

Treasury and IRS Provide Initial Guidance on Inflation Reduction Act Domestic Content Bonus Credit Requirements

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On May 12, 2023, the U.S. Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) issued initial guidance on the Inflation Reduction Act's (IRA) requirements for domestic content bonus tax credits for certain renewable energy facilities. Under the IRA, bonus tax credits are available for renewable energy production or investment if the steel, iron, or manufactured products that are "components of a qualified facility" were produced in the United States.

For iron and steel components of a facility, all manufacturing processes (from initial melting and pouring through coating and finishing) must occur in the United States. For manufactured products used directly in a facility, a certain "adjusted percentage" of the cost of all such products or their components must be produced in the United States. Bonus credits of up to 10 percentage points for investments, and 10% for production, are available if both requirements are satisfied.

The guidance clarifies that the iron and steel requirement applies to "construction materials made primarily of steel or iron" that are "structural in function." The requirement may therefore be satisfied even if items like steel fasteners, cabinets, hinges, or similar non-structural items are not melted and poured in the United States. For manufactured products, the guidance clarifies that the adjusted percentage is calculated based on the sum of the costs of all U.S.-manufactured products that are either (i) components of the qualified facility, or (ii) components of those components. If that sum as a share of the costs of all manufactured products in the qualified facility

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exceeds the applicable adjusted percentage, the domestic content requirement for manufactured products is satisfied. The adjusted percentage in general is 40% but is 20% for offshore wind facilities. Beginning in 2025, the adjusted percentages both in general and for offshore wind facilities increase annually to a maximum of 55% in 2027 and 2028, respectively.

The guidance also provides an initial list of product-specific examples to distinguish iron and steel products from manufactured products. In utility scale photovoltaic systems, products like module racks, piles, and rebar in concrete foundations will be treated as iron or steel products, while photovoltaic trackers, modules, and inverters will be treated as manufactured products. In utility scale wind projects, the towers and jacket foundations will be treated as iron or steel products, while items like monopile tower sections, transition pieces, and turbines will be treated as manufactured products.

While no timeline for further comment or clarification has of yet been provided, Treasury and the IRS intend to issue proposed regulations at some point in the future. As a result, the public will likely have another opportunity to provide comments regarding issues addressed in the guidance before final regulations are issued.

Wiley has robust International Trade and Government Contracts Practices and extensive experience helping clients navigate the IRA. Please contact the authors of this alert for any questions related to the IRA.