INTERNAL REVENUE
BULLETIN

HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2024–38
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These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

REG-108920-24, page 607.

These are proposed regulations concerning the clean electricity low-income communities bonus credit program (Program) established pursuant to the Inflation Reduction Act of 2022 as section 48E(h) of the Internal Revenue Code. Applicants investing in certain non-combustion and gasification clean electricity generation facilities may apply for an allocation of environmental justice capacity limitation (Capacity Limitation) to increase the amount of the clean electricity investment credit for the taxable year in which the facility is placed in service. These proposed regulations describe proposed definitions and requirements that would be applicable for the Program. The proposed regulations would affect applicants seeking allocations of Capacity Limitation to claim the increased clean electricity investment credit under section 48E for the taxable year in which the facility is placed in service.

Rev. Proc. 2024-34, page 604.

This revenue procedure modifies section 7 of Rev. Proc. 2024-23, 2024-23 I.R.B. 1334, to modify the procedures under section 446 of the Internal Revenue Code and § 1.446-1(e) of the Income Tax Regulations for obtaining automatic consent of the Commissioner to change methods of accounting for research or experimental expenditures paid or incurred in taxable years beginning after December 31, 2021. Specifically, this revenue procedure expands the waiver of the eligibility rules in section 5.01(1)(d) and (f) of Rev. Proc. 2015-13 to accounting method changes described in section 7.01 of Rev. Proc. 2024-23 that are made in any taxable year beginning in 2022 or 2023. This revenue procedure also permits a taxpayer to make changes under section 7.01 of Rev. Proc. 2024-23 regardless of whether a change under that section has been filed for any other taxable year beginning in 2022 or 2023. Finally, for any change under section 7.01 of Rev. Proc. 2024-23 made in a taxable year beginning in 2022 or 2023 (other than the first taxable year beginning after December 31, 2021), this revenue procedure limits audit protection for research or experimental expenditures paid or incurred in the taxpayer's first taxable year beginning after December 31, 2021 if the taxpayer failed to make a change for such expenditures for such taxable year.

Finding Lists begin on page ii.

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Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.
This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.
This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.
To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.
This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

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Part III

26 CFR 601.204: Changes in accounting periods and in methods of accounting.
(Also, Part 1, §§ 174, 446; 1.446-1.)

Rev. Proc. 2024-34

SECTION 1. PURPOSE

This revenue procedure modifies section 7 of Rev. Proc. 2024-23, 2024-23 I.R.B. 1334, to modify the procedures under § 446 of the Internal Revenue Code (Code)[1] and § 1.446-1(e) for obtaining automatic consent of the Commissioner of Internal Revenue (Commissioner) to change methods of accounting for expenditures paid or incurred in taxable years beginning after December 31, 2021, to comply with § 174 or to rely on interim guidance provided in sections 3 through 7 of Notice 2023-63, 2023-39 I.R.B. 919, as modified by Notice 2024-12, 2024-5 I.R.B. 616. References in this revenue procedure to "former § 174" refer to that section as in effect for research or experimental expenditures paid or incurred in taxable years beginning before January 1, 2022, that is, prior to the effective date of the amendments made to § 174 by § 13206(a) of Public Law 115-97, 131 Stat. 2054 (Dec. 22, 2017), commonly referred to as the Tax Cuts and Jobs Act (TCJA). References to "§ 174" in this revenue procedure refer to § 174 as amended by the TCJA.

SECTION 2. BACKGROUND

.01 *Treatment of research and experimental expenditures under former § 174*.

Former § 174 allowed taxpayers to elect to deduct research or experimental expenditures paid or incurred in connection with a trade or business as current expenses, to capitalize and amortize such expenditures over a period of not less than 60 months, or to charge such expenditures to capital account.

.02 *Treatment of SRE expenditures under § 174*.

(1) Section 13206(a) of the TCJA amended former § 174. For amounts paid or incurred in taxable years beginning after December 31, 2021, that meet the definition of specified research or experimental (SRE) expenditures under § 174(b), § 174(a)(1) disallows deductions for such amounts, except as provided in § 174(a)(2). Section 174(a)(2) requires taxpayers to charge SRE expenditures to capital account and allows amortization deductions of such capitalized expenditures ratably over a 5-year period in the case of SRE expenditures attributable to domestic research, or a 15-year period in the case of SRE expenditures attributable to foreign research, beginning with the midpoint of the taxable year in which such expenditures are paid or incurred. Section 13206(a) of the TCJA also made other amendments to former § 174, including amendments to treat any amount paid or incurred in connection with the development of any software as an SRE expenditure and to prevent the accelerated recovery of unamortized SRE expenditures on account of the disposition, retirement, or abandonment of property with respect to which such expenditures were paid or incurred. For additional background on former § 174 and the TCJA amendments to former § 174, see section 2 of Notice 2023-63.

(2) Section 13206(b) of the TCJA requires taxpayers to treat the amendments made by section 13206(a) of the TCJA as a change in method of accounting for purposes of § 481 that is (i) initiated by the taxpayer, (ii) made with the consent of the Secretary of the Treasury or her delegate, and (iii) applied on a cut-off basis to SRE expenditures paid or incurred in taxable years beginning after December 31, 2021. Thus, no adjustments under § 481(a) are required or permitted with respect to research or experimental expenditures paid or incurred in taxable years beginning before January 1, 2022.

.03 *Procedural guidance under Rev. Proc. 2023-11*.

On December 29, 2022, the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) issued Rev. Proc. 2023-11, 2023-3 I.R.B. 417, modifying and superseding Rev. Proc. 2023-8, 2023-3 I.R.B. 407, to provide procedures to obtain automatic consent to change methods of accounting for SRE expenditures to comply with § 174. The change in method of accounting provided by Rev. Proc. 2023-11 was subsequently included in section 7.02 of Rev. Proc. 2023-24, 2023-28 I.R.B. 1207.

.04 *Interim guidance under Notice 2023-63, as modified by Notice 2024-12*.

(1) Notice 2023-63 was issued on September 8, 2023, to announce that the Treasury Department and the IRS intend to issue proposed regulations addressing (1) the capitalization and amortization of SRE expenditures under § 174, (2) the treatment of SRE expenditures under § 460, and (3) the application of § 482 to cost sharing arrangements involving SRE expenditures. Sections 3 through 9 of Notice 2023-63 provide interim guidance regarding issues intended to be addressed by forthcoming proposed regulations.

(2) Notice 2024-12, 2024-5 I.R.B. 616, was released on December 22, 2023, and published on January 19, 2024, to provide additional interim guidance to clarify and modify Notice 2023-63 regarding (1) the treatment of costs paid or incurred by a research provider for research provided under contract, (2) the requirement that a taxpayer that chooses to rely on any of the rules described in Notice 2023-63 must rely on all the rules described in Notice 2023-63, and (3) the obsoletion of section 5 of Rev. Proc. 2000-50, 2000-1 C.B. 601.

.05 *Procedural guidance under Rev. Proc. 2024-9*.

(1) Revenue Procedure 2024-9, 2024-5 I.R.B. 628, was released on December 22, 2023, and published on January 19, 2024, to provide procedures for taxpayers to obtain automatic consent to change methods of accounting for expenditures paid or incurred in taxable years beginning after December 31, 2021, to comply with § 174 or to rely on interim guidance under §§ 174 and 460 provided in Notice 2023-63, as modified by Notice 2024-12. The change in method of accounting for § 174 provided in section 3 of Rev. Proc. 2024-9

[1] Unless otherwise specified, all "section" or "§" references are to sections of the Code or the Income Tax Regulations (26 CFR part 1).

modified section 7.02 of Rev. Proc. 2023-24. Rev. Proc. 2023-24 was subsequently superseded in part by Rev. Proc. 2024-23. Rev. Proc. 2024-23 renumbered section 7.02 as section 7.01 and removed former section 7.01 as obsolete.

(2) Section 7.01(5)(a) of Rev. Proc. 2024-23 waives the eligibility rules in sections 5.01(1)(d) (regarding changes made in the final year of a trade or business) and 5.01(1)(f) (regarding changes made in the previous 5 years for the same item) of Rev. Proc. 2015-13 for a change described in section 7.01(1)(a) of Rev. Proc. 2024-23 for the taxpayer's first or second taxable year beginning after December 31, 2021.

(3) Section 7.01(5)(b) of Rev. Proc. 2024-23 provides that a taxpayer may make a change described in section 7.01(1)(a) of Rev. Proc. 2024-23 for its second taxable year beginning after December 31, 2021, regardless of whether the taxpayer made a change for the same item for its first taxable year beginning after December 31, 2021.

(4) Section 7.01(6) of Rev. Proc. 2024-23 provides that a taxpayer does not receive audit protection under section 8.01 of Rev. Proc. 2015-13 for a change under section 7.01(1)(a) of Rev. Proc. 2024-23 in the second taxable year beginning after December 31, 2021, with respect to expenditures paid or incurred in the first taxable year beginning after December 31, 2021, if the taxpayer did not change its method of accounting under section 7.01(1)(a) in an effort to comply with § 174 for the first taxable year beginning after December 31, 2021.

.06 *Changing methods of accounting under section 446(e)*.

(1) Except as otherwise expressly provided in the Code and the regulations thereunder, § 446(e) and § 1.446-1(e)(2) require a taxpayer to secure the consent of the Commissioner before changing a method of accounting for Federal income tax purposes. Section 1.446-1(e)(3)(i) states, in part, that except as otherwise provided under the authority of § 1.446-1(e)(3)(ii), to secure the Commissioner's consent to a taxpayer's change in method of accounting the taxpayer generally must file a Form 3115, *Application for Change in Accounting Method*, with the Commissioner during the taxable year in which the taxpayer desires to make the change in method of accounting. Section 1.446-1(e)(3)(ii) authorizes the Commissioner to prescribe administrative procedures under which taxpayers will be permitted to change their method of accounting. The administrative procedures will prescribe those terms and conditions necessary to obtain the Commissioner's consent to effect the change and to prevent amounts from being duplicated or omitted.

(2) Rev. Proc. 2015-13, 2015-5 I.R.B. 419, as clarified and modified by Rev. Proc. 2015-33, 2015-24 I.R.B. 1067, and as modified by Rev. Proc. 2021-34, 2021-35 I.R.B. 337, Rev. Proc. 2021-26, 2021-22 I.R.B. 1163, Rev. Proc. 2017-59, 2017-48 I.R.B. 543, and section 17.02(b) and (c) of Rev. Proc. 2016-1, 2016-1 I.R.B. 1, sets forth the general administrative procedures by which a taxpayer may obtain the automatic consent of the Commissioner to change a method of accounting described in the *List of Automatic Changes*. Rev. Proc. 2024-23 contains the current *List of Automatic Changes*.

(3) A change in a taxpayer's treatment of expenditures paid or incurred in taxable years beginning after December 31, 2021, to comply with § 174 or to rely on the interim guidance in sections 3 through 7 of Notice 2023-63 is generally a change in method of accounting to which §§ 446(e) and 481, and the corresponding regulations, apply. A taxpayer that changes its method of accounting to comply with § 174 or to rely on the interim guidance in sections 3 through 7 of Notice 2023-63 must use the accounting method change procedures in Rev. Proc. 2015-13 or its successor. Section 3 of this revenue procedure modifies the eligibility rules and limited audit protection rules in section 7.01 of Rev. Proc. 2024-23 to allow taxpayers to obtain automatic consent to change their method of accounting to comply with § 174 or to rely on the interim guidance provided in sections 3 through 7 of Notice 2023-63 for taxable years beginning after December 31, 2021.

(4) Specifically, the Treasury Department and the IRS are aware that certain taxpayers may not be eligible to file automatic changes in methods of accounting under section 7.01 of Rev. Proc. 2024-23 for a taxable year beginning in 2022 or a taxable year beginning in 2023 if the taxpayer had one or multiple short taxable years during 2022 or 2023. This is because the waiver of the eligibility rules in section 5.01(1)(d) and (f) of Rev. Proc. 2015-13 apply only to a taxpayer's first or second taxable year beginning after December 31, 2021. Therefore, the procedures in section 3 of this revenue procedure modify the eligibility rules in section 7.01(5)(a) of Rev. Proc. 2024-23 to provide that the eligibility rules in section 5.01(1)(d) and (f) of Rev. Proc. 2015-13 do not apply to a change described in section 7.01(1)(a) of Rev. Proc. 2024-23 made by a taxpayer for any taxable year beginning in 2022 or 2023. The procedures in section 3 of this revenue procedure also modify the rules for changes made in successive taxable years in section 7.01(5)(b) of Rev. Proc. 2024-23 to provide that a taxpayer may make a change described in section 7.01(1)(a) of Rev. Proc. 2024-23 for a taxable year beginning in 2022 or 2023, regardless of whether the taxpayer made a change for the same item for any previous taxable year beginning in 2022 or 2023. Finally, the procedures in section 3 of this revenue procedure also modify the limited audit protection rules in section 7.01(6) of Rev. Proc. 2024-23 to provide that a taxpayer does not receive audit protection for a change under section 7.01(1)(a) of this revenue procedure made for any taxable year beginning in 2022 or 2023 (other than the first taxable year beginning after December 31, 2021) with respect to expenditures paid or incurred in the first taxable year beginning after December 31, 2021, if the taxpayer did not change its method of accounting under section 7.01(1)(a) in an effort to comply with § 174 for the first taxable year beginning after December 31, 2021.

SECTION 3. MODIFICATIONS TO REV. PROC. 2024-23

.01 *Modification of section 7.01(5) and (6) of Rev. Proc. 2024-23*. Section 7.01(5) and (6) of Rev. Proc. 2024-23, are modified to read as follows:

(5) *Certain eligibility rules inapplicable*.

(a) *In general*. The eligibility rules in section 5.01(1)(d) and (f) of Rev. Proc. 2015-13, 2015-5 I.R.B. 419, do not apply to a change described in section 7.01(1)(a) of this revenue procedure made by a

taxpayer for any taxable year beginning in 2022 or 2023.

(b) *Changes made in successive taxable years*. A taxpayer may make a change described in section 7.01(1)(a) of this revenue procedure for a taxable year beginning in 2022 or 2023, regardless of whether the taxpayer made a change for the same item for any previous taxable year beginning in 2022 or 2023.

(6) *Limited audit protection*. A taxpayer does not receive audit protection under section 8.01 of Rev. Proc. 2015-13 for the change under section 7.01(1)(a) of this revenue procedure with respect to expenditures paid or incurred in taxable years beginning on or before December 31, 2021. Additionally, a taxpayer does not receive audit protection under section 8.01 of Rev. Proc. 2015-13 for a change under section 7.01(1)(a) of this revenue procedure made for any taxable year beginning in 2022 or 2023 (other than the first taxable year beginning after December 31, 2021), with respect to expenditures paid or incurred in the first taxable year beginning after December 31, 2021, if the taxpayer did not change its method of accounting under section 7.01(1)(a) in an effort to comply with § 174 for the first taxable year beginning after December 31, 2021. See section 8.02(2) of Rev. Proc. 2015-13.

SECTION 4. EFFECT ON OTHER DOCUMENTS

This revenue procedure modifies section 7.01 of Rev. Proc. 2024-23.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective for Forms 3115 filed on or after August 29, 2024.

SECTION 6. PAPERWORK REDUCTION ACT

The Paperwork Reduction Act of 1995 (44 U.S.C. §§ 3501-3520) (PRA) generally requires that a Federal agency obtain the approval of the Office of Management and Budget (OMB) before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the OMB. The collection of information in this revenue procedure is in section 3 and is performed using Form 3115. This form is approved under OMB control numbers 1545-0074 for individual filers and 1545-0123 for business filers. This revenue procedure is not changing or creating new collection requirements not already approved by OMB.

SECTION 7. DRAFTING INFORMATION

The principal author of this revenue procedure is Bruce Chang of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this revenue procedure, please contact Mr. Chang at (202) 317-4870 (not a toll-free number).

Part IV

Notice of Proposed Rulemaking

Guidance on Clean Electricity Low-Income Communities Bonus Credit Amount Program

REG-108920-24

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations concerning the program to allocate clean electricity low-income communities bonus credit amounts established pursuant to the Inflation Reduction Act of 2022 for calendar years 2025 and succeeding years. Applicants investing in certain clean electricity generation facilities that produce electricity without combustion and gasification may apply for an allocation of environmental justice capacity limitation to increase the amount of the clean electricity investment credit for the taxable year in which the facility is placed in service. This document describes proposed definitions and requirements that would be applicable for the program.

DATES: Written or electronic comments must be received by October 3, 2024. The public hearing on these proposed regulations is scheduled to be held on October 17, 2024, at 10 a.m. EST. Requests to speak and outlines of topics to be discussed at the public hearing must be received by October 3, 2024. If no outlines are received by October 3, 2024, the public hearing will be cancelled. Requests to attend the public hearing must be received by 5 p.m. on October 15, 2024.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically via the Federal eRulemaking Portal at https://www.regulations.gov (indicate IRS and REG-108920-24) by following the online instructions for submitting comments. Requests for the public hearing must be submitted as prescribed in the "Comments and Public Hearing" section. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) will publish for public availability any comments submitted to the IRS's public docket. Send paper submissions to: CC:PA:01:PR (REG-108920-24), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed rules, Office of Associate Chief Counsel (Passthroughs & Special Industries) at (202) 317-6853 (not a toll-free number); concerning submissions of comments or the public hearing, the Publications and Regulations Section at (202) 317-6901 (not a toll-free number) or by email at publichearings@irs.gov (preferred).

SUPPLEMENTARY INFORMATION:

Authority

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 48E(h) of the Internal Revenue Code (Code) to provide proposed definitions and rules relating to the allocation of environmental justice capacity limitation (Capacity Limitation) for calendar year 2025 and succeeding years (proposed regulations). Section 48E(h)(4)(A) provides an express delegation of authority for the Secretary of the Treasury or her delegate (Secretary) to establish a program to allocate amounts of Capacity Limitation to applicable facilities not later than January 1, 2025, and to make such allocations. Section 48E(h)(5) provides an express delegation of authority for the Secretary, by regulations or other guidance, to provide rules for recapturing the benefit of any increase in the credit allowed under section 48E(a) that results from an allocation of Capacity Limitation with respect to any property that ceases to be property eligible for such increase (but that does not cease to be investment credit property within the meaning of section 50(a) of the Code). In addition, section 48E(i) provides an express delegation of authority for the Secretary to issue guidance regarding implementation of section 48E not later than January 1, 2025. The proposed regulations are also issued under the express delegation of authority under section 7805 of the Code.

Background

I. *Overview*

Section 13702 of Public Law 117-169, 136 Stat. 1818, 1921 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA), added new section 48E(h) to authorize the Secretary to establish a program for calendar years 2025 and succeeding years to award allocations of Capacity Limitation that increase the amount of the new clean electricity investment credit determined under section 48E(a) (section 48E credit) with respect to eligible property that is part of an applicable facility. This document contains proposed definitions and rules relating to the allocation of Capacity Limitation for calendar year 2025 and succeeding years.

The amount of section 48E credit for a taxable year generally is calculated by multiplying the qualified investment for such taxable year with respect to any qualified facility placed in service during that taxable year by the applicable percentage (as defined in section 48E(a)(2)). If an applicable facility is awarded an allocation of Capacity Limitation, section 48E(h) increases the amount of the section 48E credit with respect to the applicable facility by increasing the applicable percentage used to calculate the amount of the section 48E credit (section 48E(h) Increase). The term "applicable facility" is defined in section 48E(h)(2) to mean any qualified facility that (i) is not described in section 45Y(b)(2)(B) of the Code (relating to combustion and gasification facilities); (ii) has a maximum net output of less than

5 megawatts (MW) (as measured in alternating current (AC)); and (iii) is described in at least one of four categories in section 48E(h)(2)(A)(iii) (as further described in part II of this Background).

Section 48E(h)(4)(A) directs the Secretary, not later than January 1, 2025, to establish a program to allocate amounts of Capacity Limitation to applicable facilities and to "provide procedures to allow for an efficient allocation" of Capacity Limitation to applicable facilities. Accordingly, the Treasury Department and the IRS are establishing the Clean Electricity Low-Income Communities Bonus Credit Amount Program (Program). As described in the Explanation of Provisions, this notice of proposed rulemaking provides proposed threshold definitions and requirements for the Program to make allocations of Capacity Limitation efficiently and effectively. After finalizing these rules, the Treasury Department and the IRS will provide the procedures for the 2025 Program in a revenue procedure published in the Internal Revenue Bulletin. *See* §601.601 of the Statement of Procedural Rules (26 CFR part 601).

Procedures for future Program years also will be provided in guidance published in the Internal Revenue Bulletin. The Treasury Department and the IRS expect that many of the procedural aspects of the Program will be similar to the Low-Income Communities Bonus Credit Program established under section 48(e) of the Code[1] available for calendar years 2023 and 2024.

II. *Four Categories of Applicable Facilities*

Depending on the category of the facility, an allocation of Capacity Limitation may result in a section 48E(h) Increase equal to either 10 percentage points or 20 percentage points. Section 48E(h)(1)(A)(i) provides for a section 48E(h) Increase of 10 percentage points for eligible property that is located in a low-income community, as defined in section 45D(e) of the Code (Category 1 facility), or on Indian land, as defined in section 2601(2) of the Energy Policy Act of 1992 (25 U.S.C. 3501(2)) (Category 2 facility). Section 48E(h)(1)(A)(ii) provides for a section 48E(h) Increase of 20 percentage points for eligible property that is part of a qualified low-income residential building project (Category 3 facility) or a qualified low-income economic benefit project (Category 4 facility).

Section 48E(h)(2)(B) provides that a facility will be treated as part of a "qualified low-income residential building project" if the facility is installed on a residential rental building that participates in a covered housing program (as defined in section 41411(a) of the Violence Against Women Act of 1994 (34 U.S.C. 12491(a)(3)) (VAWA)), a housing assistance program administered by the Department of Agriculture (USDA) under title V of the Housing Act of 1949, a housing program administered by a tribally designated housing entity (as defined in section 4(22) of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4103(22))), or such other affordable housing programs as the Secretary may provide, and the financial benefits of the electricity produced by the facility are allocated equitably among the occupants of the dwelling units of such building.

Section 48E(h)(2)(C) provides that a facility will be treated as part of a "qualified low-income economic benefit project" if at least 50 percent of the financial benefits of the electricity produced by such facility are provided to households with income of less than 200 percent of the poverty line (as defined in section 36B(d)(3)(A) of the Code) applicable to a family of the size involved, or less than 80 percent of area median gross income (as determined under section 142(d)(2)(B) of the Code).

For a qualified low-income residential building project and a qualified low-income economic benefit project, section 48E(h)(2)(D) provides that electricity acquired at a below-market rate will be considered a financial benefit.

III. *Overview of Clean Electricity Low-Income Communities Bonus Credit Amount Program*

Section 48E(h)(4)(A) directs the Secretary to establish the Program, not later than January 1, 2025, to allocate amounts of Capacity Limitation to applicable facilities. Under section 48E(h)(4)(C), the total annual Capacity Limitation that may be allocated is 1.8 gigawatts of direct current capacity for each of the calendar years during the period beginning on January 1, 2025, and ending on December 31 of the applicable year (as defined in section 45Y(d)(3))[2], and zero thereafter.

Under section 48E(h)(4)(D)(i), if the annual Capacity Limitation for any calendar year exceeds the aggregate amount allocated for such year, the excess is carried forward to the next year. No amount of Capacity Limitation may be carried to any calendar year after the third calendar year following the applicable year (as defined in section 45Y(d)(3)). Under section 48E(h)(4)(D)(ii), if the annual Capacity Limitation for calendar year 2024 under section 48(e)(4)(D) exceeds the aggregate amount allocated for such year, the excess amount may be carried over and applied to the annual Capacity Limitation under this paragraph for calendar year 2025. The annual Capacity Limitation for calendar year 2025 is increased by the amount of such excess.

The proposed regulations in this notice of proposed rulemaking would provide definitions and requirements necessary to submit an application to request an allocation of Capacity Limitation for calendar year 2025 (and subsequent years) under the Program and to claim a section 48E(h) Increase. The Treasury Department and the IRS request comments on these proposed definitions and requirements.

Explanation of Provisions

The proposed regulations relate to specific definitions and requirements regarding the following topics: (1) the definition

[1] For the most recent procedures applicable to the Low-Income Communities Bonus Credit Program established under section 48(e), refer to Revenue Procedure 2024-19, 2024-16 I.R.B 899.

[2] Section 45Y(d)(3) defines the term "applicable year" as the later of the calendar year in which the Secretary determines that the annual greenhouse gas emissions from the production of electricity in the United States are equal to or less than 25 percent of the annual greenhouse gas emissions from the production of electricity in the United States for calendar year 2022, or 2032. *See also* proposed §1.45Y-1(c)(3).

of "applicable facility;" (2) definitions of "eligible property" under section 48E(h)(3); (3) the definition of "located in" for relevant geographic criteria; (4) definitions and requirements related to the term "financial benefit" and "electricity acquired at a below-market rate" under section 48E(h)(2)(D), as well as a manner to apply such definitions, appropriately, to Category 3 facilities that are part of qualified low-income residential building projects and Category 4 facilities that are part of qualified economic benefit projects; (5) a rule for facilities placed in service prior to an allocation award; (6) reservations of Capacity Limitation allocation for applicant facilities that meet certain Additional Selection Criteria; (7) sub-reservations of Capacity Limitation allocation for facilities built in a low-income community; (8) the requirement to submit certain application materials demonstrating facility viability in order to allow for an efficient allocation process; (9) the requirement to submit certain documentation and attestations when a facility is placed in service; and (10) post-allocation compliance, including disqualification of allocations of Capacity Limitation and recapture of the section 48E(h) Increase.

I. *Definition of Applicable Facility*

The term "applicable facility" is defined in section 48E(h)(2)(A) to mean any qualified facility (as defined in section 48E(b)(3)) that (i) is not described in section 45Y(b)(2)(B) (related to combustion and gasification facilities); (ii) has a maximum net output of less than 5 MW (as measured in AC); and (iii) is described in at least one of the four categories described in section 48E(h)(2)(A)(iii) (Category 1, 2, 3, or 4). Therefore, proposed §1.48E(h)-1(b)(1) would define an applicable facility as any qualified facility described in section 48E(b)(3) that (i) is a facility that is not described in section 45Y(b)(2)(B) (non-combustion and gasification facilities); (ii) has a maximum net output of less than 5 MW (as measured in AC); and (iii) is described in at least one of the four categories described in section 48E(h)(2)(A)(iii) (Category 1, 2, 3, or 4).

A. *Types of applicable facilities*

Proposed §1.48E(h)-1(b)(1) would also clarify that the types of qualified facilities eligible for the Program are only those non-combustion and gasification qualified facilities[3] (non-C&G facilities) that the Secretary has determined have a greenhouse gas (GHG) emissions rate of not greater than zero. An emissions rate table for eligible non-C&G facilities will be published annually in the ***Federal Register*** or the Internal Revenue Bulletin. Consistent with the notice of proposed rulemaking and a notice of public hearing (REG-119283-23) published in the ***Federal Register*** (89 FR 47792) providing guidance on the clean electricity production and investment credits under sections 45Y and 48E, the following types or categories of qualified facilities are categorically non-C&G facilities with a GHG emissions rate that is not greater than zero: wind facilities (including small wind properties), hydropower facilities (including retrofits adding power production to non-powered dams, conduit hydropower, hydropower using new impoundments, and hydropower using diversions such as a penstock or channel), marine and hydrokinetic facilities, solar facilities (including photovoltaic and concentrating solar power), geothermal facilities (including flash and binary plants), nuclear fission facilities, nuclear fusion facilities, and waste energy recovery property (WERP) that derives energy from any of the energy sources described in proposed §1.45Y-5(c)(2)(i) through (vii) (including geothermal or solar waste heat recovery such as from a district geothermal heating system, and waste heat recovery such as from a nuclear reactor dedicated to heat production for an industrial facility). These categories of facilities may be eligible for an allocation of Capacity Limitation during the 2025 Program year. Additional types of categories of non-C&G facilities may be eligible in future Program years if the Secretary determines that such facilities have a GHG emissions rate that is not greater than zero in guidance published in the ***Federal Register*** or the Internal Revenue Bulletin. For ease of reference for applicants to the Program, the Treasury Department and the IRS will include the list of eligible qualified facilities in the procedural guidance that will be published for the Program.

B. *Four categories of applicable facilities*

Depending on the category of the facility, an allocation of Capacity Limitation under the Program may result in a section 48E(h) Increase equal to either 10 percentage points or 20 percentage points. Section 48E(h)(1)(A)(i) provides for a section 48(e) Increase of 10 percentage points for eligible property that is located in a low-income community (Category 1 facility), or on Indian land (Category 2 facility). Section 48E(h)(1)(A)(ii) provides for a section 48E(h) Increase of 20 percentage points for eligible property that is part of a qualified low-income residential building project (Category 3 facility) or a qualified low-income economic benefit project (Category 4 facility). Proposed §1.48E(h)-1(b)(2) would define the four facility categories (Category 1, 2, 3, or 4).

Section 48E(h)(2)(A)(iii)(I) defines an "applicable facility" in part to include a qualified facility that is located in a low-income community (as defined in section 45D(e)). Under section 48E(h)(2)(A)(iii)(I), the term low-income community generally is defined under section 45D(e)(1), with certain modifications described elsewhere in section 45D(e), as any population census tract if the poverty rate for such tract is at least 20 percent, or, in the case of a tract not located within a metropolitan area, the median family income for such tract does not exceed 80 percent of statewide median family income, or in the case of a tract located within a metropolitan area, the median family income for such tract does not exceed 80 percent of the greater of statewide median family income or the metropolitan area median family income.

Proposed §1.48E(h)-1(b)(2)(i) would define a Category 1 facility consistent with section 48E(h)(2)(A)(iii)(I) as a facility located in a low-income community, which generally is defined under section 45D(e)(1) as any population census tract

[3] *See* proposed §1.48E-2(a), as proposed in the notice of proposed rulemaking (REG-119283-23) published in the ***Federal Register*** (89 FR 47792) on June 3, 2024, and corrected at 2024-15718 on July 18, 2024, for more information regarding the definition of "qualified facility."

if the poverty rate for such tract is at least 20 percent based on the most recently released low-income community data currently used for the New Markets Tax Credit (NMTC) under section 45D, or, in the case of a tract not located within a metropolitan area, the median family income for such tract does not exceed 80 percent of statewide median family income, or, in the case of a tract located within a metropolitan area, the median family income for such tract does not exceed 80 percent of the greater of statewide median family income or the metropolitan area median family income. Proposed §1.48E(h)-1(b)(2)(i) would provide that the term "low-income community" also includes the modifications in section 45D(e)(4) and (5) for tracts with low population and modification of the income requirement for census tracts with high migration rural counties. Low-income community information for NMTC can be found at the U.S. Department of Treasury, Community Development Financial Institutions Fund website and its webpage mapping tool, https://www.cdfifund.gov/cims.

Proposed §1.48E(h)-1(b)(2)(i) would clarify also that the poverty rate for a census tract generally is based on the most recently released American Community Survey (ACS) low-income community data for the NMTC. However, if updated data is released, a taxpayer can choose to base the poverty rate for any population census tract on either the prior version of the ACS low-income community data or the updated ACS low-income community data for a period of 1 year following the date of the release of the updated data. After the 1-year transition period, the updated ACS low-income community data must be used.

Proposed §1.48E(h)-1(b)(2)(i) would provide that population census tracts that satisfy the definition of low-income community at the time of application are considered to continue to meet the definition of low-income community for the duration of the recapture period unless the location of the facility changes.

Section 48E(h)(2)(A)(iii)(I) defines an "applicable facility" in part to include a qualified facility that is located on Indian land (as defined in section 2601(2) of the Energy Policy Act of 1992 (25 U.S.C. 3501(2)). Proposed §1.48E(h)-1(b)(2)(ii) would define a Category 2 facility, consistent with section 48E(h)(2)(A)(iii)(I), as facility that is located on Indian land. Proposed §1.48E(h)-1(b)(2)(ii) would provide that the term "Indian land" is defined in section 2601(2) of the Energy Policy Act of 1992 (25 U.S.C. 3501(2)).

Section 48E(h)(2)(A)(iii)(II) defines an "applicable facility" in part to include a qualified facility that is part of a qualified low-income residential building project. Proposed §1.48E(h)-1(b)(2)(iii) would define a Category 3 facility as a facility that is part of a qualified low-income residential building project. A facility would be treated as part of a qualified low-income residential building project if such facility is installed on a residential rental building that participates in a covered housing program or other affordable housing program described in section 48E(h)(2)(B)(i) (Qualified Residential Property) and the financial benefits of the electricity produced by such facility are allocated equitably among the occupants of the dwelling units of such building as provided in proposed §1.48E(h)-1(e). Consistent with the statute, proposed §1.48E(h)-1(b)(2)(iii) would clarify that the Qualified Residential Property, and not just its tenants, must participate in a covered housing program or other affordable housing program described in section 48E(h)(2)(B)(i). A Qualified Residential Property could either be a multifamily rental property or single-family rental property. Proposed §1.48E(h)-1(b)(2)(iii) also would clarify that a facility does not need to be installed directly on the building to be considered installed on a Qualified Residential Property if the facility is installed on the same or an adjacent parcel of land as the Qualified Residential Property, and the other requirements to be a Category 3 facility are satisfied.

The statutory cross-reference to VAWA is comprehensive and includes numerous types of housing programs and policies across Federal agencies. The Treasury Department and the IRS, in consultation with other Federal agencies, developed an illustrative list of Federal housing programs and policies that meet the requirements in section 48E(h)(2)(B)(i):

Covered housing programs and policies (as defined in VAWA) are those with active affordability covenants tied to the following:

- Department of Housing and Urban Development's (HUD) Section 202 Supportive Housing for the Elderly, including the direct loan program under Section 202.
- HUD's Section 811 Supportive Housing for Persons with Disabilities.
- HUD's Housing Opportunities for Persons With AIDS (HOPWA) program.
- HUD's homeless programs under title IV of the McKinney-Vento Homeless Assistance Act, including the Emergency Solutions Grants program, the Continuum of Care program, and the Rural Housing Stability Assistance program.
- HUD's HOME Investment Partnerships (HOME) program.
- Federal Housing Administration (FHA) mortgage insurance under Section 221(d)(3) subsidized with a below-market interest rate (BMIR) prescribed in the proviso of Section 221(d)(5) of the National Housing Act.
- HUD's Section 236 interest rate reduction payments.
- HUD Public Housing assisted under section 9 of the United States Housing Act of 1937.
- HUD project-based rental assistance under section 8 of the United States Housing Act of 1937.
- HUD Section 8 Moderate Rehabilitation Program.
- HUD Section 8 Moderate Rehabilitation Single Room Occupancy Program for Homeless Individuals.
- USDA Section 515 Rural Rental Housing.
- USDA Section 514/516 Farm Labor Housing.
- USDA Section 538 Guaranteed Rural Rental Housing.
- USDA Section 533 Housing Preservation Grant Program.
- Treasury/IRS Low-Income Housing Credit under section 42.
- HUD's National Housing Trust Fund.
- Veterans Administration's (VA) Comprehensive Service Programs for Homeless Veterans.
- VA's grant program for homeless veterans with special needs.
- VA's financial assistance for supportive services for very low-income veteran families in permanent housing.
- Department of Justice transitional housing assistance grants for victims

of domestic violence, dating violence, sexual assault, or stalking.

Section 48E(e)(2)(B)(i) also includes the following Federal housing programs:

- Housing assistance programs administered by the USDA under title V of the Housing Act of 1949.
- Housing programs administered by an Indian Tribe or a Tribally designated housing entity (as defined in section 4(22) of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4103(22)).
- Housing programs administered by the Department of Hawaiian Homelands as defined in Title VIII of the Native American Housing Assistance and Self-Determination Act of 1996 (24 CFR 1006.10), Native Hawaiian Organizations as defined in (13 CFR 124.3), and Hawaiian Homestead Associations as defined in (43 CFR 48.6).

This list also will be made available on the Program web page.

Section 48E(e)(2)(B)(i) authorizes the Secretary to add other affordable housing programs to the list of eligible programs. The Treasury Department and the IRS request comment on whether other affordable housing programs should be added to the list of eligible programs, and specifically request comment on whether and under what conditions certain state programs should be added to the list.

Section 48E(h)(2)(A)(iii)(II) defines an "applicable facility" in part to include a qualified facility that is part of a qualified low-income economic benefit project. Section 48E(h)(2)(C) provides that a facility will be treated as part of a qualified low-income economic benefit project if at least 50 percent of the financial benefits of the electricity produced by such facility are provided to households with income of less than 200 percent of the poverty line (as defined in section 36B(d)(3)(A)) applicable to a family of the size involved, or less than 80 percent of area median gross income (as determined under section 142(d)(2)(B)).

Proposed §1.48E(h)-1(b)(2)(iv), consistent with 48E(h)(2)(A)(iii)(II), would define a Category 4 facility as a facility that is part of qualified low-income economic benefit project. A facility would be treated as part of a qualified low-income economic benefit project if, as provided in proposed §1.48E(h)-1(f), at least 50 percent of the financial benefits of the electricity produced by the facility are provided to households with income of less than (A) 200 percent of the poverty line (as defined in section 36B(d)(3)(A)) applicable to a family of the size involved, or (B) 80 percent of area median gross income (as determined under section 142(d)(2)(B)).

C. *Less than five megawatts requirement*

Section 48E(h)(2)(A)(ii) requires that an applicable facility have a maximum net output of less than 5 (MW) (measured in AC), referred to in this preamble as the "less than five megawatts requirement." Proposed §1.48E(h)-1(b)(3)(i) would provide that the less than five megawatts requirement is measured at the level of the applicable facility in accordance with section 48E(h)(2)(A)(ii). The maximum net output of an applicable facility is measured only by nameplate generating capacity of the applicable facility, which includes only functionally interdependent components of property that are owned by the taxpayer, that are operated together, and that can operate apart from other property to produce electricity, at the time the applicable facility is placed in service. In accordance with proposed §1.48E-2(b)(2)(ii), proposed §1.48E(h)-1(b)(3)(i) would provide that components of property are functionally interdependent if the placing in service of each component is dependent upon placing in service other components to produce electricity.

Proposed §1.48E(h)-1(b)(3)(ii) would provide that the determination of whether an applicable facility has a maximum net output of less than 5 MW (as measured in AC) is based on the nameplate capacity of the applicable facility. The nameplate capacity for purposes of the less than five megawatts requirement is the maximum electrical generating output in MW that the applicable facility is capable of producing on a steady state basis and during continuous operation under standard conditions, as measured by the manufacturer and consistent with the definition of nameplate capacity provided in 40 CFR 96.202. If applicable, the International Standard Organization conditions should be used to measure the maximum electrical generating output of an applicable facility.

The Treasury Department and the IRS request comments on other approaches to address this statutory requirement that would further the purpose of efficient allocation of a Federal tax credit program with a national impact and would advance the goals of the Program to incentivize additional deployment of qualified facilities in low-income communities. These approaches could include rules that would aggregate the capacity of qualified facilities with integrated operations (that is, qualified facilities that are owned by the same taxpayer, placed in service in the same taxable year, and transmit electricity generated by the facilities through the same point of interconnection or, if the facilities are not grid-connected, to the same end user(s)) solely for the purposes of whether an application meets the less than five megawatts requirement under Section 48E(h)(2)(A)(ii).

II. *Eligible Property*

Section 48E(h)(3) defines "eligible property" as a qualified investment with respect to any applicable facility. Section 48E(b) describes a qualified investment with respect to a qualified facility. Generally, for purposes of section 48E(a), section 48E(b)(1)(A) and (b)(1)(B)(i) provides that the qualified investment with respect to a qualified facility for any taxable year is the sum of the basis of any qualified property placed in service by the taxpayer during such taxable year that is part of a qualified facility, plus the amount of expenditures that are paid or incurred by the taxpayer for qualified interconnection property that is properly chargeable to capital account of the taxpayer. Pursuant to section 48E(h)(3), eligible property does not include any qualified investment with respect to energy storage technology.

Proposed §1.48E(h)-1(c) would define "eligible property" as a qualified investment (as defined in section 48E(b))[4] with respect to any applicable facility.

[4] *See* proposed §1.48E-2(d), as proposed in the notice of proposed rulemaking (REG-119283-23) published in the ***Federal Register*** (89 FR 47792) on June 3, 2024, and corrected at 2024-15718 on July 18, 2024, for more information regarding the definition of "qualified investment."

III. *Location*

Proposed §1.48E(h)-1(d)(1) would treat an applicable facility as "located in a low-income community" or "on Indian land" under section 48E(h)(2)(A)(iii)(I) or located in a geographic area under the Additional Selection Criteria (*see* part V.B.2. of this Explanation of Provisions) if the facility satisfies the nameplate capacity test (Nameplate Capacity Test for Location) provided in proposed §1.48E(h)-1(d)(2).

Under the Nameplate Capacity Test for Location, which would be provided in proposed §1.48E(h)-1(d)(2), an applicable facility would be considered located in or on the relevant geographic area described in proposed §1.48E(h)-1(d)(1) if 50 percent or more of the applicable facility's nameplate capacity is in a qualifying area. The percentage of an applicable facility's nameplate capacity (as defined in proposed §1.48E(h)-1(d)(3)) that is in a qualifying area would be determined by dividing the nameplate capacity of the applicable facility's electricity-generating units that are located in the qualifying area by the total nameplate capacity of all the electricity-generating units of the applicable facility.

Proposed §1.48E(h)-1(d)(3) would provide that nameplate capacity for purposes of the Nameplate Capacity Test for Location for an electricity generating unit means the maximum electrical generating output that the applicable facility is capable of producing on a steady state basis and during continuous operation under standard conditions, as measured by the manufacturer and consistent with the definition of nameplate capacity provided in 40 CFR 96.202. If applicable, the International Standard Organization conditions should be used to measure the maximum electrical generating output of an applicable facility. For purposes of assessing the Nameplate Capacity Test for Location, electricity-generating units that generate direct current (DC) power before converting to AC (for example, solar photovoltaic) should use nameplate capacity in DC, otherwise the nameplate capacity in AC should be used.

IV. *Financial Benefits for Category 3 and Category 4 Allocations*

Section 48E(h)(2)(D) provides that "electricity acquired at a below market rate" will not fail to be taken into account as a financial benefit. To clarify this language, the Treasury Department and the IRS propose definitions of the terms "financial benefit" and "electricity acquired at a below market rate" under section 48E(h)(2)(D), as well as a manner to apply such definitions, appropriately, to qualified low-income residential building projects (section 48E(h)(2)(B)) and qualified economic benefit projects (section 48E(h)(2)(C)). The definitions and requirements would be different for an allocation under Category 3 (section 48E(h)(2)(B)) and Category 4 (section 48E(h)(2)(C)).

A. *Financial benefits for qualified low-income residential building projects*

For a facility to be treated as part of a qualified low-income residential building project (Category 3 facility), section 48E(h)(2)(B)(ii) provides that the financial benefits of the electricity produced by such facility must be allocated equitably among the occupants of the dwelling units of a residential rental building that participates in a covered housing program or other affordable housing program (Qualified Residential Property). The Treasury Department and the IRS propose to reserve allocations under this category exclusively for applicants that would apply the financial benefits requirement in proposed §1.48E(h)-1(e).

Proposed §1.48E(h)-1(e)(1) would provide that, to satisfy the requirements of a Category 3 facility, the financial benefits of the electricity produced by the facility must be allocated equitably among the occupants of the dwelling units of the Qualified Residential Property. The same rules for financial benefits for Category 3 facilities apply to both multi-family property and single-family Qualified Residential Property.

Proposed §1.48E(h)-1(e)(2) would provide that at least 50 percent of the financial value of the electricity produced by the facility (as defined in proposed §1.48E(h)-1(e)(3)) must be equitably allocated to the Qualified Residential Property's occupants that are designated as low-income occupants under the housing program.

Proposed §1.48E(h)-1(e)(3) would define the financial value of the electricity produced by the applicable facility as the greater of: (i) 25 percent of the gross financial value (as defined in proposed §1.48E(h)-1(e)(4)) of the annual electricity produced by the applicable facility, or (ii) the net financial value (as defined in proposed §1.48E(h)-1(e)(5)) of the annual energy produced by the applicable facility. This requirement would recognize that not all the financial value of the electricity produced can be passed on to building occupants because a certain percentage can be assumed to be dedicated to lowering the operational costs of electricity consumption for common areas, which benefits all building occupants.

Proposed §1.48E(h)-1(e)(4) would calculate gross financial value of the annual electricity produced by the applicable facility as the sum of: (i) the total self-consumed kilowatt-hours produced by the applicable facility multiplied by the Qualified Residential Property's metered volumetric price of electricity, (ii) the total exported kilowatt-hours produced by the applicable facility multiplied by the Qualified Residential Property's volumetric export compensation rate for kilowatt-hours of electricity, and (iii) the sale of any attributes associated with the applicable facility's production (including, for example, any Federal, State, or Tribal renewable energy credits or incentives), if separate from the metered price of electricity or export compensation rate.

The definition of net financial value in proposed §1.48E(h)-1(e)(5) would account for the specific nature of facilities serving low-income residential buildings and facility ownership, as the applicable facility may be third-party owned or commonly owned with the building. For common ownership, proposed §1.48E(h)-1(e)(5)(i) would define net financial value as the gross financial value of the annual electricity produced minus the annual average (or levelized) cost of the applicable facility over the useful life of the facility (including debt service, maintenance, replacement reserve, capital expenditures, and any other costs associated with constructing, maintaining, and operating the facility). For third-party ownership, if the facility and the Qualified Residential Property are not commonly owned, and the facility owner enters into a power purchase agreement or other contract for electricity services with the Qualified

Residential Property owner and/or building occupants, proposed §1.48E(h)-1(e)(5)(ii) would define net financial value as the gross financial value of the annual electricity produced minus any payments made by the building owner and/or building occupants to the applicable facility owner for electricity services associated with the applicable facility in a given year.

Proposed §1.48E(h)-1(e)(5)(iii) would provide different rules to ensure an equitable allocation of financial benefits depending on whether or not financial value is distributed to building occupants via utility bill savings or through different means. If financial value is distributed via utility bill savings, proposed §1.48E(h)-1(e)(5)(iii)(A) would provide that financial benefits will be considered to be allocated equitably if at least 50 percent of the financial value of the electricity produced by the applicable facility is distributed as utility bill savings in equal shares to each building dwelling unit among the Qualified Residential Property's occupants that are designated as low-income under the covered housing program or other affordable housing program (described in section 48E(h)(2)(B)(i)) or alternatively distributed in proportional shares based on each low-income dwelling unit's square footage, or each low-income dwelling unit's number of occupants. Proposed §1.48E(h)-1(e)(5)(iii)(A) would provide also that for any occupant(s) who choose to not receive utility bill savings (for example, exercise their right to not participate in or to opt out of a community generation subscription in applicable jurisdictions), the portion of the financial value that would otherwise be distributed to non-participating occupants must be instead distributed to all participating occupants. Proposed §1.48E(h)-1(e)(5)(iii)(A) would clarify that no less than 50 percent of the Qualified Residential Property's occupants that are designated as low-income must participate and receive utility bill savings for the applicable facility to use this method of benefit distribution.

Proposed §1.48E(h)-1(e)(5)(iii)(A) also would provide that in the case of a solar facility, applicants must follow the HUD guidance on Treatment of Financial Benefits to HUD-Assisted Tenants Resulting from Participation in Solar Programs Notice (Housing Notice 2023-09), located at https://www.hud.gov/sites/dfiles/OCHCO/documents/2023-09hsgn.pdf, or future HUD guidance, or other guidance or notices from the Federal agency that oversees the applicable housing program identified in section 48E(h)(2)(B) to ensure that tenants' annual income for rent calculations or other requirements impacting total tenant payment are not impacted negatively by the distribution of financial value. Applicants should apply similar principles in the case of any other applicable facility.

Proposed §1.48E(h)-1(e)(5)(iii)(B) would provide that if financial value is not distributed via utility bill savings, financial benefits will be considered to be allocated equitably if at least 50 percent of the financial value of the electricity produced by the applicable facility is distributed to occupants using one or more methods described Housing Notice 2023-09 for a master-metered building, or future HUD guidance, or other guidance or notices from the Federal agency that oversees the applicable housing program identified in section 48E(h)(2)(B). In the case of a solar facility, applicants must comply with HUD guidance, or future HUD guidance, for how residents of master-metered HUD-assisted housing can benefit from owners' sharing of financial benefits accrued from an investment in solar electricity generation to ensure that tenants' utility allowances and annual income for rent calculations are not negatively impacted. Applicants should apply similar principles in the case of any other applicable facility.

To achieve the goal of verifying Program compliance and to provide clarification to applicants regarding how they can demonstrate that statutory requirements are met, proposed §1.48E(h)-1(e)(6)(i) would provide that a Category 3 facility owner must prepare a Benefits Sharing Statement. The Benefits Sharing Statement would be required to include (A) a calculation of the facility's gross financial value using the method described in proposed §1.48E(h)-1(e)(4), (B) a calculation of the facility's net financial value using the method described in proposed §1.48E(h)-1(e)(5), (C) a calculation of the financial value required to be distributed to building occupants using the method described in proposed §1.48E(h)-1(e)(3), (D) a description of the means through which the required financial value will be distributed to building occupants, and (E) if the facility and Qualified Residential Property are separately owned, an indication of which entity will be responsible for the distribution of benefits to the occupants.

Proposed §1.48E(h)-1(e)(6)(ii) would provide that the Qualified Residential Property owner must formally notify the occupants of units in the Qualified Residential Property of the development of the facility and planned distribution of benefits.

B. *Financial benefits in qualified low-income economic benefit projects*

For a facility to be treated as part of a qualified low-income economic benefit project, section 48E(h)(2)(C) requires that at least 50 percent of the financial benefits of the electricity produced by the facility be provided to qualifying low-income households.

Proposed §1.48E(h)-1(f)(1) would provide that to satisfy the requirements of a Category 4 facility:

(i) The facility must serve multiple qualifying low-income households under section 48E(e)(2)(C)(i);

(ii) At least 50 percent of the facility's total output in kilowatts (kW) must be assigned to Qualifying Households; and

(iii) Each Qualifying Household must be provided a bill credit discount rate (as defined in proposed §1.48E(h)-1(f)(2)) of at least 30 percent.

The Treasury Department and the IRS request comment on (1) whether a 30-percent bill credit discount rate would be feasible for Category 4 facilities, (2) whether a rate of 30 percent or greater would be feasible if transitioned in over time (that is, an increase in the minimum bill credit discount for each subsequent program year) and, if so, what would be an appropriate rate of transition, (3) how would this discount rate impact different eligible technologies, and (4) the impact of a minimum bill discount credit rate for Category 4 facilities that is different from benefit requirements for existing or planned state programs (for example, state-level community solar programs supported by the

U.S. Environmental Protection Agency's Greenhouse Gas Reduction Fund).

Proposed §1.48E(h)-1(f)(2)(i) would define a bill credit discount rate as the difference between the financial benefit provided to a Qualifying Household (including utility bill credits, reductions in a Qualifying Household's electricity rate, or other monetary benefits accrued by the Qualifying Household on their utility bill) and the cost of participating in the community program (including subscription payments for zero-carbon energy and any other fees or charges), expressed as a percentage of the financial benefit distributed to the Qualifying Household. The bill credit discount rate can be calculated by starting with the financial benefit provided to the Qualifying Household, subtracting all payments made by the Qualifying Household (or payments remitted on behalf of the Qualifying Household through net crediting, consolidated billing, or similar arrangements) to the facility owner and any related third parties as a condition of receiving that financial benefit, then dividing that difference by the financial benefit distributed to the Qualifying Household.

Proposed §1.48E(h)-1(f)(2)(ii) would provide that in cases in which the Qualifying Household has no or only a nominal cost of participation, and financial benefits are delivered through a utility or government body, the bill credit discount rate should be calculated as the financial benefit provided to a Qualifying Household (including utility bill credits, reductions in a Qualifying Household's electricity rate, or other monetary benefits accrued by a Qualifying Household on their utility bill) divided by the total value of the electricity produced by the facility and assigned to the Qualifying Household (including any electricity services, products, and credits provided in conjunction with the electricity produced by such facility), as measured by the utility, independent system operator (ISO), or other off-taker procuring electricity (and related services, products, and credits) from the facility. Proposed §1.48E(h)-1(f)(2)(iii) would clarify that the bill credit discount rate is calculated on an annual basis. Proposed §1.48E(h)-1(f)(2)(iv) would provide examples to clarify that application of proposed §1.48E(h)-1(f)(2).

The Treasury Department and the IRS are considering adding other methods, apart from bill credit discounts, for financial benefits to be shared with Qualifying Households. Accordingly, the Treasury Department and the IRS request comments on (1) what alternative methods for delivering financial benefits should be considered to provide equivalent financial benefits in cases in which bill credit discounts are not available or are not feasible for covered technologies; (2) how these alternative mechanisms should be verified to ensure they provide the required financial benefits to Qualifying Households; (3) whether these alternative mechanisms are feasible for multiple technologies; and (4) what requirements can be put in place to address any uncertainties related to the potential treatment of financial benefits as income for Federal income tax purposes or the potential impact on eligibility for public assistance benefits.

Proposed §1.48E(h)-1(f)(2)(iii) would provide that if the facility derives financial value from the production of electricity in a manner such that this value cannot be directly applied to the Qualifying Household's utility bill (for example, renewable energy credit payments made directly to the facility owner), then no less than 30 percent of that monetary value must also be provided to the Qualifying Household, either through a greater bill credit discount on the Qualifying Household's utility bill than would otherwise be derived from the method described in proposed §1.48E(h)-1(f)(1)(i) or through other means.

To ensure the requirements of proposed §1.48E(h)-1(f) are met, proposed §1.48E(h)-1(f)(3) would require verification of households' qualifying low-income status. Applicants are responsible for proof-of-income verification. Proposed §1.48E(h)-1(f)(3)(i) would provide that to establish that financial benefits are provided to Qualifying Households as provided in proposed §1.48E(h)-1(f)(1), applicants must submit documentation in accordance with guidance published in the Internal Revenue Bulletin. A Qualifying Household's low-income status is determined at the time the household enrolls in the subscription program and does not need to be re-verified.

Proposed §1.48E(h)-1(f)(3)(ii) would provide that applicants can use categorical eligibility or other income verification methods to establish that a household is a Qualifying Household. Proposed §1.48E(h)-1(f)(3)(ii)(A) would provide that categorical eligibility consists of obtaining proof of the household's participation in a needs-based Federal, State, Tribal, or utility program with income limits at or below the qualifying income level required to be a Qualifying Household. Federal programs may include, but are not limited to: Medicaid, Low-Income Home Energy Assistance Program (LIHEAP) administered by the Department of Health and Human Services, Weatherization Assistance Program (WAP) administered by the Department of Energy (DOE), Supplemental Nutrition Assistance Program (SNAP) administered by the USDA, Section 8 Project-Based Rental Assistance, the Housing Choice Voucher Program administered by HUD, the Federal Communication Commission's Lifeline Support for Affordable Communications, the National School Lunch Program administered by the USDA, the Supplemental Security Income Program administered by the Social Security Administration, and any verified government or non-profit program serving Asset Limited Income Constrained Employed (ALICE) persons or households. With respect to the Federal programs listed previously an individual in the household must currently be approved for assistance from or participation in the program with an award letter or other written documentation within the last 12 months for enrollment in that program to establish categorical eligibility of the household. State agencies also can provide verification that a household is a Qualifying Household if the household participates in a State's solar or other program and income limits for such program are at or below the qualifying income level required to be a Qualifying Household. The qualifying income level for a Qualifying Household is based on where such household is located.

Proposed §1.48E(h)-1(f)(3)(ii)(B) would provide that paystubs, Federal or State tax returns, or income verification through crediting agencies and commercial data sources can also be used to establish that a household is a Qualifying Household. Proposed §1.48E(h)-1(f)(3)(ii)(C) would provide that a self-attesta-

tion from a household is not a permissible method to establish a household is a Qualifying Household. This prohibition on direct self-attestation from a household does not extend to categorical eligibility for needs-based Federal, State, Tribal, or utility programs with income limits that rely on self-attestation for verification of income.

V. *Proposed Program Requirements and Structure*

A. *Annual capacity limitation*

Under section 48E(h)(4)(C), the total annual Capacity Limitation is 1.8 gigawatts of DC capacity for each calendar year during the period beginning on January 1, 2025, and ending on December 31 of the applicable year (as defined in section 45Y(d)(3))[5], and zero thereafter. Proposed §1.48E(h)-1(g) would provide that the Treasury Department and the IRS intend to announce how the annual Capacity Limitation would be allocated across the four facility categories (described in proposed §1.48E(h)-1(b)(2)) in future guidance published in the Internal Revenue Bulletin. Proposed §1.48E(h)-1(g)(1) also would provide that the Capacity Limitation for each Program year is divided across the four facility categories based on factors such as the anticipated number of applications that are expected for each category and the amount of Capacity Limitation that needs to be reserved for each category to encourage market participation in each category consistent with statutory intent and the goals of the Program. After the Capacity Limitation for each facility category is established in guidance published in the Internal Revenue Bulletin, it may be reallocated later across facility categories and sub-reservation in the event one category or sub-reservation is oversubscribed and another has excess capacity. Proposed §1.48E(h)-1(g) would specify that a facility category or sub-reservation is oversubscribed if it receives applications in excess of Capacity Limitation reserved for the facility category or sub-reservation.

Proposed §1.48E(h)-1(g)(2) would provide that if the annual Capacity Limitation for any calendar year exceeds the aggregate amount of annual Capacity Limitation allocated for a calendar year under proposed §1.48E(h)-1(g)(2), then the annual Capacity Limitation for the succeeding calendar year is increased by the amount of such excess. No amount of Capacity Limitation may be carried to any calendar year after the third calendar year following the applicable year (as defined in section 45Y(d)(3)).

B. *Additional Selection Criteria*

Proposed §1.48E(h)-1(h)(1) would provide that at least 50 percent of the total Capacity Limitation in each facility category would be reserved for facilities meeting criteria described in proposed §1.48E(h)-1(h)(2) (relating to ownership criteria) and proposed §1.48E(h)-1(h)(3) (relating to geographic criteria); both the ownership and the geographic criteria are collectively referred to as "Additional Selection Criteria". The specific amount of Capacity Limitation reserved (but not less than 50 percent) would be provided in guidance published in the Internal Revenue Bulletin for each Program year.

The procedure for using these Additional Selection Criteria also will be provided in guidance published in the Internal Revenue Bulletin. The Treasury Department and the IRS expect that in evaluating applications received during the initial application window, priority would be given to eligible applications for facilities meeting at least one of the two Additional Selection Criteria. The Treasury Department and the IRS expect that if the eligible applications for Capacity Limitation for facilities that meet at least one of the two Additional Selection Criteria categories exceed the Capacity Limitation for a category, then facilities meeting both of the Additional Selection Criteria categories would be prioritized for an allocation. If eligible applications for facilities that meet at least one of the two Additional Selection Criteria categories received during the initial application window total less than 50 percent of the Capacity Limitation for a category, then additional Capacity Limitation would be reserved during the rolling application period such that 50 percent of the total Capacity Limitation in the category would be reserved for these facilities.

Proposed §1.48E(h)-1(h) also would provide that after the reservation of Capacity Limitation for qualified facilities meeting the Additional Selection Criteria described in proposed §1.48E(h)-1(h)(2) and (3) is established in guidance published in the Internal Revenue Bulletin, it may be reallocated later across facility categories and sub-reservations in the event one category or sub-reservation within a category is oversubscribed and another has excess capacity. The Treasury Department and the IRS would retain the discretion to reallocate Capacity Limitation across categories and sub-categories to maximize allocations in the event one category or sub-reservation is oversubscribed and another has excess capacity.

1. *Ownership criteria*

Proposed §1.48E(h)-1(h)(2) would provide criteria based on ownership (Ownership Criteria). The Ownership Criteria category is based on characteristics of the applicant that owns the applicable facility. An applicable facility would meet the Ownership Criteria if it is owned by a Tribal enterprise, an Alaska Native Corporation, a Native Hawaiian Organization, a renewable energy cooperative, or a qualified tax-exempt entity. If an applicant wholly owns an entity that is the owner of an applicable facility, and the entity is disregarded as separate from its owner for Federal income tax purposes (disregarded entity), then the applicant, and not the disregarded entity, is treated as the owner of the applicable facility for purposes of the Ownership Criteria. For corporations incorporated under the authority of either section 17 of the Indian Reorganization Act of 1934, 25 U.S.C. 5124 or section 3 of the Oklahoma Indian Welfare Act, 25 U.S.C. 5203, an application may be made as a Tribal Enterprise. If an appli-

[5] Section 45Y(d)(3) defines the term "applicable year" as the later of the calendar year in which the Secretary determines that the annual greenhouse gas emissions from the production of electricity in the United States are equal to or less than 25 percent of the annual greenhouse gas emissions from the production of electricity in the United States for calendar year 2022, or 2032. *See also* proposed §1.45Y-1(c)(3).

cant is an entity treated as a partnership for Federal income tax purposes, and an entity described in proposed §1.48E(h)-1(h)(2)(i)(A) through (E) owns at least a one percent interest (either directly or indirectly) in each material item of partnership income, gain, loss, deduction, and credit and is a managing member or general partner (or similar title) under State or Tribal law of the partnership (or directly owns 100 percent of the equity interests in the managing member or general partner) at all times during the existence of the partnership, the applicable facility will be deemed to meet the Ownership Criteria. If the partnership becomes the owner of the facility after an allocation is made to an entity described in proposed §1.48E(h)-1(h)(2)(i)(A) through (E), the transfer of the facility to the partnership is not a disqualification event for purposes of proposed §1.48E(h)-1(m)(5), so long as the requirements of proposed §1.48E(h)-1(m)(5) are satisfied. The original applicant and the successor partnership should refer to guidance published in the Internal Revenue Bulletin for the procedures to request a transfer of the Capacity Limitation allocation to the successor partnership.

Currently, these proposed regulations do not include an Ownership Criteria category for emerging market businesses, such as those businesses that do not have large market shares that could be demonstrated by the number of employees, annual revenue, and other factors. The Treasury Department and IRS considered including a category for emerging market businesses similar to the qualified renewable energy company category under the section 48(e) Low-Income Communities Bonus Credit Program and §1.48(e)-1(h)(2)(vi), but ultimately decided not to retain the qualified renewable energy company category for purposes of the Program under section 48E(h) and these proposed regulations. The Treasury Department and IRS request comments on how an administrable emerging market business Ownership Criteria category could be structured, including what thresholds a definition should include to define market share and size, age of business, the number of employees (both minimum and maximum) and/or annual gross receipts generated by an emerging market business, and the supporting documentation that could be provided as part of the application to verify an applicant meets such criteria. Additionally, the Treasury Department and the IRS request comments on any other appropriate Ownership Criteria that might be applied, for example the degree to which a business focuses its efforts on and delivers benefits to low-income and disadvantaged communities, and the supporting documentation that could be provided as part of the application to verify an applicant meets such criteria.

a. *Tribal enterprise*

A "Tribal enterprise" for purposes of the Ownership Criteria is an entity that is (1) owned at least 51 percent directly by an Indian Tribal government (as defined in section 30D(g)(9) of the Code), or owned at least 51 percent indirectly through a corporation that is wholly owned by the Indian Tribal government and is created either under the Tribal laws of the Indian Tribal government or through a corporation incorporated under the authority of either section 17 of the Indian Reorganization Act of 1934, 25 U.S.C. 5124, or section 3 of the Oklahoma Indian Welfare Act, 25 U.S.C. 5203, and (2) subject to Tribal government rules, regulations, and/or codes that regulate the operations of the entity.

b. *Alaska Native Corporation*

An "Alaska Native Corporation" for purposes of the Ownership Criteria is defined in section 3 of the Alaska Native Claims Settlement Act, 43 U.S.C. 1602(m).

c. *Native Hawaiian Organization*

A "Native Hawaiian Organization" for purposes of the Ownership Criteria is defined in 13 CFR 124.3.

d. *Renewable energy cooperative*

A "renewable energy cooperative" for purposes of the Ownership Criteria is an entity that develops applicable facilities and is either (1) a consumer or purchasing cooperative controlled by its members with each member having an equal voting right and with each member having rights to profit distributions based on patronage as defined by proportion of volume of energy or energy credits purchased (kWh), volume of financial benefits delivered ($), or volume of financial payments made ($), and in which at least 50 percent of the patronage in the qualified facility is by cooperative members who are low-income households (as defined in section 48(e)(2)(C)); or (2) a worker cooperative controlled by its worker-members with each member having an equal voting right.

e. *Qualified tax-exempt entity*

A "qualified tax-exempt entity" for purposes of the Ownership Criteria is:

(1) An organization exempt from the tax imposed by subtitle A of the Code by reason of being described in section 501(c)(3) or (d) of the Code;

(2) Any State, the District of Columbia, or political subdivision thereof, or any agency or instrumentality of any of the foregoing;

(3) An Indian Tribal government (as defined in section 30D(g)(9)), a political subdivision thereof, or any agency or instrumentality of any of the foregoing; or

(4) Any corporation described in section 501(c)(12) operating on a cooperative basis that is engaged in furnishing electric energy to persons in rural areas.

2. *Geographic criteria*

Proposed §1.48E(h)-1(h)(3) would provide criteria based on geography (Geographic Criteria). The Geographic Criteria category is based on where the facility will be placed in service. Geographic Criteria would not apply to Category 2 facilities. To meet the Geographic Criteria, a facility would need to be located in a Persistent Poverty County (PPC)[6] as described in proposed §1.48E(h)-1(h)(3)(ii) or in certain census tracts identified on the Climate and Economic Justice Screening Tool (CEJST)[7] and as described in proposed §1.48E(h)-1(h)(3)(iii). Proposed

[6] https://www.ers.usda.gov/data-products/county-typology-codes/.

[7] https://screeningtool.geoplatform.gov/en/#3/33.47/-97.5.

§1.48E(h)-1(h)(3) would also provide that applicants who meet the Geographic Criteria at the time of application are considered to continue to meet the Geographic Criteria for the duration of the recapture period described in proposed §1.48E(h)-1(n)(1) unless the location of the facility changes.

Proposed §1.48E(h)-1(h)(3)(ii) would describe a PPC as any county in which 20 percent or more of residents have experienced high rates of poverty over the past 30 years. For purposes of the Program, the Treasury Department and the IRS propose using the PPC measure adopted by the USDA to make this determination. The most recent measure, which would apply for the 2025 program year, incorporates poverty estimates from the 1990 and 2000 censuses, and 2007-2011 and 2017-2021 ACS Survey 5-year averages.[8]

Proposed §1.48E(h)-1(h)(3)(iii) would provide that a census tract qualifies under §1.48E(h)-1(h)(3)(i) if it is described in the latest official CEJST, as greater than or equal to the 90th percentile for energy burden and greater than or equal to the 65th percentile for low income, or as greater than or equal to the 90th percentile for PM2.5 exposure and greater than or equal to the 65th percentile for low income. Proposed §1.48E(h)-1(h)(3)(iii)(A) through (C) would provide definitions for terms used in identifying census tracts described in proposed §1.48E(h)-1(h)(3)(iii). *See* CEJST, Methodology & data, https://screeningtool.geoplatform.gov/en/methodology for more information on these terms as applied in the screening tool.

C. *Sub-reservations of allocation for facilities located in a low-income community*

The Treasury Department and the IRS anticipate that Category 1 will receive the largest number of applications, and that within Category 1, many applications will involve residential solar facilities that are smaller in scale and have relatively short construction completion timelines. Therefore, proposed §1.48E(h)-1(i) would subdivide the Capacity Limitation reservation for facilities seeking a Category 1 allocation with a portion of the Capacity Limitation specifically reserved for eligible residential behind the meter (BTM) facilities, including rooftop solar. The sub-reservation of a substantial portion of the allocation in Category 1 for eligible residential BTM facilities would help ensure that allocations predominantly are awarded to facilities serving residences and consumers, rather than facilities serving businesses. Proposed §1.48E(h)-1(i) would reserve the remaining Capacity Limitation in Category 1 for applicants with front of the meter (FTM) facilities as well as non-residential BTM facilities. Proposed §1.48E(h)-1(i) clarifies that the specific amounts of the Category 1 sub-reservations will be provided in future guidance published in the Internal Revenue Bulletin that is applicable to a Program year based on factors such as promoting efficient allocation of Capacity Limitation and allowing like-projects to compete for an allocation. Proposed §1.48E(h)-1(i) provides that after the sub-reservation is established in guidance published in the Internal Revenue Bulletin, it may be reallocated later in the event it has excess capacity.

Proposed §1.48E(h)-1(i)(2)(ii) would define an eligible residential BTM facility as single-family or multi-family residential applicable facility that does not meet the requirements for Category 3 and is BTM. Proposed §1.48E(h)-1(i)(2)(ii) would provide that an applicable facility is residential if it is uses energy to generate electricity for use in a dwelling unit that is used as a residence. Proposed §1.48E(h)-1(i)(2)(i) would define an applicable facility as BTM if: (1) it is connected with an electrical connection between the facility and the panelboard or sub-panelboard of the site where the facility is located, (2) it is to be connected on the customer side of a utility service meter before it connects to a distribution or transmission system (that is, before it connects to the electricity grid), and (3) its primary purpose is to provide electricity to the utility customer of the site where the facility is located. This also includes systems not connected to a grid and that may not have a utility service meter, and whose primary purpose is to serve the electricity demand of the owner of the site where the system is located.

Proposed §1.48E(h)-1(i)(2)(iii) would define a facility as FTM if it is directly connected to a grid and its primary purpose is to provide electricity to one or more offsite locations via such grid or utility meters with which it does not have an electrical connection; alternatively, FTM is defined as a facility that is not BTM. For purposes of Category 4 facilities, an applicable facility is also FTM if 50 percent or more of its electricity generation on an annual basis is physically exported to the broader electricity grid.

D. *Application and selection process*

Section 48E(h)(4)(A) provides that "[i]n establishing such program and to carry out the purposes of this paragraph, the Secretary shall provide procedures to allow for an efficient allocation process." The Treasury Department and the IRS anticipate that the number of eligible applicants seeking an allocation may exceed the total Capacity Limitation allocation available to be allocated. Accordingly, the Treasury Department and the IRS are designing an application process that both ensures that allocations are awarded to facilities that advance the Program goals and facilitates an efficient allocation process.

Proposed §1.48E(h)-1(j)(1) provides that applications for a Capacity Limitation allocation will be evaluated according to the procedures specified in guidance published in the Internal Revenue Bulletin. Based on feedback received with respect to the section 48(e) Low-Income Communities Bonus Credit Program (a similar program applicable solely to qualified solar and wind facilities in 2023 and 2024) and an assessment of operational capabilities set up to administer the Program, the Treasury Department and the IRS expect to provide a process that includes one or more initial application windows in which applications received by a certain time and date would be evaluated together, followed by a rolling application process if Capacity Limitation is not fully allocated after an initial application window closes.

[8] https://www.ers.usda.gov/data-products/poverty-area-measures.

Facilities that meet at least one of the two categories of specified Ownership and Geographic criteria (Additional Selection Criteria, discussed in part V.B. of this Explanation of Provisions) would receive priority for an allocation within each facility category described in section 48E(h)(2)(A)(iii).

Because section 48E(h) is subject to a finite annual Capacity Limitation, the Treasury Department and the IRS think that allocating amounts of Capacity Limitation to a group of related qualified facilities with an aggregate total maximum net output equal to or greater than five megawatts (as measured in alternating current) could concentrate allocations in a smaller number of communities, which would not further the purpose of efficient allocation of a Federal tax credit program with a national impact. The Treasury Department and the IRS additionally believe that although such facilities could be provided a small capacity allocation rather than be deprioritized, providing a small allocation to a group of related qualified facilities with a much larger aggregate capacity is not likely to be determinative of the deployment of those qualified facilities and thus would not advance the goals of the Program to incentivize additional deployment of qualified facilities in low-income communities. The Treasury Department and the IRS therefore intend to deprioritize review of applications for an applicable facility that together with other qualified facilities (1) share a point of interconnection, (2) produce electricity using the same technology, (3) are owned by the same taxpayer, and (4) have an aggregate total maximum net output (as determined by the sum of the maximum net output of the applicable facility and each qualified facility under proposed §1.48E(h)-1(b)(3)(ii)) equal to or greater than five megawatts (alternating current). Deprioritized applications will be considered after other applications in the current allocation round, or a subsequent allocation round at the Secretary's discretion. An application for review may be deemed to not be part of a group of related qualified facilities with a total combined maximum net output equal to or greater than five megawatts if it has an interconnection agreement for less than five megawatts.

Section 48E(h)(4)(A) directs the Secretary to provide procedures to allow for an efficient allocation process. Additionally, section 48E(h)(4)(E)(i) requires that facilities allocated an amount of Capacity Limitation be placed in service within four years of the date of allocation. To promote efficient allocation, and to ensure that allocations will be awarded to facilities that are sufficiently viable and well defined to allow for a review for an allocation, and sufficiently advanced such that they are likely to meet the four-year placed-in-service deadline, proposed §1.48E(h)-1(j)(2) would require applicants to submit certain information, documentation, and attestations when applying for an allocation that demonstrate project eligibility and viability. Proposed §1.48E(h)-1(j)(2) would clarify that the specific information, documentation, and attestation to be submitted will be provided in future guidance published in the Internal Revenue Bulletin that is applicable to a Program year. Details regarding the application process will be provided in future procedural guidance published in the Internal Revenue Bulletin. Procedural guidance for the 2025 Program year will be issued later this year.

The Treasury Department and the IRS expect that the specific application information, documentation, and attestation requirements provided in procedural guidance applicable to the Program published in the Internal Revenue Bulletin will be substantially similar to requirements applicable the section 48(e) Low-Income Communities Bonus Program provided in Revenue Procedure 2024-19, 2024-16 I.R.B. 899. Like the section 48(e) program, some requirements may differ for FTM and BTM facilities and other requirements may differ by Facility Category and Additional Selection Criteria. The Treasury Department and the IRS will periodically assess the Program and previous applications to determine any changes to the Program's application process. The Treasury Department and the IRS request comments on all aspects of the application and selection process but specifically request comments on whether (1) modifications are necessary with respect to any of the application requirements so that the Program is available to all applicable facilities under the Program, and (2) certain facility categories can demonstrate project viability with other types of documentation.

Proposed §1.48E(h)-1(j)(3) would provide that there is no administrative appeal of Capacity Limitation allocation decisions.

E. *Documentation and attestations to be submitted when placed in service*

The Treasury Department and the IRS also propose in §1.48E(h)-1(k)(1) to require facilities that received a Capacity Limitation allocation to report to the DOE the date the eligible property was placed in service. Proposed §1.48E(h)-1(k)(1) also would require that this report be made through the same portal used to submit the original application for allocation.

Proposed §1.48E(h)-1(k)(2) would require facilities that received a Capacity Limitation to submit additional documentation or complete additional attestations with this reporting. At the time of application, applicants would not necessarily be able to demonstrate compliance with certain eligibility requirements, as the facility would not yet be operating at that time. Requiring placed in service reporting would allow for final verification that the facilities that were awarded a Capacity Limitation Allocation have met certain eligibility requirements under the Program. Therefore, proposed §1.48E(h)-1(k)(2) would require facilities awarded a Capacity Limitation to submit final eligibility information at placed in service time. At the time that the owner reports that eligible property has been placed in service the owner also must confirm information about the facility and submit additional documentation to prove the facility is still eligible to maintain the allocation and the increased applicable percentage under section 48E(h)(1) as specified in guidance published in the Internal Revenue Bulletin.

Proposed §1.48E(h)-1(k)(3) would provide that the DOE will review the placed in service documentation and attestations to determine if the facility meets the eligibility criteria for the owner to claim an increased applicable percentage. The DOE then provides a recommendation to the IRS regarding whether the facility continues to meet the eligibility requirements

for the facility to retain its allocation or if the facility should be disqualified (as provided in proposed §1.48E(h)-1(m)). Based on DOE's recommendation, the IRS will decide whether the facility should retain its allocation or if the facility should be disqualified and will notify the applicant of its decision. Each applicant must receive confirmation from the IRS that the DOE has reviewed the placed in service submissions, and that eligibility is confirmed, prior to the owner (or a partner or shareholder in the case of a partnership or S corporation) claiming the increased credit amount on Form 3468*, Investment Credit (or Form 3800, General Business Credit)*, or successor form, or, if eligible, making a transfer election under section 6418 of the Code, or an elective payment election under section 6417 of the Code.

Proposed §1.48E(h)-1(k)(4) would provide a definition of placed in service. Pursuant to proposed §1.48E(h)-1(k)(4), for purposes of §1.48E(h)-1(k), eligible property is considered placed in service in the earlier of the following taxable years: (i) the taxable year in which, under the taxpayer's depreciation practice, the period for depreciation with respect to such eligible property begins; or (ii) the taxable year in which the eligible property is placed in a condition or state of readiness and availability for a specifically assigned function, whether in a trade or business or in the production of income.

F. *Placed in service prior to allocation award*

The Treasury Department and the IRS propose in §1.48E(h)-1(l) that facilities placed in service prior to being awarded an allocation of Capacity Limitation would not be eligible to receive an allocation. One of the goals of the Program is to increase adoption of and access to renewable energy facilities in low-income and other communities with environmental justice concerns. Awarding an allocation to facilities that have already been placed in service would be inconsistent with this goal. Further, section 48E(h)(4)(E)(i) provides that a facility must be placed in service within four years of receiving an allocation of Capacity Limitation, indicating that allocations should be made to new facilities that have not yet been placed in service. Accordingly, the Treasury Department and the IRS propose that facilities placed in service prior to being awarded an allocation of Capacity Limitation would not be eligible to receive an allocation.

VI. *Post-Allocation Compliance*

A. *Disqualification after receiving an allocation*

The Treasury Department and the IRS recognize that because, under section 48E(h)(4)(E)(i), an applicant has four years after the date of an allocation of Capacity Limitation to place eligible property in service, circumstances may change prior to the property being placed in service such that a facility is no longer eligible for the allocation it received. In addition, to promote an efficient allocation process consistent with section 48E(h)(4)(A), the Treasury Department and the IRS want to discourage material changes in project plans, such as significant reductions in facility size that tie up Capacity Limitation that could otherwise be awarded to other qualified facilities.

Accordingly, proposed §1.48E(h)-1(m) would provide that a facility that was awarded a Capacity Limitation allocation is disqualified and loses its allocation if prior to or upon the facility being placed in service: (1) the location where the facility will be placed in service changes; (2) the maximum net output of the facility increases such that it exceeds the less than five megawatt requirement provided in section 48E(h)(2)(A)(ii) or the nameplate capacity decreases by the greater of 2 kW or 25 percent of the Capacity Limitation awarded in the allocation; (3) the facility cannot satisfy the financial benefits requirements under section 48E(h)(2)(B)(ii) and proposed §1.48E(h)-1(e) as planned (if applicable) or cannot satisfy the financial benefits requirements under section 48E(h)(2)(C) and proposed §1.48E(h)-1(f) as planned (if applicable); (4) the eligible property that is part of the facility that received the Capacity Limitation allocation is not placed in service within four years after the date the applicant was notified of the allocation of Capacity Limitation to the facility; or (5) the facility received a Capacity Limitation allocation based, in part, on meeting the Ownership Criteria and ownership of the facility changes prior to the facility being placed in service, unless the original applicant transfers the facility to an entity treated as a partnership for Federal income tax purposes and retains at least a one percent interest (either directly or indirectly) in each material item of partnership income, gain, loss, deduction, and credit of such partnership and is a managing member or general partner (or similar title) under State or Tribal law of the partnership (or directly owns 100 percent of the equity interests in the managing member or general partner) at all times during the existence of the partnership.

B. *Recapture of section 48E(h) Increase*

Section 48E(h)(5) requires the Secretary, by regulations or other guidance, to provide rules for recapturing the benefit of any section 48E(h) Increase with respect to any property that ceases to be property eligible for such section 48E(h) Increase (but that does not cease to be investment credit property within the meaning of section 50(a)). The period and percentage of such recapture is determined under rules similar to the rules of section 50(a). To the extent provided by the Secretary, such recapture may not apply with respect to any property if, within 12 months after the date the applicant becomes aware (or reasonably should have become aware) of such property ceasing to be property eligible for such section 48E(h) Increase, the eligibility of such property for such section 48E(h) Increase is restored. Such restoration of a section 48E(h) Increase is not available more than once with respect to any facility.

Proposed §1.48E(h)-1(n)(1) would provide that if, at any time during the five-year recapture period beginning on the date that an applicable facility under section 48E(h) is placed in service, there is a recapture event under proposed §1.48E(h)-1(n)(3) with respect to such property, then the Federal income tax imposed on the taxpayer by chapter 1 of the Code for the taxable year in which the recapture event occurs is increased by the recapture percentage of the benefit of the increase in the section 48E credit. The recapture percent-

age is determined according to the table provided in section 50(a)(1)(B).

Proposed §1.48E(h)-1(n)(2) would provide that recapture under proposed §1.48E(h)-1(n)(1) may not apply with respect to any property if, within 12 months after the date the applicant becomes aware (or reasonably should have become aware) of such property ceasing to be property eligible for such increase in the credit allowed under section 48E(a), the eligibility of such property for such increase pursuant to section 48E(h) is restored. Such restoration of an increase pursuant to section 48E(h) is not available more than once with respect to any facility.

Proposed §1.48E(h)-1(n)(3) would provide that the following circumstances result in a recapture event if the property ceases to be eligible for the increased credit under section 48E(h): (1) property described in section 48E(h)(2)(A)(iii)(II) fails to provide financial benefits over the 5-year period after its original placed-in-service date; (2) property described under section 48E(h)(2)(B) ceases to allocate the financial benefits equitably among the occupants of the dwelling units, such as not passing on to residents the required net energy savings of the electricity; (3) property described under section 48E(h)(2)(C) ceases to provide at least 50 percent of the financial benefits of the electricity produced to Qualifying Households as described under section 48E(h)(2)(C)(i) or (ii), or fails to provide those households the required minimum 30 percent bill credit discount rate; (4) for property described under section 48E(h)(2)(B), the residential rental building the facility is a part of ceases to participate in a covered housing program or any other housing program described in section 48E(h)(2)(B)(i), if applicable; and (5) a facility increases its maximum net output such that the facility's maximum net output is 5 MW AC or greater.

Proposed §1.48E(h)-1(n)(4) would provide that any event that results in recapture under section 50(a) also will result in recapture of the benefit of the increase in the section 48E credit by reason of section 48E(h). The exception to the application of recapture provided in proposed §1.48E(h)-1(n)(2) does not apply in the case of a recapture event under section 50(a).

Proposed Applicability Date

These regulations are proposed to apply to qualified facilities placed in service after December 31, 2024, and during taxable years ending after the date the final regulations are filed for public inspection by the Office of the Federal Register.

Special Analysis

I. *Regulatory Planning and Review – Economic Analysis*

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

II. *Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) (PRA) requires that a Federal agency obtain the approval of OMB before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. The collections of information in these proposed regulations contain reporting and recordkeeping requirements that are required to obtain the section 48E(h) Increase. This information in the collections of information would generally be used by the IRS and the DOE for tax compliance purposes and by taxpayers to facilitate proper reporting and compliance. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The recordkeeping requirements mentioned within this proposed regulation are considered general tax records under §1.6001-1(e). These records are required for the IRS to validate that taxpayers have met the regulatory requirements and are entitled to receive section 48E(h) Increase. For PRA purposes, general tax records are already approved by OMB under 1545-0123 for business filers, 1545-0074 for individual filers, and 1545-0047 for tax-exempt organizations.

The proposed regulations also provide reporting requirements related to providing attestations and supporting documentation for initial application, supplemental documentation for specific facilities, and to confirm a facility is placed in service as detailed in this NPRM. These attestations and documentation would allow IRS to allocate Capacity Limitation and ensure taxpayers keep and maintain compliance for the credits. To assist with the collections of information, the DOE will provide certain administration services for the Program. Among other things, the DOE will establish a website portal to review the applications for eligibility criteria and will provide recommendations to the IRS regarding the selection of applications for an allocation of Capacity Limitation. These collection requirements will be submitted to the Office of Management and Budget (OMB) under 1545-NEW for review and approval in accordance with 5 CFR 1320.11. The likely respondents are business filers, individual filers, and tax-exempt organization filers. A summary of paperwork burden estimates for the application and attestations is as follows:

Estimated number of respondents: 70,000

Estimated burden per response: 60 minutes

Estimated frequency of response: 1 for initial applications, 1 for follow-up documentation, and 1 for projects placed in service.

Estimated total burden hours: 210,000 burden hours

IRS will be soliciting feedback on the collection requirements for the application and attestations. Commenters are strongly encouraged to submit public comments electronically. Written comments and recommendations for the proposed information collection should be sent to www.reginfo.gov/public/do/PRAMain. Comments on the collection of information should be received by October 3, 2024. Comments are specifically requested concerning:

(1) Whether the proposed collection of information is necessary for the proper

performance of the functions of the IRS, including whether the information will have practical utility;

(2) The accuracy of the estimated burden associated with the proposed collection of information;

(3) How the quality, utility, and clarity of the information to be collected may be enhanced;

(4) How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

(5) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

III. *Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 et seq.) and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a proposal is not likely to have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires the agency to present an initial regulatory flexibility analysis (IRFA) of the proposed rule. The Treasury Department and the IRS have not determined whether the proposed rule would likely have a significant economic impact on a substantial number of small entities. This determination requires further study and an IRFA is provided in these proposed regulations. The Treasury Department and the IRS invite comments on both the number of entities affected and the economic impact on small entities.

Pursuant to section 7805(f), this notice of proposed rulemaking has been submitted to the Chief Counsel of Advocacy of the Small Business Administration for comment on its impact on small business.

1. *Need for and Objectives of the Rule*

The proposed regulations would provide guidance to potential applicants to determine eligibility to apply for an allocation of Capacity Limitation under section 48E(h), and, in general, to taxpayers awarded an allocation of Capacity Limitation to understand the requirement to claim the section 48E(h) Increase. The proposed regulations are expected to encourage applicants to invest in applicable facilities. Thus, the Treasury Department and the IRS intend and expect that the proposed rule will deliver benefits across the economy and environment that will beneficially impact various industries.

2. *Affected Small Entities*

The Small Business Administration estimates in its 2018 Small Business Profile that 99.9 percent of United States businesses meet its definition of a small business. The applicability of these proposed regulations does not depend on the size of the business, as defined by the Small Business Administration. As described more fully in the preamble to this proposed regulation and in this IRFA, these rules may affect a variety of different businesses across serval different industries.

The Treasury Department and the IRS expect to receive more information on the impact on small businesses through comments on this proposed rule and again when participation in the Program commences.

3. *Impact of the Rules*

The recordkeeping and reporting requirements would increase for applicants that participate in the Program. Although the Treasury Department and the IRS do not have sufficient data to determine precisely the likely extent of the increased costs of compliance, the estimated burden of complying with the recordkeeping and reporting requirements are described in the Paperwork Reduction Act section of the preamble.

4. *Alternatives Considered*

The Treasury Department and the IRS considered alternatives to the proposed regulations. For example, the Treasury Department and the IRS considered requests from stakeholders that potential applicants be able to place a facility in service before applying for or receiving an allocation of Capacity Limitation. The Treasury Department and IRS determined it would not be possible to accommodate this request in the proposed regulations because the statutory language under section 48E(h)(4)(E)(i) requires that the facility be placed in service by a date that is 4 years after the date of the allocation. Moreover, facilities that were placed in service prior to the allocation process do not increase adoption of and access to renewable energy facilities, as compared to the absence of the Program, and so do not further Program goals.

Additionally, the Treasury Department and IRS considered proposing a variety of bill credit discounts for Category 4 qualified low-income benefit project facilities, including the 20 percent bill credit discount rate used in the Low-Income Communities Bonus Credit Program established under section 48(e). However, to ensure that low-income customers are receiving meaningful financial benefits, the Treasury Department and the IRS decided to propose a 30 percent bill credit discount for the Program but are also requesting comments on whether this is the most appropriate bill credit discount rate for the Program and whether a transition rule to achieve this bill discount rate is necessary.

Another example is the revisions to the list of eligible covered housing programs that can be found in the Explanation of Provisions section of this document. In the preamble to Treasury Decision 9979, applicable to the Low-Income Communities Bonus Credit Program established under section 48(e), the Treasury Department and the IRS included as an eligible covered housing program, HUD tenant-based rental assistance under section 8 of the United States Housing Act of 1937. The Treasury Department and IRS considered retaining tenant-based housing assistance programs. However, after consulting with HUD, it was determined that tenant-based assistance is assistance that can only be attributed to a particular tenant, and not a building. Under section 48E(h)(2)(B), for a facility to qualify as a being part of a qualified low-income residential building project, the facility must be installed on a residential rental building that participates in a covered housing

program (that is, a Qualified Residential Property). Tenant-based housing assistance programs applicable to a particular tenant do not qualify the building in which the tenant resides as participating in a covered housing program. Therefore, because tenant-based assistance under Section 8 does not comport with the requirements under section 48E(h)(2)(B), tenant-based housing assistance programs under Section 8, have been removed as an eligible covered housing program for purposes of the Program under section 48E(h).

Additionally, the Treasury Department and IRS considered whether to propose to include the sub-reservation for Category 1 facilities for eligible residential BTM facilities but concluded this sub-reservation should be proposed for the Program. The sub-reservation of a substantial portion of the allocation in Category 1 for eligible residential BTM facilities would help ensure that allocations are predominantly awarded to facilities serving residences and consumers, rather than facilities serving businesses.

Comments are requested on the requirements in the proposed regulations, including specifically, whether there are less burdensome alternatives that ensure the Treasury Department and IRS and DOE can efficiently administer the Program.

5. *Duplicative, Overlapping, or Conflicting Federal Rules*

The proposed rule would not duplicate, overlap, or conflict with any relevant Federal rules. As discussed in the Explanation of Provisions, the proposed rules would merely provide requirements, procedures, and definitions related to the Program. The Treasury Department and the IRS invite input from interested members of the public about identifying and avoiding overlapping, duplicative, or conflicting requirements.

IV. *Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Indian Tribal government, in the aggregate, or by the private sector, of $100 million (updated annually for inflation). These proposed regulations do not include any Federal mandate that may result in expenditures by State, local, or Indian Tribal governments, or by the private sector in excess of that threshold.

V. *Executive Order 13132: Federalism*

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. These proposed regulations do not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

VI. *Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments) prohibits an agency from publishing any rule that has Tribal implications if the rule either imposes substantial, direct compliance costs on Indian Tribal governments, and is not required by statute, or preempts Tribal law, unless the agency meets the consultation and funding requirements of section 5 of the Executive order. These proposed regulations do not have substantial direct effects on one or more Federally recognized Indian tribes and does not impose substantial direct compliance costs on Indian Tribal governments within the meaning of the Executive order.

Nevertheless, consistent with Treasury's Tribal Consultation Policy, the Treasury Department and the IRS will hold a consultation with Tribal leaders requesting assistance in addressing questions related to these proposed regulations.

Comments and Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to comments regarding the notice of proposed rulemaking that are submitted timely to the IRS as prescribed in the preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. All comments will be made available at https://www.regulations.gov. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn.

A public hearing with respect to this notice of proposed rulemaking has been scheduled for October 17, 2024, beginning at 10 a.m. EST. The hearing scheduled for October 17, 2024, will be held in the Auditorium at the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, D.C. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. Participants may alternatively attend the public hearing by telephone.

The rules of 26 CFR 601.601(a)(3) apply to the public hearing. Persons who wish to present oral comments at the public hearing must submit an outline of the topics to be discussed and the time to be devoted to each topic by October 3, 2024. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the public hearing. If no outline of the topics to be discussed at the public hearing is received by October 3, 2024, the public hearing will be cancelled. If the public hearing is cancelled, a notice of cancellation of the public hearing will be published in the ***Federal Register***.

Individuals who want to testify in person at the public hearing must send an email to publichearings@irs.gov to have your name added to the building access list. The subject line of the email must

contain the regulation number REG-108920-24 and the language TESTIFY In Person. For example, the subject line may say: Request to TESTIFY In Person at Hearing for REG-108920-24.

Individuals who want to testify by telephone at the public hearing must send an email to publichearings@irs.gov to receive the telephone number and access code for the public hearing. The subject line of the email must contain the regulation number REG-108920-24 and the language TESTIFY Telephonically. For example, the subject line may say: Request to TESTIFY Telephonically at Hearing for REG-108920-24.

Individuals who want to attend the public hearing in person without testifying must also send an email to publichearings@irs.gov to have your name added to the building access list. The subject line of the email must contain the regulation number REG-108920-24 and the language ATTEND In Person. For example, the subject line may say: Request to ATTEND Hearing In Person for REG-108920-24. Requests to attend the public hearing must be received by 5 p.m. EST on October 15, 2024.

Individuals who want to attend the public hearing by telephone without testifying must also send an email to publichearings@irs.gov to receive the telephone number and access code for the public hearing. The subject line of the email must contain the regulation number REG-108920-24 and the language ATTEND Hearing Telephonically. For example, the subject line may say: Request to ATTEND Hearing Telephonically for REG-108920-24. Requests to attend the public hearing must be received by 5 p.m. EST on October 15, 2024.

Public hearings will be made accessible to people with disabilities. To request special assistance during a public hearing please contact the Publications and Regulations Section of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to publichearings@irs.gov (preferred) or by telephone at (202) 317-6901 (not a toll-free number) and must be received by October 11, 2024.

Statement of Availability of IRS Documents

Guidance cited in this preamble is published in the Internal Revenue Bulletin and is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at https://www.irs.gov.

Drafting Information

The principal author of these proposed rules is the Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and IRS propose to amend 26 CFR part 1 as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry for §1.48E(h)-1 in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

* * * * *

Section 1.48E(h)-1 also issued under 26 U.S.C. 48E(h) and (i).

* * * * *

Par. 2. Sections 1.48E(h)-0 and 1.48E(h)-1 are added to read as follows:

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This section lists the captions contained in §1.48E(h)-1.

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§1.48E(h)-1 Clean Electricity Low-Income Communities Bonus Credit Amount Program.

(a) *Overview*—(1) *General rule*. For purposes of section 46 of the Internal Revenue Code (Code), if an allocation of the environmental justice capacity limitation (Capacity Limitation) is made with respect to eligible property (as defined in paragraph (c) of this section) that is part of any applicable facility (as defined in paragraph (b) of this section) placed in service in connection with low-income communities under the Clean Electricity Low-Income Communities Bonus Credit Amount Program (Program) established under section 48E(h)(4), the applicable percentage used to calculate the amount of the clean electricity investment credit determined under section 48E(a) (section 48E credit) is increased under section 48E(h)(1).

(2) *Certain terms used in this section*. In this section:

(i) *Applicants*. The terms *applicant* and *taxpayer* are used interchangeably as the context may require.

(ii) *Internal Revenue Bulletin*. The term *Internal Revenue Bulletin* has the meaning provided in §601.601 of this chapter.

(b) *Applicable facility defined*—(1) *In general*. An *applicable facility* means any qualified facility (as defined in section 48E(b)(3)) that—

(i) Is a non-combustion and gasification facility for which the Secretary of the Treasury or her delegate has determined has a greenhouse gas (GHG) emissions rate of not greater than zero in guidance published either in the ***Federal Register*** or in the Internal Revenue Bulletin as of the opening date for a Program year, which the Internal Revenue Service will publicly announce;

(ii) Has a maximum net output of less than 5 megawatts (MW) (as measured in alternating current (AC)); and

(iii) Is described in at least one of the four categories described in section 48E(h)(2)(A)(iii) and paragraph (b)(2) of this section.

(2) *Facility categories*—(i) *Category 1 facility*. A facility is a *Category 1 facility* if it is located in a low-income community. The term *low-income community* generally is defined under section 45D(e)(1) of the Code as any population census tract for which the poverty rate is at least 20 percent based on the most recently released American Community Survey (ACS) low-income community data currently used for the New Markets Tax Credit (NMTC) under section 45D, or, in the case of a tract not located within a metropolitan area, the median family income for such tract does not exceed 80 percent of statewide median family income, or, in the case of a tract located within a metropolitan area, the median family income for such tract does not exceed 80 percent of the greater of statewide median family income or the metropolitan area median family income. The term low-income community also includes the modifications in section 45D(e)(4) and (5) for tracts with low population and modification of the income requirement for census tracts with high migration rural counties. Low-income community information for NMTC can be found at https://www.cdfifund.gov/cims3. For purposes of this paragraph (b)(2)(i), if updated ACS low-income community data is released for the NMTC program, a taxpayer can choose to base the poverty rate for any population census tract on either the prior version of the ACS low-income community data for the NMTC program or the updated ACS low-income community data for the NMTC program for a period of 1 year following the date of the release of the updated data. After the 1-year transition period, the updated ACS low-income community data for the NMTC program must be used to determine the poverty rate for any population census tract. Population census tracts that satisfy the definition of low-income community at the time of application are considered to continue to meet the definition of low-income community for the duration of the recapture period described in paragraph (n)(1) of this section unless the location of the facility changes.

(ii) *Category 2 facility*. A facility is a *Category 2 facility* if it is located on Indian land. The term Indian land is defined in section 2601(2) of the Energy Policy Act of 1992 (25 U.S.C. 3501(2)).

(iii) *Category 3 facility*. A facility is a *Category 3 facility* if it is part of a quali-

fied low-income residential building project. A facility will be treated as part of a qualified low-income residential building project if such facility is installed on a residential rental building that participates in a covered housing program or other affordable housing program described in section 48E(h)(2)(B)(i) (Qualified Residential Property) and the financial benefits of the electricity produced by such facility are allocated equitably among the occupants of the dwelling units of such building as provided in paragraph (e) of this section. A Qualified Residential Property could either be a multifamily rental property or single-family rental property. However, the building, and not merely the tenants, must participate in a covered housing program or other affordable housing program described in section 48E(h)(2)(B)(i). A facility does not need to be installed directly on the building to be considered installed on a Qualified Residential Property if the facility is installed on the same or an adjacent parcel of land as the Qualified Residential Property, and the other requirements to be a Category 3 facility are satisfied.

(iv) *Category 4 facility*. A facility is a *Category 4 facility* if it is part of a qualified low-income economic benefit project. A facility will be treated as part of a qualified low-income economic benefit project if, as provided in paragraph (f) of this section, at least 50 percent of the financial benefits of the electricity produced by such facility are provided to households with income of less than—

(A) Two-hundred percent of the poverty line (as defined in section 36B(d)(3)(A) of the Code) applicable to a family of the size involved; or

(B) Eighty percent of area median gross income (as determined under section 142(d)(2)(B) of the Code).

(3) *Less than five megawatts requirement*—(i) *In general*. For purposes of this paragraph (b), the less than five megawatts requirement is measured at the level of the applicable facility in accordance with section 48E(h)(2)(A)(ii). The maximum net output of an applicable facility is measured only by nameplate generating capacity of the applicable facility, which includes only functionally interdependent components of property that are owned by the taxpayer, that are operated together, and that can operate apart from other property to produce electricity, at the time the applicable facility is placed in service. Components of property are functionally interdependent if the placing in service of each component is dependent upon placing in service other components to produce electricity.

(ii) *Nameplate capacity for purposes of the less than five megawatts requirement.* The determination of whether an applicable facility has a maximum net output of less than 5 MW (as measured in AC) is based on the nameplate capacity of the applicable facility. The nameplate capacity for purposes of the less than five megawatts requirement is the maximum electrical generating output in MW that the applicable facility is capable of producing on a steady state basis and during continuous operation under standard conditions, as measured by the manufacturer and consistent with the definition of nameplate capacity provided in 40 CFR 96.202. If applicable, the International Standard Organization conditions should be used to measure the maximum electrical generating output of an applicable facility.

(c) *Eligible property*. *Eligible property* means a qualified investment (as defined in section 48E(b)) with respect to any applicable facility.

(d) *Location*—(1) *In general*. An applicable facility is treated as located in a low-income community or located on Indian land under section 48E(h)(2)(A)(iii)(I) if the applicable facility satisfies the Nameplate Capacity Test for Location of paragraph (d)(2) of this section. Similarly, an applicable facility is treated as located in a geographic area under the Additional Selection Criteria described in paragraph (h) of this section if it satisfies the Nameplate Capacity Test for Location.

(2) *Nameplate Capacity Test for Location*. An applicable facility is considered located in or on the relevant geographic area described in paragraph (d)(1) of this section if 50 percent or more of the applicable facility's nameplate capacity is in a qualifying area. The percentage of an applicable facility's nameplate capacity (as defined in paragraph (d)(3) of this section) that is in a qualifying area is determined by dividing the nameplate capacity of the applicable facility's electricity-generating units that are located in the qualifying area by the total nameplate capacity of all the electricity-generating units of the applicable facility.

(3) *Nameplate capacity for purpose of Nameplate Capacity Test for Location*. *Nameplate capacity* for an electricity generating unit means the maximum electrical output that the applicable facility is capable of producing on a steady state basis and during continuous operation under standard conditions, as measured by the manufacturer and consistent with the definition of nameplate capacity provided in 40 CFR 96.202. If applicable, the International Standard Organization conditions should be used to measure the maximum electrical generating output. For purposes of assessing the Nameplate Capacity Test, electricity-generating units that generate direct current (DC) power before converting to AC (for example, solar photovoltaic), should use nameplate capacity in DC, otherwise the nameplate capacity in AC should be used.

(e) *Financial benefits for a Category 3 facility*—(1) *In general*. To satisfy the requirements of a Category 3 facility as provided in paragraph (b)(2)(iii) of this section, the financial benefits of the electricity produced by the facility must be allocated equitably among the occupants of the dwelling units of the Qualified Residential Property. The same rules for financial benefits for Category 3 facilities apply to both multi-family property and single-family Qualified Residential Property.

(2) *Threshold requirement*. At least 50 percent of the financial value of the electricity produced by the facility (as defined in paragraph (e)(3) of this section) must be allocated equitably to the Qualified Residential Property's occupants that are designated as low-income occupants under the covered housing program or other affordable housing program.

(3) *Financial value of the electricity produced by the facility*. For purposes of this paragraph (e), the *financial value of the electricity produced by the facility* is defined as the greater of:

(i) 25 percent of the gross financial value (as defined in paragraph (e)(4) of this section) of the annual electricity produced by the applicable facility; or

(ii) The net financial value (as defined in paragraph (e)(5) of this section) of the

annual electricity produced by the applicable facility.

(4) *Gross financial value*. For purposes of this paragraph (e), *gross financial value* of the annual electricity produced by the applicable facility is calculated as the sum of:

(i) The total self-consumed kilowatt-hours produced by the applicable facility multiplied by the Qualified Residential Property's metered volumetric price of electricity;

(ii) The total exported kilowatt-hours produced by the applicable facility multiplied by the Qualified Residential Property's volumetric export compensation rate for the type of electricity produced by the applicable facility per kilowatt-hour; and

(iii) The sale of any attributes associated with the applicable facility's production (including, for example, any Federal, State, or Tribal renewable energy credits or incentives), if separate from the metered price of electricity or export compensation rate.

(5) *Net financial value defined*—(i) *Common ownership*. For purposes of this paragraph (e), if the facility and Qualified Residential Property are commonly owned, *net financial value* is defined as the gross financial value of the annual electricity produced minus the annual average (or levelized) cost of the applicable facility over the useful life of the facility (including debt service, maintenance, replacement reserve, capital expenditures, and any other costs associated with constructing, maintaining, and operating the facility).

(ii) *Third-party ownership*. For purposes of this paragraph (e), if the facility and the Qualified Residential Property are not commonly owned and the facility owner enters into a Power Purchase Agreement or other contract for electricity services with the Qualified Residential Property owner and/or building occupants, *net financial value* is defined as the gross financial value of the annual electricity produced minus any payments made by the building owner and/or building occupants to the facility owner for electricity services associated with the facility in a given year.

(iii) *Equitable allocation of financial benefits*. There are different rules to ensure an equitable allocation of financial benefits depending on whether or not financial value is distributed to building occupants via utility bill savings or through different means. Previously distributed financial benefits or investments already made to the Qualified Residential Property are not considered eligible financial benefits for this purpose.

(A) *If financial value distributed via utility bill savings*. If financial value is distributed via utility bill savings, financial benefits will be considered to be allocated equitably if at least 50 percent of the financial value of the electricity produced by the facility is distributed as utility bill savings in equal shares to each building dwelling unit among the Qualified Residential Property's occupants that are designated as low-income under the covered housing program or other affordable housing program (described in section 48E(h)(2)(B)(i)) or alternatively distributed in proportional shares based on each low-income dwelling unit's square footage, or each low-income dwelling unit's number of occupants. For any occupant(s) who choose to not receive utility bill savings (for example, exercise their right to not participate in or to opt out of a community solar subscription in applicable jurisdictions), the portion of the financial value that would otherwise be distributed to non-participating occupants must be distributed instead to all participating occupants. No less than 50 percent of the Qualified Residential Property's occupants that are designated as low-income must participate and receive utility bill savings for the facility to use this method of benefit distribution. In the case of a solar facility, applicants must follow the Department of Housing and Urban Development (HUD) guidance on Treatment of Financial Benefits to HUD-Assisted Tenants Resulting from Participation in Solar Programs Notice (Housing Notice 2023-09), located at https://www.hud.gov/sites/dfiles/OCHCO/documents/2023-09hsgn.pdf, or future HUD guidance, or other guidance or notices from the Federal agency that oversees the applicable housing program identified in section 48E(h)(2)(B) to ensure that tenants' annual income for rent calculations or other requirements impacting total tenant payment are not negatively impacted by the distribution of financial value. Applicants should apply similar principles in the case of any other applicable facility.

(B) *If financial value is not distributed via utility bill savings*. If financial value is not distributed via utility bill savings, financial benefits will be considered to be allocated equitably if at least 50 percent of the financial value of the electricity produced by the facility is distributed to occupants using one or more methods described in Housing Notice 2023-09 for a master-metered building, or future HUD guidance, or other guidance or notices from the Federal agency that oversees the applicable housing program identified in section 48E(h)(2)(B). In the case of a solar facility, applicants must comply with HUD guidance, or future HUD guidance, for how residents of master-metered HUD-assisted housing can benefit from owners' sharing of financial benefits accrued from an investment in solar electricity generation to ensure that tenants' utility allowances and annual income for rent calculations are not negatively impacted. Applicants should apply similar principles in the case of any other applicable facility.

(6) *Benefits sharing statement*—(i) *In general*. The facility owner must prepare a Benefits Sharing Statement, which must include:

(A) A calculation of the facility's gross financial value using the method described paragraph (e)(4) of this section;

(B) A calculation of the facility's net financial value using the method described in paragraph (e)(5) of this section;

(C) A calculation of the financial value required to be distributed to building occupants using the method described in paragraph (e)(3) of this section;

(D) A description of the means through which the required financial value will be distributed to building occupants; and

(E) If the facility and Qualified Residential Property are separately owned, specify the entity that will be responsible for the distribution of benefits to the occupants.

(ii) *Notification requirement*. The Qualified Residential Property owner must formally notify the occupants of units in the Qualified Residential Property of the development of the facility and planned distribution of benefits.

(f) *Financial benefits for a Category 4 facility*—(1) *In general*. To satisfy the requirements of a Category 4 facility as provided in paragraph (b)(2)(iv) of this section:

(i) The facility must serve multiple qualifying low-income households under section 48E(h)(2)(C)(i) or (ii) (Qualifying Household);

(ii) At least 50 percent of the facility's total output in kW must be assigned to Qualifying Households; and

(iii) Each Qualifying Household must be provided a bill credit discount rate (as defined in paragraph (f)(2) of this section) of at least 30 percent.

(2) *Bill credit discount rate*—(i) *In general*. A bill credit discount rate is the difference between the financial benefit provided to a Qualifying Household (including utility bill credits, reductions in a Qualifying Household's electricity rate, or other monetary benefits accrued by the Qualifying Household on their utility bill) and the cost of participating in the community program (including subscription payments for zero carbon and any other fees or charges), expressed as a percentage of the financial benefit distributed to the Qualifying Household. The bill credit discount rate can be calculated by starting with the financial benefit provided to the Qualifying Household, subtracting all payments made by the Qualifying Household (or payments remitted on behalf of the Qualifying Household through net crediting, consolidated billing, or similar arrangements) to the facility owner and any related third parties as a condition of receiving that financial benefit, then dividing that difference by the financial benefit distributed to the Qualifying Household.

(ii) *No or nominal cost of participation*. In cases in which the Qualifying Household has no or only a nominal cost of participation, and financial benefits are delivered through a utility or government body, the bill credit discount rate should be calculated as the financial benefit provided to a Qualifying Household (including utility bill credits, reductions in a Qualifying Household's electricity rate, or other monetary benefits accrued by a Qualifying Household on their utility bill) divided by the total value of the electricity produced by the facility and assigned to the Qualifying Household (including any electricity services, products, and credits provided in conjunction with the electricity produced by such facility), as measured by the utility, independent system operator, or other off-taker procuring electricity (and related services, products, and credits) from the facility.

(iii) *Other value from electricity production*. If the facility derives financial value from the production of electricity in a manner such that this value cannot be directly applied to the Qualifying Household's utility bill (for example, renewable energy credit payments made directly to the facility owner), than no less than 30 percent of that monetary value must also be provided to the Qualifying Household, either through a greater bill credit discount on the Qualifying Household's utility bill than would otherwise be derived from the method described in paragraph (f)(2)(i) of this section or through other means.

(iv) *Calculation on annual basis*. In all instances, the bill credit discount rate is calculated on an annual basis.

(v) *Examples*. The provisions of this paragraph (f)(2) may be illustrated by the following examples:

(A) *Example 1*. A Qualifying Household signs a community solar subscription agreement with the facility owner. Each month, the facility owner will assign a portion of the electricity generated (or its value) by the facility to the household's utility bill, and the household will pay the facility owner. The amount the household pays the facility owner cannot exceed 70 percent of the monetary value of the assigned generation. The remaining 30 percent is a cost savings to the household on electricity. In this example, over the course of the first year the facility owner or their agent cause $180 in utility bill credits to be placed on the Qualifying Household's bill, and the Qualifying Household pays $126, inclusive of any upfront fees. The subsequent year, due to variation in solar generation and/or the compensation paid by the utility for solar generation, the facility owner, in accordance with the community solar subscription agreement, causes $240 in bill credits to be provided to the Qualifying Household's bill and the household pays $168. In each year of facility operation described within this example, a bill credit discount rate of 30 percent is maintained (($180 - $126) / $180 = 30%) and (($240 -$168) / $240 = 30%), respectively.

(B) *Example 2*. Due to the regulatory structure of the applicable jurisdiction or program, the terms of the community solar subscription, the use of a *net-crediting* mechanism, or other reason, the Qualifying Household does not make a direct payment to the facility owner, but rather payment is remitted on their behalf by the utility. In this example, over the course of the first year the facility owner or their agent cause $200 in utility bill credits to be placed on the Qualifying Household's bill, and the Qualifying Household's utility remits $126 to the facility owner, inclusive of any upfront fees. The subsequent year, due to variation in solar generation and/or the compensation paid by the utility for solar generation, the facility owner, in accordance with the community solar subscription agreement, causes $240 in bill credits to be provided to the Qualifying Household's bill and the utility remits $168 to the facility owner. In each year of facility operation described within this example, a bill credit discount rate of 30 percent is maintained (($180 - $126) / $180 = 30%) and (($240 -$168) / $240 = 30%), respectively.

(C) *Example 3*. Assume the facility is part of a program by which the financial benefits are delivered to Qualifying Households through a utility or government body, and each Qualifying Household pays no cost to participate. Assume that the total annual financial benefit for a Qualifying Household is $180 in the first year and $240 in the second year. Assume further that the value of the electricity produced by the facility and assigned to the Qualifying Household though a utility or government body, as measured by the utility, independent system operator, or other off-taker procuring the electricity, is $600 in the first year and $800 in the second year. In this case, the bill credit discount rate is 30 percent in each year (($600 x 30% = $180) and ($800 x 30% = $240), respectively).

(3) *Low-income verification*—(i) *In general*. To establish that financial benefits are provided to Qualifying Households as provided in paragraph (f)(1) of this section, applicants must, in accordance with guidance published in the Internal Revenue Bulletin, submit documentation upon placing the applicable facility in service. A Qualifying Household's low-income status is determined at the time the household enrolls in the subscription program and does not need to be re-verified.

(ii) *Methods of verification*. Applicants may use categorical eligibility or other income verification methods to establish that a household is a Qualifying Household.

(A) *Categorical eligibility*. Categorical eligibility consists of obtaining proof of the household's participation in a needs-based Federal, State, Tribal, or utility program with income limits at or below the qualifying income level required to be a Qualifying Household. Federal programs may include, but are not limited to: Medicaid, Low-Income Home Energy Assistance Program (LIHEAP) administered by the Department of Health and Human Services, Weatherization Assistance Program (WAP) administered by the Department of Energy (DOE), Supplemental Nutrition Assistance Program (SNAP) administered by the Department of Agriculture (USDA), Section 8 Project-Based Rental

Assistance, the Housing Choice Voucher Program administered by HUD, the Federal Communication Commission's Lifeline Support for Affordable Communications, the National School Lunch Program administered by the USDA, the Supplemental Security Income Program administered by the Social Security Administration, and any verified government or non-profit program serving Asset Limited Income Constrained Employed (ALICE) persons or households. With respect to the Federal programs listed previously an individual in the household must currently be approved for assistance from or participation in the program with an award letter or other written documentation within the last 12 months for enrollment in that program to establish categorical eligibility of the household. State agencies can also provide verification that a household is a Qualifying Household if the household participates in a State's solar or other energy program and income limits for such program are at or below the qualifying income level required to be a Qualifying Household. The qualifying income level for a Qualifying Household is based on where such household is located.

(B) *Other income verification methods*. Paystubs, Federal or State tax returns, or income verification through crediting agencies and commercial data sources can be used to establish that a household is a Qualifying Household.

(C) *Impermissible verification method*. A self-attestation from a household is not a permissible method to establish a household is a Qualifying Household. This prohibition on direct self-attestation from a household does not extend to categorical eligibility for needs-based Federal, State, Tribal, or utility programs with income limits that rely on self-attestation for verification of income.

(g) *Annual Capacity Limitation*—(1) *In general*. Under section 48E(h)(4)(C), the total annual Capacity Limitation is 1.8 gigawatts of DC capacity for each calendar year of the Program. The annual Capacity Limitation for each Program year is divided across the four facility categories described in section 48E(h)(2)(A)(iii) and paragraph (b)(2) of this section as provided in guidance published in the Internal Revenue Bulletin. The Capacity Limitation for each Program year is divided across the four facility categories based on factors such as the anticipated number of applications that are expected for each category and the amount of Capacity Limitation that needs to be reserved for each category to encourage market participation in each category consistent with statutory intent and the goals of the Program. After the Capacity Limitation for each facility category is established in guidance published in the Internal Revenue Bulletin, it may be reallocated later across facility categories and sub-reservation in the event one category or sub-reservation is oversubscribed and another has excess capacity. A facility category or sub-reservation is oversubscribed if it receives qualified applications in excess of Capacity Limitation reserved for the facility category or sub-reservation.

(2) *Carryover of unallocated Annual Capacity Limitation.* If the Annual Capacity Limitation for any calendar year exceeds the aggregate amount of Annual Capacity Limitation allocated for a calendar year under paragraph (g)(1) of this section, the Annual Capacity Limitation for the succeeding calendar year will be increased by the amount of such excess. No amount of Capacity Limitation may be carried to any calendar year after the third calendar year following the applicable year (as defined in section 45Y(d)(3) of the Code).

(h) *Reservations of Capacity Limitation allocation for facilities that meet certain Additional Selection Criteria*—(1) *In general*. At least 50 percent of the total Capacity Limitation in each facility category described in paragraph (b) of this section will be reserved for qualified facilities meeting the Additional Selection Criteria described in paragraph (h)(2) of this section (relating to ownership criteria) and paragraph (h)(3) of this section (relating to geographic criteria) as provided in guidance published in the Internal Revenue Bulletin. Future guidance published in the Internal Revenue Bulletin will provide the amounts reserved for each Program year. The procedure for using these Additional Selection Criteria is provided in guidance published in the Internal Revenue Bulletin. After the reservation of Capacity Limitation for qualified facilities meeting the Additional Selection Criteria described in paragraphs (h)(2) and (3) of this section is established in guidance published in the Internal Revenue Bulletin, it may be reallocated later across facility categories and sub-reservations in the event one category or sub-reservation within a category is oversubscribed and another has excess capacity.

(2) *Ownership criteria*—(i) *In general*. The ownership criteria are based on characteristics of the applicant that owns the applicable facility. An applicable facility will meet the ownership criteria if it is owned by one of the following:

(A) A Tribal enterprise (as defined in paragraph (h)(2)(iii) of this section);

(B) An Alaska Native Corporation (as defined in paragraph (h)(2)(iv) of this section);

(C) A Native Hawaiian Organization (as defined in paragraph (h)(2)(v) of this section);

(D) A renewable energy cooperative (as defined in paragraph (h)(2)(vi) of this section); or

(E) A qualified tax-exempt entity (as defined in paragraph (h)(2)(vii) of this section).

(ii) *Indirect ownership*—(A) *Disregarded entities*. If an applicant wholly owns an entity that is the owner of an applicable facility, and the entity is disregarded as separate from its owner for Federal income tax purposes (disregarded entity), then the applicant, and not the disregarded entity, is treated as the owner of the applicable facility for purposes of the ownership criteria.

(B) *Partner qualifying partnership under ownership criteria*. If an applicant is an entity treated as a partnership for Federal income tax purposes, and an entity described in paragraphs (h)(2)(i)(A) through (E) of this section owns at least a one percent interest (either directly or indirectly) in each material item of partnership income, gain, loss, deduction, and credit and is a managing member or general partner (or similar title) under State or Tribal law of the partnership (or directly owns 100 percent of the equity interests in the managing member or general partner) at all times during the existence of the partnership, the applicable facility will be deemed to meet the ownership criteria. If the partnership becomes the owner of the facility after an allocation is made to an entity described in paragraphs (h)(2)(i)(A)

through (E) of this section, then the transfer of the facility to the partnership is not a disqualification event for purposes of paragraph (m)(5) of this section, so long as the requirements of paragraph (m)(5) of this section are satisfied. The original applicant and the successor partnership should refer to guidance published in the Internal Revenue Bulletin for the procedures to request a transfer of the Capacity Limitation allocation to the successor partnership.

(iii) *Tribal enterprise*. A *Tribal enterprise* for purposes of the ownership criteria is an entity that is:

(A) Owned at least 51 percent directly by an Indian Tribal government (as defined in section 30D(g)(9) of the Code), or owned at least 51 percent indirectly through a corporation that is wholly owned by the Indian Tribal government and is created under either the Tribal laws of the Indian Tribal government or through a corporation incorporated under the authority of either section 17 of the Indian Reorganization Act of 1934, 25 U.S.C. 5124, or section 3 of the Oklahoma Indian Welfare Act, 25 U.S.C. 5203; and

(B) Subject to Tribal government rules, regulations, and/or codes that regulate the operations of the entity.

(iv) *Alaska Native Corporation*. An *Alaska Native Corporation* for purposes of the ownership criteria is defined in section 3 of the Alaska Native Claims Settlement Act, 43 U.S.C. 1602(m).

(v) *Native Hawaiian Organization*. A *Native Hawaiian Organization* for purposes of the ownership criteria is defined in 13 CFR 124.3.

(vi) *Renewable energy cooperative*. A renewable energy cooperative for purposes of the ownership criteria is an entity that develops applicable facilities and is either:

(A) A consumer or purchasing cooperative controlled by its members with each member having an equal voting right and with each member having rights to profit distributions based on patronage as defined by proportion of volume of electricity or energy credits purchased (kWh), volume of financial benefits delivered ($), or volume of financial payments made ($); and in which at least 50 percent of the patronage in the qualified facility is by cooperative members who are low-income households (as defined in section 48E(h)(2)(C)); or

(B) A worker cooperative controlled by its worker-members with each member having an equal voting right.

(vii) *Qualified tax-exempt entity*. A qualified tax-exempt entity for purposes of the ownership criteria is:

(A) An organization exempt from the tax imposed by subtitle A by reason of being described in section 501(c)(3) or section 501(d) of the Code;

(B) Any State, the District of Columbia, or political subdivision thereof, or any agency or instrumentality of any of the foregoing;

(C) An Indian Tribal government (as defined in section 30D(g)(9)), a political subdivision thereof, or any agency or instrumentality of any of the foregoing; or

(D) Any corporation described in section 501(c)(12) operating on a cooperative basis that is engaged in furnishing electric energy to persons in rural areas.

(3) *Geographic criteria*—(i) *In general*. Geographic criteria do not apply to Category 2 facilities. To meet the geographic criteria, a facility must be located in a county or census tract that is described in paragraph (h)(3)(ii) or (iii) of this section. Applicants who meet the geographic criteria at the time of application are considered to continue to meet the geographic criteria for the duration of the recapture period unless the location of the facility changes.

(ii) *Persistent Poverty County*. A Persistent Poverty County (PPC), which is, generally, described as any county in which 20 percent or more of residents have experienced high rates of poverty over the past 30 years. For purposes of the Program, the PPC measure adopted by the USDA is used to make this determination. If updated data is released by USDA, a taxpayer will have a 1-year period following the date of the release of the updated data to be eligible under the previous data. After the 1-year transition period, the updated data must be used to determine eligibility.

(iii) *Certain census tracts under Climate and Economic Justice Screening Tool*. A census tract that is described in the latest official Climate and Economic Justice Screening Tool (CEJST), as greater than or equal to the 90th percentile for energy burden and greater than or equal to the 65th percentile for low income, or as greater than or equal to the 90th percentile for PM2.5 exposure and greater than or equal to the 65th percentile for low income.

(A) *Energy burden*. *Energy burden* is defined as average household annual energy cost in dollars divided by the average household income.

(B) *PM2.5*. *PM2.5* is defined as fine inhalable particles with 2.5 or smaller micrometer diameters. The percentile is the weight of the particles per cubic meter.

(C) *Low-income*. *Low income*, for purposes of this section, is defined as the percent of a census tract's population in households for which household income is at or below 200 percent of the Federal poverty level, not including students enrolled in higher education.

(i) *Sub-reservations of allocation for Category 1 facilities*—(1) *In general*. Capacity Limitation reserved for Category 1 facilities will be subdivided each Program year for facilities seeking a Category 1 allocation with Capacity Limitation reserved specifically for eligible residential behind the meter (BTM) facilities, including rooftop solar. The remaining Capacity Limitation is available for applicants with front of the meter (FTM) facilities as well as non-residential BTM facilities. The specific sub-reservation for eligible residential BTM facilities in Category 1 is provided in guidance published in the Internal Revenue Bulletin and is established based on factors such as promoting efficient allocation of Capacity Limitation and allowing like-projects to compete for an allocation. After the sub-reservation is established in guidance published in the Internal Revenue Bulletin, it may be reallocated later in the event it has excess capacity.

(2) *Definitions*—(i) *Behind the meter (BTM) facility*. For purposes of the Program, an applicable facility is BTM if:

(A) It is connected with an electrical connection between the facility and the panelboard or sub-panelboard of the site where the facility is located;

(B) It is to be connected on the customer side of a utility service meter before it connects to a distribution or transmission system (that is, before it connects to the electricity grid); and

(C) Its primary purpose is to provide electricity to the utility customer of the site where the facility is located. This also includes systems not connected to a grid and that may not have a utility service meter, and whose primary purpose is to serve the electricity demand of the owner of the site where the system is located.

(ii) *Eligible residential BTM facility*. For purposes of paragraph (i)(1) of this section, an eligible residential BTM facility is defined as a single-family or multi-family residential applicable facility that does not meet the requirements for a Category 3 facility and is BTM. An applicable facility is residential if it uses energy to generate electricity for use in a dwelling unit that is used as a residence.

(iii) *FTM facility*. For purposes of the Program, an applicable facility is FTM if it is directly connected to a grid and its primary purpose is to provide electricity to one or more offsite locations via such grid or utility meters with which it does not have an electrical connection; alternatively, a FTM facility is defined as a facility that is not a BTM facility. For the purpose of Category 4 facilities, an applicable facility is also FTM if 50 percent or more of its electricity generation on an annual basis is exported physically to the broader electricity grid.

(j) *Process of application evaluation*—(1) *In general*. Applications for a Capacity Limitation allocation will be evaluated according to the procedures specified in guidance published in the Internal Revenue Bulletin. If a facility category is oversubscribed, a lottery system may be used to allocate Capacity Limitation to similarly situated applicants.

(2) *Information required as part of application*. With each application for a Capacity Limitation allocation, applicants are required to submit information, documentation, and attestations to demonstrate eligibility for an allocation and project viability as specified in guidance published in the Internal Revenue Bulletin.

(3) *No administrative appeal of Capacity Limitation allocation decisions*. An applicant may not administratively appeal decisions regarding Capacity Limitation allocations.

(k) *Placed in service*—(1) *Requirement to report date placed in service*. For any facility that receives an allocation of Capacity Limitation, the owner of the facility must report to the DOE the date the eligible property was placed in service. This report is made through the same portal used to submit the original application for allocation.

(2) *Requirement to submit final eligibility information at placed in service time*. At the time that the owner reports that eligible property has been placed in service, the owner also must confirm information about the facility and submit additional documentation to prove the facility is still eligible to maintain the allocation and the increased applicable percentage under section 48E(h)(1) as specified in guidance published in the Internal Revenue Bulletin.

(3) *DOE confirmation*. The DOE will review the placed in service documentation and attestations to determine if the facility meets the eligibility criteria for the owner to claim an increased applicable percentage. The DOE then provides a recommendation to the IRS regarding whether the facility continues to meet the eligibility requirements for the facility to retain its allocation or if the facility should be disqualified (as provided in paragraph (m) of this section). Based on the DOE's recommendation and underlying facts and circumstances analysis, the IRS will decide whether the facility should retain its allocation or if the facility should be disqualified and will notify the DOE of its decision. Each applicant must receive confirmation from the IRS that the DOE has reviewed the placed in service submissions, and that eligibility is confirmed, prior to the owner (or a partner or shareholder in the case of a partnership or S corporation) claiming the increased credit amount on Form 3468, *Investment Credit* (or Form 3800, *General Business Credit*), or successor form, or, if eligible, making a transfer election under section 6418 of the Code, or an elective payment election under section 6417 of the Code.

(4) *Definition of placed in service*. For purposes of this section, eligible property is considered *placed in service* in the earlier of the following taxable years:

(i) The taxable year in which, under the taxpayer's depreciation practice, the period for depreciation with respect to such eligible property begins; or

(ii) The taxable year in which the eligible property is placed in a condition or state of readiness and availability for a specifically assigned function, whether in a trade or business or in the production of income.

(l) *Facilities placed in service prior to an allocation award*—(1) *In general*. Applicable facilities must be placed in service after being awarded an allocation of Capacity Limitation.

(2) *Rejection or rescission*. An application for an applicable facility that is placed in service prior to submission of the application will be rejected. If a facility is placed in service after the application is submitted, but prior to the allocation of Capacity Limitation, and the facility is awarded an allocation, the allocation will be rescinded.

(m) *Disqualification*. A facility will be disqualified and lose its allocation if prior to or upon the facility being placed in service an occurrence described in one of paragraphs (m)(1) through (5) of this section takes place.

(1) The location where the facility will be placed in service changes.

(2) The maximum net output of the facility increases such that it exceeds the less than five megawatts AC requirement provided in section 48E(h)(2)(A)(ii) or the nameplate capacity decreases by the greater of 2 kW or 25 percent of the Capacity Limitation awarded in the allocation.

(3) The facility cannot satisfy the financial benefits requirements under section 48E(h)(2)(B)(ii) and paragraph (e) of this section as planned, if applicable, or cannot satisfy the financial benefits requirements under section 48E(h)(2)(C) or paragraph (f) of this section as planned, if applicable.

(4) The eligible property that is part of the facility that received the Capacity Limitation allocation is not placed in service within four years after the date the applicant was notified of the allocation of Capacity Limitation to the facility.

(5) The facility received a Capacity Limitation allocation based, in part, on meeting the ownership criteria and ownership of the facility changes prior to the facility being placed in service, unless the original applicant transfers the facility to an entity treated as a partnership for Federal income tax purposes and retains at

least a one percent interest (either directly or indirectly) in each material item of partnership income, gain, loss, deduction, and credit of such partnership and is a managing member or general partner (or similar title) under State or Tribal law of the partnership (or directly owns 100 percent of the equity interests in the managing member or general partner) at all times during the existence of the partnership.

(n) *Recapture of section 48E(h) Increase to the section 48E(a) credit*—(1) *In general*. Section 48E(h)(5) provides for recapturing the benefit of any increase in the credit allowed under section 48E(a) by reason of section 48E(h) with respect to any property that ceases to be property eligible for such increase (but that does not cease to be investment credit property within the meaning of section 50(a) of the Code). Section 48E(h) provides that the period and percentage of such recapture must be determined under rules similar to the rules of section 50(a). Therefore, if, at any time during the five year recapture period beginning on the date that an applicable facility under section 48E(h) is placed in service, there is a recapture event under paragraph (n)(3) of this section with respect to such property, then the Federal income tax imposed on the taxpayer by chapter 1 of the Code for the taxable year in which the recapture event occurs is increased by the recapture percentage of the benefit of the increase in the section 48E credit. The recapture percentage is determined according to the table provided in section 50(a)(1)(B).

(2) *Exception to application of recapture*. Such recapture may not apply with respect to any property if, within 12 months after the date the applicant becomes aware (or reasonably should have become aware) of such property ceasing to be property eligible for such increase in the credit allowed under section 48E(a), the eligibility of such property for such increase pursuant to section 48E(h) is restored. Such restoration of an increase pursuant to section 48E(h) is not available more than once with respect to any facility.

(3) *Recapture events*. Any of the following circumstances result in a recapture event if the property ceases to be eligible for the increased credit under section 48E(h):

(i) Property described in section 48E(h)(2)(A)(iii)(II) fails to provide financial benefits;

(ii) Property described under section 48E(h)(2)(B) ceases to allocate the financial benefits equitably among the occupants of the dwelling units, such as not allocating to residents the required net electricity savings of the electricity, as required by paragraph (e) of this section;

(iii) Property described under section 48E(h)(2)(C) ceases to provide at least 50 percent of the financial benefits of the electricity produced to qualifying households as described under section 48E(h)(2)(C)(i) or (ii), or fails to provide those households the required minimum 30 percent bill credit discount rate, as required by paragraph (f) of this section;

(iv) For property described under section 48E(h)(2)(B), the residential rental building the facility is a part of ceases to participate in a covered housing program or any other affordable housing program described in section 48E(h)(2)(B)(i), as applicable; or

(v) A facility increases its maximum net output or nameplate capacity such that the facility's maximum net output or nameplate capacity is 5 MW AC or greater.

(4) *Section 50(a) recapture*. Any event that results in recapture under section 50(a) also will result in recapture of the benefit of the increase in the section 48E credit by reason of section 48E(h). The exception to the application of recapture provided in paragraph (n)(2) of this section does not apply in the case of a recapture event under section 50(a).

(o) *Applicability date*. This section applies to qualified facilities placed in service after December 31, 2024, and during a taxable year ending after [the date the final regulations are filed for public inspection by the Office of the Federal Register].

Douglas W. O'Donnell,
Deputy Commissioner.

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Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2024–27 through 2024–52 is in Internal Revenue Bulletin 2024–52, dated December 30, 2024.

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[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2024–27 through 2024–52 is in Internal Revenue Bulletin 2024–52, dated December 30, 2024.

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