150 millimeter-thick steel plates do not currently exist in the U.S.”

Q7. Please provide comments on any other topics relating to the energy community requirement that may require guidance.

Recognizing the enormous decarbonization potential and economic boost to certain communities by offshore wind and offshore carbon capture and storage, please clarify and provide guidance on how offshore wind and offshore carbon capture and storage can qualify for the energy community requirement. Under a traditional location-based metric, offshore wind or offshore carbon sequestration in federal waters may not be considered to have energy community attributes. However, these projects should in fact be considered to have energy community attributes because of the benefits from these projects to onshore energy communities. For offshore wind projects, the point of interconnection, the operations and maintenance facility, the staging port, or a part of the onshore substation for the offshore wind project should serve as a proxy for the economic benefits that it generates. Therefore, we would propose that an entire offshore wind project meets the energy community requirement if the point of interconnection or the operations and maintenance facility or the staging port or a part of the onshore substation for the offshore wind project is located in the energy community. Similarly, for offshore carbon sequestration, the point of carbon capture should serve as a proxy for the economic benefits that are created, and the entire CCS project should meet the energy community requirement if the point of capture is located in the energy community.

Thank you for considering these comments. Please contact me at milito@noia.org with any questions.

Very respectfully,



Erik Milito
President
National Ocean Industries Association