



## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Notice 2022-61

### Prevailing Wage and Apprenticeship Initial Guidance under Section 45(b)(6)(B)(ii) and Other Substantially Similar Provisions

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of initial guidance.

**SUMMARY:** This notice provides guidance on the prevailing wage and apprenticeship requirements that generally apply to certain provisions of the Internal Revenue Code (Code), as amended by the Inflation Reduction Act of 2022. This notice also serves as the published guidance establishing the 60-day period described in those provisions of the Code with respect to the applicability of the prevailing wage and apprenticeship requirements. Finally, this notice provides guidance for determining the beginning of construction of a facility for certain credits allowed under the Code, and the beginning of installation of certain property with respect to the energy efficient commercial buildings deduction under the Code. This notice affects facilities the construction of which began, or certain property the installation of which began, on or after **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. The Department of the Treasury (Treasury Department) and the IRS anticipate issuing proposed regulations and other guidance with respect to the prevailing wage and apprenticeship requirements.

**DATES:** **[INSERT DATE 60 DAYS AFTER PUBLICATION IN *THE FEDERAL REGISTER*]** is the date that is 60 days after the Secretary of the Treasury or her delegate (Secretary) publishes the guidance described in 26 U.S.C. 30C(g)(1)(C)(i), 45(b)(6)(B)(ii), 45Q(h)(2), 45V(e)(2)(A)(i), 45Y(a)(2)(B)(ii), 48(a)(9)(B)(ii),

48E(a)(2)(A)(ii)(II) and (a)(2)(B)(ii)(II), and 179D(b)(3)(B)(i).

**FOR FURTHER INFORMATION CONTACT:** Alexander Scott, CC:PSI:6, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224, at (202) 317-6853 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

**SECTION 1. PURPOSE**

Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA), amended §§ 30C, 45, 45L, 45Q, 45U, 45V, 45Y, 45Z, 48, 48C, 48E, and 179D of the Internal Revenue Code (Code) to add prevailing wage and apprenticeship requirements to qualify for increased credit or deduction amounts.<sup>1</sup> This notice provides guidance on the prevailing wage and apprenticeship requirements that generally apply to those sections of the Code. This notice also serves as the published guidance under §§ 30C(g)(1)(C)(i), 45(b)(6)(B)(ii), 45Q(h)(2), 45V(e)(2)(A)(i), 45Y(a)(2)(B)(ii), 48(a)(9)(B)(ii), 48E(a)(2)(A)(ii)(II) and (a)(2)(B)(ii)(II), and 179D(b)(3)(B)(i) establishing the 60-day period described in such sections with respect to the applicability of the prevailing wage and apprenticeship requirements. Finally, this notice provides guidance for determining the beginning of construction under §§ 30C, 45, 45Q, 45V, 45Y, 48, and 48E, and the beginning of installation under § 179D solely for purposes of § 179D(b)(3)(B)(i).

The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) anticipate issuing proposed regulations and other guidance with respect to the prevailing wage and apprenticeship requirements.

**SECTION 2. BACKGROUND**

.01 Increased Tax Benefits For Satisfying Certain Prevailing Wage and Apprenticeship or Construction and Installation Requirements.

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<sup>1</sup> See §§ 13101(f), 13102(k), 13104(d), 13105(a), 13204(a)(1), 13303(a)(1), 13304(d), 13404(d), 13501(a), 13701(a), 13702(a), and 13704(a) of the IRA.

(1) In General. Increased credit amounts are available under §§ 30C, 45, 45Q, 45V, 45Y, 45Z, 48, 48C, and 48E, and an increased deduction is available under § 179D, for taxpayers satisfying certain prevailing wage and apprenticeship requirements. Increased credit amounts are available under §§ 45L and 45U for taxpayers satisfying certain prevailing wage requirements. The general concepts and provisions relating to the increased tax benefits under § 45(b)(6), (7), and (8) are similar to those under each of these other Code sections. Therefore, only the relevant provisions under § 45(b)(6), (7), and (8) are discussed in section 2.01(2) and (3) of this notice.

(2) Prevailing Wage Requirements. Section 45(b)(7)(A) provides that to meet the prevailing wage requirements with respect to any qualified facility, a taxpayer must ensure that any laborers and mechanics employed by the taxpayer or any contractor or subcontractor in: (i) the construction of such facility, and (ii) the alteration or repair of such facility (with respect to any taxable year, for any portion of such taxable year that is within the 10-year period beginning on the date the qualified facility is originally placed in service), 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 is located as most recently determined by the Secretary of Labor, in accordance with subchapter IV of chapter 31 of title 40, United States Code (Prevailing Wage Rate Requirements). Section 45(b)(7)(B) provides correction and penalty mechanisms for a taxpayer's failure to satisfy the requirements under § 45(b)(7)(A).

(3) Apprenticeship Requirements. Section 45(b)(8)(A)(i) provides that to meet the apprenticeship requirements taxpayers must ensure that, with respect to the construction of any qualified facility, 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) with respect to such facility is, subject to

§ 45(b)(8)(B), performed by qualified apprentices (Apprenticeship Labor Hour Requirements). Under § 45(b)(8)(A)(ii), for purposes of § 45(b)(8)(A)(i), the applicable percentage is: (i) in the case of a qualified facility the construction of which begins before January 1, 2023, 10 percent, (ii) in the case of a qualified facility the construction of which begins after December 31, 2022, and before January 1, 2024, 12.5 percent, and (iii) in the case of a qualified facility the construction of which begins after December 31, 2023, 15 percent.

Section 45(b)(8)(B) provides that the requirement under § 45(b)(8)(A)(i) is subject to any applicable requirements for apprentice-to-journeyworker ratios of the Department of Labor or the applicable State Apprenticeship Agency (Apprenticeship Ratio Requirements). Section 45(b)(8)(C) provides that each taxpayer, contractor, or subcontractor who employs 4 or more individuals to perform construction, alteration, or repair work with respect to the construction of a qualified facility must employ 1 or more qualified apprentices to perform such work (Apprenticeship Participation Requirements).

Under § 45(b)(8)(D)(i), a taxpayer is not treated as failing to satisfy the requirements of § 45(b)(8) if: (i) the taxpayer satisfies the requirements described in § 45(b)(8)(D)(ii) (Good Faith Effort Exception), or (ii) subject to § 45(b)(8)(D)(iii) (Intentional Disregard Provision), in the case of any failure by the taxpayer to satisfy the requirement under § 45(b)(8)(A) and (C) with respect to the construction, alteration, or repair work on any qualified facility to which § 45(b)(8)(D)(i)(I) does not apply, the taxpayer makes payment to the Secretary of the Treasury or her delegate (Secretary) of a penalty in an amount equal to the product of \$50 multiplied by the total labor hours for which the requirement described in § 45(b)(8)(A) and (C) was not satisfied with respect to the construction, alteration, or repair work on such qualified facility.

Under the Good Faith Effort Exception described in § 45(b)(8)(D)(ii), a taxpayer is deemed to have satisfied the apprenticeship requirements with respect to a qualified

facility if the taxpayer has requested qualified apprentices from a registered apprenticeship program, as defined in § 3131(e)(3)(B), and: (i) such request has been denied, provided that such denial is not the result of a refusal by the taxpayer or any contractors or subcontractors engaged in the performance of construction, alteration, or repair work with respect to such qualified facility to comply with the established standards and requirements of the registered apprenticeship program, or (ii) the registered apprenticeship program fails to respond to such request within 5 business days after the date on which such registered apprenticeship program received such request.

Under the Intentional Disregard Provision, if the Secretary determines that any failure described in § 45(b)(8)(D)(i)(II) is due to intentional disregard of the requirements under § 45(b)(8)(A) and (C), § 45(b)(8)(D)(i)(II) is applied by substituting “\$500” for “\$50.”

Under § 45(b)(8)(E)(i), the term “labor hours” means the total number of hours devoted to the performance of construction, alteration, or repair work by any individual employed by the taxpayer or by any contractor or subcontractor. This term excludes any hours worked by foremen, superintendents, owners, or persons employed in a bona fide executive, administrative, or professional capacity (within the meaning of those terms in part 541 of title 29, Code of Federal Regulations).

Under § 45(b)(8)(E)(ii), the term “qualified apprentice” means an individual who is employed by the taxpayer or by any contractor or subcontractor and who is participating in a registered apprenticeship program, as defined in § 3131(e)(3)(B).

Section 3131(e)(3)(B) defines a registered apprenticeship program as an apprenticeship registered under the Act of August 16, 1937 (commonly known as the National Apprenticeship Act, 50 Stat. 664, chapter 663, 29 U.S.C. 50 *et seq.*) that meets the standards of subpart A of part 29 and part 30 of title 29 of the Code of Federal

Regulations.<sup>2</sup>

.02 Beginning of Construction.

(1) In General. A qualified facility, property, project, or equipment, are hereafter referred to as a “facility” in this notice. A facility generally must meet the prevailing wage and apprenticeship requirements to receive the increased credit or deduction amounts under §§ 30C, 45, 45Q, 45V, 45Y, 48, 48E, and 179D if construction (or installation for purposes of § 179D) of the facility begins on or after the date 60 days after the Secretary publishes guidance with respect to the prevailing wage and apprenticeship requirements of the Code.<sup>3</sup> The IRS has issued notices under §§ 45,<sup>4</sup> 45Q,<sup>5</sup> and 48<sup>6</sup> (collectively, IRS Notices) that provide guidance for determining when construction begins for purposes of §§ 45, 45Q, and 48, respectively, including a safe harbor regarding the continuity requirement (described in section 2.02(3) of this notice).

(2) Establishing Beginning of Construction. The IRS Notices describe two methods that a taxpayer may use to establish that construction of a facility begins: (i) by starting physical work of a significant nature (Physical Work Test), and (ii) by paying or incurring five percent or more of the total cost of the facility (Five Percent Safe Harbor).

(i) Physical Work Test. Under the Physical Work Test, construction of a facility begins when physical work of a significant nature begins, provided that the taxpayer maintains a continuous program of construction. This test focuses on the nature of the

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<sup>2</sup> Effective November 25, 2022, 29 CFR part 29 is no longer divided into subparts A and B because subpart B (Industry Recognized Apprenticeship Programs) was rescinded in a final rule published on September 26, 2022. See 87 FR 58269.

<sup>3</sup> Certain facilities are exempt from the prevailing wage and apprenticeship requirements. See, for example, § 45(b)(6)(B)(i).

<sup>4</sup> Notice 2013-29, 2013-20 I.R.B. 1085; *clarified by* Notice 2013-60, 2013-44 I.R.B. 431; *clarified and modified by* Notice 2014-46, 2014-36 I.R.B. 520; *updated by* Notice 2015-25, 2015-13 I.R.B. 814; *clarified and modified by* Notice 2016-31, 2016-23 I.R.B. 1025; *updated, clarified, and modified by* Notice 2017-04, 2017-4 I.R.B. 541; Notice 2018-59, 2018-28 I.R.B. 196; *modified by* Notice 2019-43, 2019-31 I.R.B. 487; *modified by* Notice 2020-41, 2020-25 I.R.B. 954; *clarified and modified by* Notice 2021-5, 2021-3 I.R.B. 479; *clarified and modified by* Notice 2021-41, 2021-29 I.R.B. 17.

<sup>5</sup> Notice 2020-12, 2020-11 I.R.B. 495.

<sup>6</sup> Notice 2018-59, 2018-28 I.R.B. 196; *modified by* Notice 2019-43; *modified by* Notice 2020-41; *clarified and modified by* Notice 2021-5; *clarified and modified by* Notice 2021-41.

work performed, not the amount or the costs. Assuming the work performed is of a significant nature, there is no fixed minimum amount of work or monetary or percentage threshold required to satisfy the Physical Work Test. Physical work of significant nature does not include preliminary activities, even if the cost of those preliminary activities is properly included in the depreciable basis of the facility.<sup>7</sup> For purposes of the Physical Work Test, preliminary activities include, but are not limited to, planning or designing, securing financing, exploring, researching, obtaining permits, licensing, conducting surveys, environmental and engineering studies, or clearing a site.<sup>8</sup>

Work performed by the taxpayer and work performed for the taxpayer by other persons under a binding written contract<sup>9</sup> that is entered into prior to the manufacture, construction, or production of the property for use by the taxpayer in the taxpayer's trade or business (or for the taxpayer's production of income) is taken into account in determining whether construction has begun.<sup>10</sup> Both on-site and off-site work (performed either by the taxpayer or by another person under a binding written contract) may be taken into account for purposes of demonstrating that physical work of a significant nature has begun. Physical work of a significant nature does not include work (performed either by the taxpayer or by another person under a binding written contract) to produce property that is either in existing inventory or is normally held in inventory by a vendor.<sup>11</sup>

(ii) Five Percent Safe Harbor. Under the Five Percent Safe Harbor, construction of a facility will be considered as having begun if: (i) a taxpayer pays or incurs (within

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<sup>7</sup> For § 45, see Notice 2013-29, section 4.02(1); Notice 2016-31, section 5.03; for § 45Q, see Notice 2020-12, section 5.03; and for § 48, see Notice 2018-59, section 4.03.

<sup>8</sup> For § 45, see Notice 2013-29, section 4.02(1); Notice 2016-31, section 5.03; for § 45Q, see Notice 2020-12, section 5.03; and for § 48, see Notice 2018-59, section 4.03.

<sup>9</sup> For § 45, see Notice 2013-29, section 4.03(1); for § 45Q, see Notice 2020-12, section 8.02(1); for § 48, see Notice 2018-59, section 7.03(1).

<sup>10</sup> For § 45, see Notice 2013-29, sections 4.01 and 4.03; for § 45Q, see Notice 2020-12, section 8.02; and for § 48, see Notice 2018-59, section 7.03.

<sup>11</sup> For § 45, see Notice 2013-29, section 4.02(2); for § 45Q, see Notice 2020-12, section 5.04; and for § 48, see Notice 2018-59, section 4.04.

the meaning of § 1.461-1(a)(1) and (2)) five percent or more of the total cost of the facility, and (ii) thereafter, the taxpayer makes continuous efforts to advance towards completion of the facility. All costs properly included in the depreciable basis of the facility are taken into account to determine whether the Five Percent Safe Harbor has been met.<sup>12</sup> For property that is manufactured, constructed, or produced for the taxpayer by another person under a binding written contract with the taxpayer, costs incurred with respect to the property by the other person before the property is provided to the taxpayer are deemed incurred by the taxpayer when the costs are incurred by the other person under the principles of § 461.<sup>13</sup>

(3) Continuity Requirement and Continuity Safe Harbor. The IRS Notices, as clarified and modified by Notice 2021-41, provide that for purposes of the Physical Work Test and Five Percent Safe Harbor, taxpayers must demonstrate either continuous construction or continuous efforts (Continuity Requirement) regardless of whether the Physical Work Test or the Five Percent Safe Harbor was used to establish the beginning of construction. Whether a taxpayer meets the Continuity Requirement under either test is determined by the relevant facts and circumstances. The IRS will closely scrutinize a facility and may determine that the beginning of construction is not satisfied with respect to a facility if a taxpayer does not meet the Continuity Requirement.

The IRS Notices, as subsequently modified and clarified, also provide for a “Continuity Safe Harbor” under which a taxpayer will be deemed to satisfy the Continuity Requirement provided a qualified facility is placed in service no more than four calendar years after the calendar year during which construction of the qualified facility began for purposes of §§ 45<sup>14</sup> and 48,<sup>15</sup> and no more than six calendar years after the calendar

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<sup>12</sup> For § 45, see Notice 2013-29, section 5.01(1); for § 48, see Notice 2018-59, section 5.02; and for § 45Q, see Notice 2020-12, section 6.02.

<sup>13</sup> For § 45, see Notice 2013-29, section 5.01(2); for § 48, see Notice 2018-59, section 7.03; for § 45Q, see Notice 2020-12, section 8.02.

<sup>14</sup> Notice 2016-31, section 3.

<sup>15</sup> Notice 2018-59, section 6.05.



year during which construction of the qualified facility or carbon capture equipment began for purposes of § 45Q.<sup>16</sup> Certain offshore projects and projects built on federal land under §§ 45 and 48 satisfy the Continuity Requirement if such a project is placed into service no more than 10 calendar years after the calendar year during which construction of the project began.<sup>17</sup>

.03 Recordkeeping.

Section 6001 provides that every person liable for any tax imposed by the Code, or for the collection thereof, must keep such records as the Secretary may from time to time prescribe. Section 1.6001-1(a) provides that any person subject to income tax must keep such permanent books of account or records, including inventories, as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of such tax. Section 1.6001-1(e) provides that the books and records required by § 1.6001-1 must be retained so long as the contents thereof may become material in the administration of any internal revenue law.

Section 45(b)(12) authorizes the Secretary to issue such regulations or other guidance as the Secretary determines necessary to carry out the purposes of § 45(b), including regulations or other guidance that provide requirements for recordkeeping or information reporting for purposes of administering the requirements of § 45(b).<sup>18</sup>

### SECTION 3. GUIDANCE WITH RESPECT TO PREVAILING WAGE RATE REQUIREMENTS

.01 How to Satisfy Prevailing Wage Rate Requirements. The Prevailing Wage Rate Requirements under § 45(b)(7)(A) and the substantially similar provisions set forth

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<sup>16</sup> Notice 2020-12, section 7.05.

<sup>17</sup> Notice 2021-5. Projects under §§ 45 and 48 may also be eligible for the extended Continuity Safe Harbors provided for in Notices 2020-41 and 2021-41 due to the COVID-19 pandemic depending on when construction began with respect to those projects.

<sup>18</sup> See *also* §§ 30C(g)(4), 45L(g)(3), 45Q(h)(5), 45U(d)(3), 45V(e)(5), 45Y(f), 45Z(e), 48(a)(16), 48E(i), and 179D(b)(6).

in §§ 30C, 45L, 45Q, 45U, 45V, 45Y, 45Z, 48, 48C, 48E, and 179D will be satisfied if:

(1) The taxpayer satisfies the Prevailing Wage Rate Requirements with respect to any laborer or mechanic employed in the construction, alteration, or repair of a facility, property, project, or equipment by the taxpayer or any contractor or subcontractor of the taxpayer; and

(2) The taxpayer maintains and preserves sufficient records, including books of account or records for work performed by contractors or subcontractors of the taxpayer, to establish that such laborers and mechanics were paid wages not less than such prevailing rates, in accordance with the general recordkeeping requirements under § 6001 and § 1.6001-1, *et seq.*

.02 Prevailing Wage Determinations. If the Secretary of Labor has published on [www.sam.gov](http://www.sam.gov) a prevailing wage determination for the geographic area and type or types of construction applicable to the facility, including all labor classifications for the construction, alteration, or repair work that will be done on the facility by laborers or mechanics, that wage determination contains the prevailing rates for the laborers or mechanics who perform work on the facility as most recently determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code, as identified in § 45(b)(7)(A). The following procedures described in section 3.02 of this notice are designed to be used to request an unlisted classification only in the limited circumstance when no labor classification on the applicable prevailing wage determination applies to the planned work.

If the Secretary of Labor has not published a prevailing wage determination for the geographic area and type of construction for the facility on [www.sam.gov](http://www.sam.gov), or the Secretary of Labor has issued a prevailing wage determination for the geographic area and type of construction, but one or more labor classifications for the construction, alteration, or repair work that will be done on the facility by laborers or mechanics is not

listed, then the taxpayer can rely on the procedures established by the Secretary of Labor for purposes of the requirement to pay prevailing rates determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.<sup>19</sup> To rely on the procedures to request a wage determination or wage rate, and to rely on the wage determination or rate provided in response to the request, the taxpayer must contact the Department of Labor, Wage and Hour Division via email at [IRAPrevailingWage@dol.gov](mailto:IRAPrevailingWage@dol.gov) and provide the Wage and Hour Division with the type of facility, facility location, proposed labor classifications, proposed prevailing wage rates, job descriptions and duties, and any rationale for the proposed classifications. The taxpayer may use these procedures to request a wage determination, or wage rates for the unlisted classifications, applicable to the construction, alteration, or repair of the facility. After review, the Department of Labor, Wage and Hour Division will notify the taxpayer as to the labor classifications and wage rates to be used for the type of work in question in the area in which the facility is located.

Questions regarding the applicability of a wage determination or its listed classifications and wage rates should be directed to the Department of Labor, Wage and Hour Division via email at [IRAPrevailingWage@dol.gov](mailto:IRAPrevailingWage@dol.gov).

For purposes of the Prevailing Wage Rate Requirements, the prevailing rate for qualified apprentices hired through a registered apprenticeship program may be less than the corresponding prevailing rate for journeyworkers of the same classification, as described in 29 CFR 5.5(a)(4)(i).

For purposes of the Prevailing Wage Requirements for the § 179D deduction, the prevailing wage rate for installation of energy efficient commercial building property, energy efficient building retrofit property, or property installed pursuant to a qualified

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<sup>19</sup> The taxpayer is not required to follow any other procedure to request a wage determination or a wage rate under § 45(b)(7)(A), including submission of the Form SF-1444.

retrofit plan, is determined with respect to the prevailing wage rate for construction, alteration, or repair of a similar character in the locality in which such property is located, as most recently determined by the Secretary of Labor, in accordance with subchapter IV of chapter 31 of title 40, United States Code.

.03 Definitions. For purposes of the Prevailing Wage Rate Requirement and the associated recordkeeping requirements the following definitions apply.

(1) A taxpayer, contractor, or subcontractor is considered to “employ” an individual if the individual performs services for the taxpayer, contractor, or subcontractor in exchange for remuneration, regardless of whether the individual would be characterized as an employee or an independent contractor for other Federal tax purposes.

(2) The terms “wage” and “wages” means “wages” as defined under 29 CFR 5.2(p), including any bona fide fringe benefits as defined therein.

(3) The term “laborer or mechanic” means “laborer or mechanic” as defined under 29 CFR 5.2(m).

(4) The term “construction, alteration, or repair” means “construction, prosecution, completion, or repair” as defined under 29 CFR 5.2(j).

(5) The term “prevailing wage” means the wage listed for a particular classification of laborer or mechanic on the applicable wage determination for the type of construction and the geographic area or other applicable wage as determined by the Secretary of Labor.

(6) The term “prevailing wage determination” means a wage determination issued by the Department of Labor and published on [www.sam.gov](http://www.sam.gov).<sup>20</sup>

.04 Examples.

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<sup>20</sup> Prevailing wage determinations and the applicable procedures are described in section 3.02 of this notice, above.

(1) Example 1. A taxpayer employs laborers and mechanics to construct a facility. The taxpayer also uses a contractor and subcontractor to construct the facility. The Department of Labor has issued a prevailing wage determination that applies to the type of construction that the laborers and mechanics perform for the county in which the facility is located. The taxpayer ensures that the taxpayer, contractor, and subcontractor pay each laborer and mechanic a wage rate equal to the applicable rates for their respective labor classifications listed in this prevailing wage determination. The taxpayer maintains records that are sufficient to establish that the taxpayer and the taxpayer's contractor and subcontractor paid wages not less than such prevailing wage rates. Such records include but are not limited to, identifying the applicable wage determination, the laborers and mechanics who performed construction work on the facility, the classifications of work they performed, their hours worked in each classification, and the wage rates paid for the work. Under these facts, the taxpayer will be considered to have satisfied the Prevailing Wage Rate Requirements with respect to the facility.

(2) Example 2. The facts are the same as in Example 1, except that the Department of Labor has not issued an applicable prevailing wage determination for the relevant type of construction and geographic area in which the facility is being constructed. The taxpayer contacts the Department of Labor, Wage and Hour Division under the procedures described in section 3.02 of this notice. After review, the Department of Labor, Wage and Hour Division notifies the taxpayer as to the labor classifications and wage rates to be used for the type of construction work in question in the area in which the facility is located. The taxpayer ensures that the taxpayer, contractor, and subcontractor pay each laborer and mechanic a wage rate equal to the applicable rates for the respective classifications listed in this wage determination.

The taxpayer maintains records, which include the additional prevailing wage

rates provided by the Department of Labor to establish that the taxpayer and the taxpayer's contractor and subcontractor paid wages not less than such prevailing wage rates. Under these facts, the taxpayer will be considered to have satisfied the Prevailing Wage Rate Requirements with respect to the facility.

(3) Example 3. The facts are the same as in Example 1, except that the Department of Labor has issued a prevailing wage determination that applies to the type of construction that the laborers and mechanics are hired to perform for the county in which the facility is located, but that wage determination does not include a classification of laborer or mechanic that will be used to complete the construction work on the facility (for example, electrician, carpenter, laborer, etc.). The taxpayer contacts the Department of Labor, Wage and Hour Division under the procedures described in section 3.02 of this notice. After review, including confirming that no labor classification on the applicable prevailing wage determination that applies to the work exists, the Department of Labor, Wage and Hour Division notifies the taxpayer as to the wage rate to be paid regarding the additional classification. The taxpayer ensures that the taxpayer, contractor, and subcontractor pay each laborer and mechanic a wage rate equal to the applicable rates for their respective labor classifications listed in the prevailing wage determination, including the additional wage rates provided by the Department of Labor.

The taxpayer maintains records, which include the additional wage rates provided by the Department of Labor to establish that the taxpayer and taxpayer's contractor and subcontractor paid wages not less than prevailing wage rates. Under these facts, the taxpayer will be considered to have satisfied the Prevailing Wage Rate Requirements with respect to the facility.

#### SECTION 4. GUIDANCE WITH RESPECT TO APPRENTICESHIP REQUIREMENTS

.01 How to Satisfy Apprenticeship Requirements. A taxpayer satisfies the

apprenticeship requirements described in § 45(b)(8) if:

(1) The taxpayer satisfies the Apprenticeship Labor Hour Requirements, subject to any applicable Apprenticeship Ratio Requirements;

(2) The taxpayer satisfies the Apprenticeship Participation Requirements; and

(3) The taxpayer complies with the general recordkeeping requirements under § 6001 and § 1.6001-1, including maintaining books of account or records for contractors or subcontractors of the taxpayer, as applicable, in sufficient form to establish that the Apprenticeship Labor Hour and the Apprenticeship Participation Requirements have been satisfied.

Under the Good Faith Effort Exception,<sup>21</sup> the taxpayer will be considered to have made a good faith effort in requesting qualified apprentices if the taxpayer requests qualified apprentices from a registered apprenticeship program in accordance with usual and customary business practices for registered apprenticeship programs in a particular industry.<sup>22</sup> Pursuant to § 6001 and § 1.6001-1, the taxpayer must maintain sufficient books and records establishing the taxpayer's request of qualified apprentices from a registered apprenticeship program and the program's denial of such request or non-response to such request, as applicable.

.02 Definitions. For purposes of the apprenticeship requirements the following definitions apply.

(1) A taxpayer, contractor, or subcontractor is considered to "employ" an individual if the individual performs services for the taxpayer, contractor, or subcontractor in exchange for remuneration, regardless of whether the individual would be characterized as an employee or an independent contractor for other Federal tax

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<sup>21</sup> Described in section 2.01(3) of this notice, above.

<sup>22</sup> Registered apprenticeship programs can be located using the Office of Apprenticeship's partner finder tool, available at <https://www.apprenticeship.gov/partner-finder> and through the applicable State Apprenticeship Agency, <https://www.apprenticeship.gov/about-us/state-offices>.

purposes.<sup>23</sup>

(2) The term “journeyworker” means “journeyworker” as defined under 29 CFR 29.2.

(3) The term “apprentice-to-journeyworker ratio” means the ratio described under 29 CFR 29.5(b)(7).

(4) The term “construction, alteration, or repair” means “construction, prosecution, completion, or repair” as defined under 29 CFR 5.2(j).

(5) The term “State Apprenticeship Agency” means “State Apprenticeship Agency” as defined under 29 CFR 29.2.

.03 Example. A taxpayer employs workers and qualified apprentices to construct a new facility. Construction of the facility begins in calendar year 2023, and the construction of the facility is completed in calendar year 2023. To satisfy the apprenticeship labor hour requirement, the percentage of total labor hours to be performed by qualified apprentices is 12.5 percent for 2023. The total labor hours, as defined in § 45(b)(8)(E)(i), for the construction of the facility is 10,000 labor hours. The taxpayer employed qualified apprentices that performed a total of 1,150 hours of construction on the facility. On each day that a qualified apprentice performed construction work on the facility for the taxpayer, the applicable requirements for apprentice-to-journeyworker ratios of the Department of Labor or the applicable State Apprenticeship Agency were met.

The taxpayer also hired a contractor to assist with construction of the facility for 1,000 labor hours of the 10,000 total labor hours. The contractor employed qualified apprentices that performed a total of 100 hours of construction on the facility. On each day that a qualified apprentice performed construction work on the facility for the

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<sup>23</sup> This definition does not alter any of the existing legal requirements pertaining to the proper classification of qualified apprentices in registered apprenticeship programs as employees for purposes of certain Federal laws and regulations.



contractor, the applicable requirements for apprentice-to-journeyworker ratios of the Department of Labor or the applicable State Apprenticeship Agency were met.

The taxpayer ensured that the taxpayer and the contractor each employed 1 or more qualified apprentices because the taxpayer and contractor each employed 4 or more individuals to perform construction work on the qualified facility.

The taxpayer maintained sufficient records to establish that the taxpayer and the contractor hired by the taxpayer satisfied the Apprenticeship Labor Hour Requirement of 1,250 total labor hours for the facility (12.5% of 10,000 labor hours), and the Apprenticeship Ratio and Apprenticeship Participation Requirements. Under these facts, the taxpayer will be considered to have satisfied the Apprenticeship Labor Hour, Apprenticeship Ratio, and Apprenticeship Participation Requirements of the statute with respect to the facility.

#### SECTION 5. DETERMINING WHEN CONSTRUCTION OR INSTALLATION BEGINS

To determine when construction begins for purposes of §§ 30C, 45V, 45Y, and 48E, principles similar to those under Notice 2013-29 regarding the Physical Work Test and Five Percent Safe Harbor apply, and taxpayers satisfying either test will be considered to have begun construction. In addition, principles similar to those provided in the IRS Notices regarding the Continuity Requirement for purposes of §§ 30C, 45V, 45Y, and 48E apply. Whether a taxpayer meets the Continuity Requirement under either test is determined by the relevant facts and circumstances.

Similar principles to those under section 3 of Notice 2016-31 regarding the Continuity Safe Harbor also apply for purposes of §§ 30C, 45V, 45Y, and 48E. Taxpayers may rely on the Continuity Safe Harbor provided the facility is placed in service no more than four calendar years after the calendar year during which construction began.

For purposes of § 179D, the IRS will accept that installation has begun if a

taxpayer generally satisfies principles similar to the two tests described in section 2.02 of this notice, above, regarding the beginning of construction under Notice 2013-29 (Physical Work Test and Five Percent Safe Harbor). The relevant facts and circumstances will ultimately be determinative of whether a taxpayer has begun installation.

For purposes of §§ 45, 45Q, and 48, the IRS Notices will continue to apply under each respective Code section, including application of the Physical Work Test and Five Percent Safe Harbor, and the rules regarding the Continuity Requirement and Continuity Safe Harbors.<sup>24</sup>

## SECTION 6. PAPERWORK REDUCTION ACT

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, and its attendant regulations, 5 CFR part 1320, require an agency to consider the impact of paperwork and other information collection burdens imposed on the public. The IRA allows taxpayers to take certain increased credit amounts or an increased deduction if they satisfy the Prevailing Wage Requirements, and Apprenticeship Requirements, where applicable. The Department of Labor will collect the data needed to issue wage rates for taxpayers in connection with facilities whose construction, alteration, or repair is not subject to one or more Davis-Bacon and Related Acts (DBRA), as facilities subject to the DBRA are already accounted for in an existing collection approved by OMB.<sup>25</sup> DOL data collections needed to register apprentices and apprenticeship programs are accounted for in an existing collection approved by OMB.<sup>26</sup>

Under the PRA, an agency may not collect or sponsor an information collection requirement unless it displays a currently valid Office of Management and Budget

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<sup>24</sup> Described in section 2.02 of this notice, above.

<sup>25</sup> OMB Control Number 1235-0023.

<sup>26</sup> OMB Control Number 1205-0223.

(OMB) control number.<sup>27</sup> This collection of information is approved under OMB Control Number 1235-0034. The Department of Labor estimates that it will take an average of 15 minutes for respondents to complete this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The information that the Department of Labor will collect, as discussed in section 3.02 of this notice, includes the type of facility, facility location, proposed labor classifications, proposed prevailing wage rates, job descriptions and duties, and any rationale for the proposed classifications. After review, the Department of Labor will notify the taxpayer as to the labor classifications and wage rates to be used for the type of work in question in the area in which the facility is located. You may view the Department of Labor's webpage instruction here: <https://www.dol.gov/agencies/whd/IRA>.

## SECTION 7. DRAFTING INFORMATION

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<sup>27</sup> See 5 CFR 1320.8(b)(3)(vi).



The principal authors of this notice are Alexander Scott and Jeremy Milton of Associate Chief Counsel (Passthroughs & Special Industries). However, other personnel from the Treasury Department and the IRS participated in its development. For further information regarding this notice contact Mr. Scott at (202) 317-6853 (not a toll-free call).

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