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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Chapter I

[REG-110412-23]

RIN 1545-BQ81

Additional Guidance on Low-Income Communities Bonus Credit Program

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed rules concerning the low-income communities bonus energy investment credit program established pursuant to the Inflation Reduction Act of 2022. Applicants investing in certain solar and wind powered-electricity generation facilities may apply for an allocation of environmental justice solar and wind capacity limitation to increase the amount of an energy 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 allocating the calendar year 2023 capacity limitation, which also would inform guidance applicable for future program years. The proposed rules would affect applicants seeking allocations of environmental justice solar and wind capacity limitation.

DATES: Written or electronic comments must be received by June 30, 2023.

ADDRESSES: Stakeholders are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG-110412-23) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comments

submitted, whether electronically or on paper, to the IRS's public docket. Send paper submissions to: CC:PA:LPD:PR (REG-110412-23), 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 written comments, Vivian Hayes at (202) 317-5306 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

I. Overview

Section 13103 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 48(e) to the Internal Revenue Code (Code) to increase the amount of the energy investment credit determined under section 48(a) (section 48 credit) with respect to eligible property that is part of a qualified solar and wind facility that is awarded an allocation of environmental justice solar and wind capacity limitation (Capacity Limitation). This document contains proposed definitions and rules relating to the allocation of Capacity Limitation for calendar year 2023 (2023 Capacity Limitation).

The amount of the energy investment credit determined under the section 48 credit for a taxable year is generally calculated by multiplying the basis of each energy property placed in service during that taxable year by the energy percentage (as defined in section 48(a)(2)). Section 48(e) increases the section 48 credit by increasing the energy percentage used to calculate the amount of the section 48 credit (section 48(e) Increase) in the case of qualified solar and wind facilities that receive an allocation of Capacity Limitation. The term "qualified solar and wind facility" is defined in section 48(e)(2) to mean any facility that (i) generates electricity solely from a wind facility, solar

energy property, or small wind energy property; (ii) has a maximum net output of less than 5 megawatts (as measured in alternating current); and (iii) is described in at least one of four categories in section 48(e)(2)(A)(iii) (and in part II of this Background).

As described in part III of this Background, section 48(e)(4)(A) directs the Secretary of the Treasury or her delegate (Secretary) to "provide procedures to allow for an efficient allocation" of Capacity Limitation to qualified solar and wind facilities. Later this year, the Treasury Department and the IRS expect to issue details for the program applicable for the calendar year 2023 Capacity Limitation, covering a comprehensive set of procedures and rules for applicants. The majority of the information regarding the program's details will be procedural rules. Some of the information that the Treasury Department and the IRS intend to include, however, will provide more substantive details that cover threshold definitions and requirements that must be established to make allocations efficiently and effectively. Those aspects of the program's details are the subject of this notice of proposed rulemaking. The Treasury Department and the IRS expect that final guidance will be reflected in regulations.

II. Four Categories of Qualified Solar and Wind Facilities

Depending on the category of the facility, an allocation of Capacity Limitation may result in a section 48(e) Increase equal to either 10 percentage points or 20 percentage points. Section 48(e)(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, as defined in section 45D(e) (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 48(e)(1)(A)(ii) provides for a section 48(e) 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). Under section 48(e)(1)(A)(i), a Category 1 or Category 2 facility that also

qualifies as a Category 3 or Category 4 facility is considered a Category 3 facility or Category 4 facility (as applicable).

Section 48(e)(2)(B) provides that 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 which participates in a covered housing program (as defined in § 41411(a) of the Violence Against Women Act of 1994 (34 U.S.C. 12491(a)(3)), a housing assistance program administered by the Department of Agriculture under title V of the Housing Act of 1949, a housing program administered by a tribally designated housing entity (as defined in § 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 (ii) the financial benefits of the electricity produced by such facility are allocated equitably among the occupants of the dwelling units of such building.

Section 48(e)(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 48(e)(2)(D) provides that electricity acquired at a below-market rate will be considered a financial benefit.

III. <u>Overview of Low-Income Communities Bonus Credit Program</u>

Section 48(e)(4) directs the Secretary to establish a program, within 180 days of enactment of the IRA, to allocate amounts of Capacity Limitation to qualified solar and wind facilities. Notice 2023-17, 2023-10 I.R.B. 505, established the program under

section 48(e) to allow amounts of Capacity Limitation to be allocated to qualified solar and wind facilities eligible for the section 48 credit (Low-Income Communities Bonus Credit Program).[1] Under section 48(e)(4)(C), the total annual Capacity Limitation that may be allocated under the Low-Income Communities Bonus Credit Program is 1.8 gigawatts of direct current capacity for each of the calendar years 2023 and 2024. Under section 48(e)(4)(D), 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, but not beyond calendar year 2024.[2]

Consistent with Notice 2023-17, the Treasury Department and the IRS propose to reserve a portion of the total annual Capacity Limitation of 1.8 gigawatts of direct current capacity for each facility category for calendar year 2023 as follows:

Category 1: Located in a Low-Income Community	700 megawatts
Category 2: Located on Indian Land	200 megawatts
Category 3: Qualified Low-Income Residential Building Project	200 megawatts
Category 4: Qualified Low-Income Economic Benefit Project	700 megawatts

The proposed rules in this document would supplement the guidance provided in Notice 2023-17 to outline the specific application procedures, additional allocation criteria, and applicable definitions, among other information, necessary to submit an application to request an allocation of the Capacity Limitation for calendar year 2023 under the Low-Income Communities Bonus Credit Program. The Treasury Department

[1] Notice 2023-17 describes several other definitions and requirements related to the Low-Income Communities Bonus Credit Program.

[2] Section 13702(a) of the IRA also enacted section 48E(h), which generally provides for a program similar to the Low-Income Communities Bonus Credit Program for calendar years after 2024. Section 48E(i) directs the Secretary to issue guidance regarding the implementation of section 48E not later than January 1, 2025. Any excess Capacity Limitation from calendar year 2024 may be carried forward and applied to the Capacity Limitation for calendar year 2025 under new section 48E(h)(4)(D)(ii). The Treasury Department and the IRS anticipate that operation of the Low-Income Communities Bonus Credit Program will inform the operation of the section 48E(h) program generally, as described in future guidance.

and the IRS request comments on these proposed definitions and requirements. The Treasury Department and the IRS also request comment on whether these proposed definitions and requirements should apply for purposes of the Low-Income Communities Bonus Credit Program for calendar year 2024 and the program to be established under section 48E(h) for calendar year 2025 and future years. The Treasury Department and the IRS anticipate further evaluating the program for 2023 to determine what further guidance may be helpful or necessary in the future.

Explanation of Proposed Rules

The proposed rules relate to specific definitions and requirements regarding the following topics: (1) the definition of facility based on single project factors; (2) the definition of "in connection with" to demonstrate what it means for energy storage technology to be considered part of eligible property of the qualified facility; (3) definitions of the terms "financial benefit" and "electricity acquired at a below market rate" under section 48(e)(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; (4) the definition of "located in" for relevant geographic criteria; (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) application materials demonstrating facility viability in order to allow for an efficient allocation process; (9) documentation and attestations to be submitted when a facility is placed in service; and (10) post-allocation compliance including disqualification and recapture of section 48(e) Increases.

I. Proposed Definitions and Requirements

A. Definition of Facility

The term “qualified solar and wind facility” is defined in section 48(e)(2)(A) to mean any facility that (i) generates electricity solely from a wind facility, solar energy property, or small wind energy property; (ii) has a maximum net output of less than 5 megawatts (as measured in alternating current); and (iii) is described in at least one of the four categories described in section 48(e)(2)(A)(iii) (Category 1, 2, 3, or 4). The Treasury Department and the IRS are concerned that some applicants may attempt to circumvent the less than 5-megawatt output limitation provided in section 48(e)(2)(A)(ii) by artificially dividing larger projects into multiple facilities. To prevent applicants from dividing larger projects that should be regarded as a single facility under section 48(e)(2)(A), solely for the purpose of the Low-Income Communities Bonus Credit Program, the Treasury Department and the IRS propose to aggregate into a single “qualified solar and wind facility” multiple facilities or energy properties of the same type (solar or wind) that are operated as part of a single project consistent with the single-project factors provided in section 7.01(2)(a) of Notice 2018-59, 2018-28 I.R.B. 196 or section 4.04(2) of Notice 2013-29, 2013-20 I.R.B. 1085, as applicable.

Therefore, the Treasury Department and the IRS propose to define a single qualified solar or wind facility as any facility that (i) generates electricity solely from a wind facility, solar energy property, or small wind energy property; (ii) that has a maximum net output of less than 5 megawatts (as measured in alternating current); and (iii) that is described in at least one of the four categories described in section 48(e)(2)(A)(iii) (Category 1, 2, 3, or 4). In addition, for purposes of determining allocations, administering the program fairly, and avoiding abuse, the Treasury Department and the IRS propose that multiple solar or wind energy properties or facilities that are operated as part of a single project would be aggregated and treated as a single facility. Whether multiple facilities or energy properties are operated as part of a single project would depend on the relevant facts and circumstances and would be

evaluated based on the factors provided in section 7.01(2)(a) of Notice 2018-59 or section 4.04(2) of Notice 2013-29, as applicable.

B. Energy Storage Technology Installed in Connection with Solar and Wind Facility.

Section 48(e)(3) defines "eligible property" to mean energy property that (i) is part of a wind facility described in section 45(d)(1) for which an election to treat the facility as energy property was made under section 48(a)(5) (wind facility), or (ii) is solar energy property described in section 48(a)(3)(A)(i) (solar energy property) or qualified small wind energy property described in section 48(a)(3)(A)(vi) (small wind energy property), including energy storage technology (as described in section 48(a)(3)(A)(ix)) "installed in connection with" such qualifying energy property. The Treasury Department and the IRS propose to define "installed in connection with" for energy storage technology to demonstrate what is required for such energy storage technology to be considered eligible property under section 48(e)(3).

Under the proposed definition energy storage technology would be "installed in connection with" other eligible property if both (1) the energy storage technology and other eligible property are considered part of a single qualified solar and wind facility because the energy storage technology and other eligible property are owned by a single legal entity, located on the same or contiguous pieces of land, have a common interconnection point, and are described in one or more common environmental or other regulatory permits; and (2) the energy storage technology is charged no less than 50 percent by the other eligible property. The Treasury Department and the IRS also propose to add a safe harbor, which would deem the energy storage technology to be charged at least 50 percent by the facility if the power rating of the energy storage technology is less than 2 times the capacity rating of the connected wind facility (in kW alternating current) or solar facility (in kW direct current).

C. Financial Benefits for Category 3 and Category 4 Allocations

Section 48(e)(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 48(e)(2)(D), as well as a manner to apply such definitions, appropriately, to qualified low-income residential building projects (section 48(e)(2)(B)) and qualified economic benefit projects (section 48(e)(2)(C)). The definitions and requirements would be different for an allocation in Category 3 (section 48(e)(2)(B)) and Category 4 (section 48(e)(2)(C)).

1. 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, section 48(e)(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 under Category 3 in the following manner.

The Treasury Department and the IRS propose that financial benefit can be demonstrated through net energy savings as defined below. At least 50 percent of the financial value of net energy savings would be required to be equitably passed on to building occupants. This requirement would recognize that not all the financial value of the net energy savings can be passed on to building occupants because a certain percentage can be assumed to be dedicated to lowering the operational costs of energy consumption for common areas, which benefits all building occupants. The Treasury Department and the IRS propose to reserve allocations under this category exclusively for applicants that would equitably pass on net energy savings by distributing equal

shares among the qualified residential property's units that are designated as low-income under the covered housing program, or by distributing proportional shares based on each dwelling unit's electricity usage.

This proposal accounts for the specific nature of facilities serving low-income residential buildings and facility ownership, as the facility may be third party owned or commonly owned with the building.

a. Facility and Qualified Residential Property Have Same Ownership

In scenarios where the facility and the qualified residential property have the same ownership, the Treasury Department and the IRS propose to define the financial value of net energy savings as the financial value equal to the greater of: (1) 25 percent of the gross financial value of the annual energy produced or (2) the gross financial value of the annual energy produced minus the annual costs to operate the facility. Gross financial value of the annual energy produced is calculated as the sum of (a) the total self-consumed kilowatt-hours produced by the qualified solar and wind facility multiplied by the applicable building's metered price of electricity and (b) the total exported kilowatt-hours produced by the qualified solar and wind facility multiplied by the applicable building's volumetric export compensation rate for solar and wind kilowatt-hours. The annual operating costs are calculated as the sum of annual debt service, maintenance, replacement reserve, and other costs associated with maintaining and operating the qualified solar and wind facility.

If the facility and building are commonly owned, a signed benefits sharing agreement between the building owner and the tenants would be required. The Treasury Department and the IRS request comments on how to adjust definitions of gross financial value to account for scenarios in which building occupants are compensating the facility owner for energy services.

b. Facility and Qualified Residential Property Have Different Ownership

In scenarios where the facility and the qualified residential property have different ownership and the facility owner enters into a power purchase agreement or other contract for energy services with the qualified residential property owner, the Treasury Department and the IRS propose to define net energy savings as equal to the greater of: (1) 50 percent of the financial value of the annual energy produced by the facility which accrues to the owner of the qualified residential property in the form of utility bill credit and/or cash payments for net excess generation or (2) the financial value of the annual energy produced by the facility which accrues to the owner of the qualified residential property in the form of utility bill credit and/or cash payments for net excess generation minus any payments made by the building owner to the facility owner for energy services associated with the facility in a given year. In these scenarios, the facility owner must enter into an agreement with the building owner for the building owner to distribute the savings to residents.

The Treasury Department and the IRS request comments on how to adjust definitions of gross financial value to account for scenarios in which building occupants are compensating the facility owner for energy services.

c. Impact of Metering on Delivery of Financial Benefits

Regardless of ownership, residential buildings may have master-metered or sub-metered utilities. The financial benefits of the electricity produced by the facility cannot be distributed to residents in master-metered buildings in the same manner as in sub-metered buildings and is often administratively infeasible in certain sub-metered buildings. Therefore, the Treasury Department and the IRS propose that for sub-metered buildings, the tenants must receive the financial value associated with utility bill savings in the form of a credit on their utility bills. The U.S. Department of Housing and Urban Development (HUD) has issued guidance for residents of sub-metered HUD-assisted housing that participate in community solar, providing an analysis of how

community solar credits may affect utility allowance and annual income for rent calculations.[3] The Treasury Department and the IRS propose that applicants follow the HUD guidance and future HUD guidance on this issue to ensure that tenants' utility allowances and annual income for rent calculations are not negatively impacted.

The Treasury Department and the IRS are aware that in some States or jurisdictions it may not be administratively, or legally, possible to apply utility bill savings on residents' electricity bills. The Treasury Department and the IRS request comments on this issue and how financial benefits, such as services and building improvements, can be provided to residents in such residential buildings

For master-metered buildings, the Treasury Department and the IRS propose that because residents do not have individually metered utilities and do not receive utility bills, the building owner must pass on the savings through other means, such as by providing certain benefits to the building residents beyond those provided prior to the qualified solar and wind facility being placed in service. HUD has issued guidance for how residents of mastered-metered HUD-assisted housing can benefit from owners' sharing financial benefits accrued from an investment in solar energy generation.[4] The Treasury Department and the IRS propose that applicants follow the HUD guidance and future HUD guidance on this issue to ensure that tenants' utility allowances and annual income for rent calculations are not negatively impacted.

2. 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 48(e)(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.

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[3] U.S. Department of Housing and Urban Development, Treatment of Community Solar Credits on Tenant Utility Bills (July 2020): MF Memo re Community Solar Credits July 14 Draft (hud.gov).

[4] U.S. Department of Housing and Urban Development, Treatment of Solar Benefits in Mastered-metered Buildings (May 2023), MF_Memo_re_Community_Solar_Credits_in_MM_Buildings.pdf (hud.gov)

To satisfy this standard, the Treasury Department and the IRS propose to require that the facility serves multiple households and at least 50 percent of the facility's total output is distributed to qualifying low-income households under section 48(e)(2)(C)(i) or (ii). In addition, to further the overall goals of the program, the Treasury Department and the IRS propose to reserve allocations under this category exclusively for applicants that would provide at least a 20-percent bill credit discount rate for all such low-income households. The Treasury Department and the IRS propose defining a "bill credit discount rate" as the difference between the financial benefit distributed to the low-income household (including utility bill credits, reductions in the low-income household's electricity rate, or other monetary benefits accrued by the household) and the cost of participating in the program (including subscription payments for renewable energy and any other fees or charges), expressed as a percentage of the financial benefit distributed to the low-income household. The bill credit discount rate can be calculated by starting with the financial benefit distributed to the low-income household, subtracting all payments made by the low-income customer 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 low-income household.

To ensure these requirements are met, verification of households' qualifying low-income status is required. Applicants are responsible for proof-of-income verification and would be required to submit documentation upon placing the qualified solar and wind facility in service that identifies each qualifying low-income household, the output allocated to each qualifying low-income household in kW, and the method of income verification utilized.

Applicants may use category eligibility or other income verification methods to qualify low-income households. Categorical eligibility consists of obtaining proof of

household participation in a needs-based Federal[5], State, Tribal, or utility program with income limits at or below the qualifying income level for the specific facility (qualifying program). State agencies (for example, state community solar/wind program administrators) can also provide verification of low-income status if the State program's income limits are at or below the qualifying income level for the qualified solar and wind facility. If a household is not enrolled in a qualifying program, additional income verification methods can be used such as: paystubs, tax returns, or income verification through crediting agencies and commercial data sources. Eligibility based on the applicant (or contractors or subcontractors) collecting self-attestations is not permissible.

D. Location.

A qualified solar and wind facility is treated as "located in a low-income community" or "on Indian Land" under section 48(e)(2)(A)(iii)(I) or located in a geographic area under the Additional Selection Criteria (see part II.C) if the facility satisfies the nameplate capacity test (Nameplate Capacity Test).

Under the Nameplate Capacity Test, a facility that has nameplate capacity (for example, wind and solar facilities) is considered located in or on the relevant geographic area if 50 percent or more of the facility's nameplate capacity is in a qualifying area. A facility's nameplate capacity percentage is determined by dividing the nameplate capacity of the facility's energy-generating units that are located in the qualifying area by the total nameplate capacity of all the energy-generating units of the facility.

Nameplate capacity for an electricity generating unit means the maximum electricity generating output that the unit is capable of producing on a steady state basis and during continuous operation under standard conditions, as measured by the

[5] Federal programs may include, but are not limited to: Medicaid, Low-Income Home Energy Assistance Program (LIHEAP), Weatherization Assistance Program (WAP), Supplemental Nutrition Assistance Program (SNAP), Section 8 Project-Based Rental Assistance, and the Housing Choice Voucher Program.

manufacturer and consistent with the definition provided in 40 CFR 96.202. Energy-generating units that generate direct current (DC) power before converting to alternating current (AC) (for example, solar photovoltaic) should use the nameplate capacity in DC, otherwise the nameplate capacity in AC should be used (for example, wind facilities). Where applicable, the International Standard Organization (ISO) conditions are used to measure the maximum electricity generating output or usable energy capacity. The nameplate capacity of any energy storage technology installed in connection with the qualified solar and wind facility does not affect the assessment of the Nameplate Capacity Test.

II. Proposed Program Requirements and Structure

A. Placed in Service Prior to Allocation Award

As stated in section 4.05 of Notice 2023-17, 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. As described in Notice 2023-17, one of the broad goals of the Low-Income Communities Bonus Credit Program is to increase adoption of and access to renewable energy facilities in low-income and other communities with environmental justice concerns. 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 Low-Income Communities Bonus Credit Program. Further, section 48(e)(4)(E)(i) provides that a facility must be placed in service within four years of receiving an allocation of Capacity Limitation, supporting allocations to new facilities that have not yet been placed in service. Accordingly, the Treasury Department and the IRS continue to propose that facilities placed in service prior to being awarded an allocation of Capacity Limitation would not be eligible to receive an allocation.

B. Selection Process

Under section 48(e)(4)(C), the total annual Capacity Limitation is 1.8 gigawatts of direct current capacity for the calendar year 2023 program. Section 4.02 of Notice 2023-17 specified how the annual Capacity Limitation would be allocated across the four facility categories in 2023: Located in a Low-Income Community (Category 1), Located on Indian Land (Category 2), Qualified Low-Income Residential Building Project (Category 3), and Qualified Low-Income Economic Benefit Project (Category 4). Section 4.07 of Notice 2023-17 provided that applications would be accepted in a phased approach for calendar year 2023, during 60-day application windows. Based on public feedback in response to Notice 2023-17 and an updated assessment of operational capabilities set up to administer the program, a new approach is proposed.

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. 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 previously stated in Notice 2023-17 and facilitates an efficient allocation process.

Accordingly, the Treasury Department and the IRS propose an approach that includes an initial application window in which applications received by a certain time and date would be evaluated together, followed with a rolling application process if Capacity Limitation is not fully allocated after the initial application window closes. Facilities that meet at least one of the two categories of specified ownership and geographic criteria (Additional Selection Criteria) would receive priority for an allocation within each facility category described in section 48(e)(2)(A)(iii). The Treasury Department and the IRS propose that at least 50 percent of the total Capacity Limitation in each facility category would be reserved for facilities meeting Additional Selection Criteria in the following fashion.

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. 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, facilities meeting both of the Additional Selection Criteria categories would be prioritized for an allocation. A lottery system may be used in oversubscribed categories to decide among similarly situated applications (for example, facilities that meet both of the Additional Selection Criteria categories, facilities that meet only one of the two Additional Selection Criteria categories, facilities that do not meet either of the Additional Selection Criteria categories). An applicant could not administratively appeal the Capacity Limitation allocation decisions made under the Low-Income Communities Bonus Credit Program.

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, 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.

The Treasury Department and the IRS would retain the discretion to reallocate Capacity Limitation across categories and sub-categories in order to maximize allocation in the event one category or sub-category is oversubscribed and another has excess capacity.

C. Additional Selection Criteria

The Treasury Department and the IRS propose that the two Additional Selection Criteria are Ownership Criteria and Geographic Criteria.

1. Ownership Criteria.

The Ownership Criteria category is based on characteristics of the applicant that

owns the qualified solar and wind facility. A qualified solar and wind facility would meet the Ownership Criteria if it is owned by a Tribal Enterprise, an Alaska Native Corporation, a renewable energy cooperative, a qualified renewable energy company meeting certain characteristics, or a qualified tax-exempt entity. If an applicant wholly owns an entity that is the owner of a qualified solar and wind facility, and the entity is disregarded as separate from its owner for Federal income tax purposes (disregarded entity), the applicant, and not the disregarded entity, is treated as the owner of the qualified solar and wind facility for purposes of the Ownership Criteria.

a. Tribal Enterprise

A "Tribal Enterprise" for purposes of the Ownership Criteria is an entity that is (1) an Indian Tribal government (as defined in section 30D(g)(9) of the Code) that owns at least a 51 percent interest in, either directly or indirectly (through a wholly owned corporation created under its Tribal laws or through a section 3 or section 17 Corporation)[6], and (2) the Indian Tribal government has the power to appoint and remove a majority (more than 50 percent) of the individuals serving on the entity's board of directors or equivalent governing board.

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. Renewable energy cooperative

A "renewable energy cooperative" for purposes of the Ownership Criteria is an entity that develops qualified solar and/or wind facilities and owns at least 51 percent of a facility and is either (1) a consumer or purchasing cooperative controlled by its members who are low-income households (as defined in section 48(e)(2)(C)) with each

[6] A "section 17 corporation" is a corporation incorporated under the authority of section 17 of the Indian Reorganization Act of 1934, 25 U.S.C. 5124. A "section 3 corporation" is a corporation that is incorporated under the authority of section 3 of the Oklahoma Indian Welfare Act, 25 U.S.C. 5203.

member having an equal voting right, or (2) a worker cooperative controlled by its worker-members with each member having an equal voting right.

d. Qualified renewable energy company

A "qualified renewable energy company" for purposes of the Ownership Criteria would be an entity that serves low-income communities and provides pathways for the adoption of clean energy by low-income households. In addition to its general business purpose, the Treasury Department and the IRS are considering the following requirements that a qualified renewable energy company would need to satisfy:

(1) At least 51 percent of the entity's equity interests are owned and controlled by (a) one or more individuals, (b) a Community Development Corporation (as defined in 13 CFR 124.3), (c) an agricultural or horticultural cooperative (as defined in section 199A(g)(4)(A) of the Code), (d) an Indian Tribal government (as defined in section 30D(g)(9)), (e) an Alaska Native corporation (as defined in section 3 of the Alaska Native Claims Settlement Act, 43 U.S.C. 1602(m)), or (f) a Native Hawaiian organization (as defined in 13 CFR 124.3);

(2) After applying the controlled group rules under section 52(a) of the Code, has less than 10 full-time equivalent employees (as determined under section 4980H(c)(2)(E) and (c)(4) of the Code) and less than $5 million in annual gross receipts in the previous calendar year;

(3) First installed or operated a qualified solar and wind facility as defined in section 48(e)(2)(A) two or more years prior to the date of application; and

(4) Has installed and/or operated qualified solar and wind facilities as defined in section 48(e)(2)(A) with at least 100kW of cumulative nameplate capacity located in one or more Low-Income Communities as defined in section 48(e)(2)(A)(iii)(I).

The Treasury Department and the IRS specifically request comments on these proposed elements for determining whether a business is a qualified renewable energy

company. The Treasury Department and the IRS also request comments on an administrable rule to ensure that qualified renewable energy companies are employing workers in the Low-Income Communities.

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 section 501(d);

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

(3) An Indian Tribal government (as defined in section 30D(g)(9)), 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 which is engaged in furnishing electric energy to persons in rural areas.

2. Geographic Criteria.

The Geographic Criteria category is based on where the facility will be placed in service. To meet the Geographic Criteria, a facility would need to be located in a Persistent Poverty County (PPC)[7] or in a census tract that is designated in the Climate and Economic Justice Screening Tool (CEJST) as disadvantaged based on whether the tract is either (a) greater than or equal to the 90th percentile for energy burden and is greater than or equal to the 65th percentile for low income, or (b) greater than or equal to the 90th percentile for PM2.5 exposure and is greater than or equal to the 65th percentile for low income.[8] The Treasury Department and the IRS propose that

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

[8] https://screeningtool.geoplatform.gov/en/#3/33.47/-97.5. The CEJST website provides further detail on the terms used in identifying census tracts for the Energy category. "Energy cost" is defined as "Average household annual energy cost in dollars divided by the average household income." 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." "Low income" is defined as "Percent of a census tract's population in households where household income is at or below 200% of the Federal poverty level, not including

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.

A PPC is generally defined as any county where 20 percent or more of residents have experienced high rates of poverty over the past 30 years. For the purposes of the Low-Income Communities Bonus Credit Program, the Treasury Department and the IRS propose the PPC measure adopted by the U.S. Department of Agriculture to make this determination. The most recent measure, which would apply for the 2023 program year, incorporates poverty estimates from the 1980, 1990, 2000 censuses, and 2007-11 American Community Survey 5-year average.

D. Sub-Reservations of Allocation for Facilities Located in a Low-Income Community

Notice 2023-17 provided that 700 megawatts of 2023 calendar year Capacity Limitation would be reserved for Category 1. The Treasury Department and the IRS anticipate that Category 1 will receive the largest number of applications, and that most applications will be for small rooftop residential solar facilities. Therefore, the Treasury Department and the IRS propose to subdivide the 700 MW Capacity Limitation reservation for facilities seeking a Category 1 allocation with 560 megawatts reserved specifically 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 are predominantly awarded to facilities serving residences and consumers, rather than facilities serving businesses. The remaining 140 megawatts of Capacity Limitation would be available for applicants with front of the meter (FTM) facilities as well as non-residential BTM facilities.

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students enrolled in higher education." See Methodology & data - Climate & Economic Justice Screening Tool (geoplatform.gov)

The Treasury Department and the IRS propose to define an eligible residential BTM facility as single-family or multi-family residential qualified solar and wind facility that does not meet the requirements for Category 3 and is BTM. A qualified wind and solar facility is 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.

The Treasury Department and the IRS propose to define a FTM facility. A facility is FTM if it is directly connected to a grid and its sole purpose is to provide electricity to one or more offsite locations via such grid; alternatively, FTM is defined as a facility that is not BTM.

E. Application Materials.

Section 48(e)(4)(A) directs the Secretary to provide procedures to allow for an efficient allocation process. Additionally, section 48(e)(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 better 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, the Treasury Department and the IRS propose to require applicants to submit certain documentation and attestations when applying for an allocation. Some requirements differ for FTM and BTM facilities and other requirements differ by Category and Additional Selection Criteria.

Under this proposed approach, applicants would be required to submit the following:

1. Documentation and Attestations to be Submitted for all Facilities:

Proposed Document Requirement	FTM	BTM <= 1 MW AC	BTM > 1 MW AC
An executed contract to purchase the facility, an executed contract to lease the facility, or an executed power purchase agreement for the facility.	No	Yes	Yes
A copy of the final executed interconnection agreement, if applicable.[9]	Yes	No	Yes

Proposed Attestation Requirement	FTM	BTM <= 1 MW AC	BTM > 1 MW AC
The applicant has site control through ownership, an executed lease contract, site access agreement or similar agreement between the property owner and the applicant.	Yes	No	No
The facility has obtained all applicable Federal, State, Tribal, and local non-ministerial permits, or that the facility is not required to obtain such permits.	Yes	Yes	Yes
The applicant is in compliance with all Federal, State, and Tribal laws, including consumer protection laws (as applicable).	Yes	Yes	Yes
The applicant has appropriately sized the facility (to meet no more than 110% of historical customer load).	No	Yes	Yes
The applicant has appropriately sized the customer's facility output share and has based facility output share on historical customer load.	Yes	No	No
The applicant has inspected installation sites for suitability (for example, roofs).	Yes	Yes	Yes

2. Documentation and Attestations to be Submitted for Certain Facilities Depending on Category and Additional Selection Criteria:

Proposed Document Requirement	Category 1	Category 2	Category 3	Category 4
Documentation demonstrating property will be installed on an eligible residential building	No	No	Yes	No
Plans to ensure tenants receive required financial benefits	No	No	Yes	No

[9] If an interconnection agreement is not applicable to the facility (for example, due to utility ownership), this requirement is satisfied by a final written decision from a Public Utility Commission, cooperative board, or other governing body with sufficient authority that financially authorizes the facility. If the facility is located in a market where the interconnection agreement cannot be signed prior to construction of the facility or interconnection facilities, this requirement is satisfied by a signed conditional approval letter from the jurisdictional utility and an affidavit from a senior corporate officer of the applicant (or someone with authority to bind the applicant) stating that an interconnection agreement cannot be executed until after construction of the facility.

If applying under Additional Selection Criteria: Documentation demonstrating applicant meets Ownership Criteria	Yes	Yes	Yes	Yes

Proposed Attestation Requirement	Category 1	Category 2	Category 3	Category 4
Facility location is eligible[10]	Yes	Yes	No	No
Consumer disclosures informing customers of their legal rights and protections have been provided to customers that have signed up and will be provided to future customers	Yes	Yes	Yes (provided to tenants)	Yes
The applicant will ensure at least 50% of the financial benefits will be provided to qualified households at 20% bill credit discount rate	No	No	No	Yes
If applying under additional Selection Criteria: Facility location is eligible based on PPC/CEJST	Yes	No	Yes	Yes

F. Documentation and Attestations to be Submitted when Placed in Service

The Treasury Department and the IRS also propose to require facilities that received a Capacity Limitation allocation to report to the Department of Energy (DOE) that the facility has been placed in service, and 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 Low-Income Communities Bonus Credit Program.

The applicant-owner would submit documentation or sign an attestation for the following:

Proposed Attestation Requirement	Category
Confirmation of material ownership and/or facility changes from application or that there has been no change from the application.	All

[10] Facility location would be reviewed using latitude and longitude coordinates when possible.

Proposed Document Requirement	
Permission to Operate (PTO) letter (or commissioning report verifying for off-grid facilities) that the facility has been placed in service and the location of the facility being placed in service.	All
Final, Professional Engineer (PE) stamped as-built design plan, PTO letter with nameplate capacity listed, or other documentation from an unrelated party verifying as-built nameplate capacity.	All
Benefits Sharing Agreement for qualified residential building projects between building owner and tenants (including for facilities that are third party owned, additional sharing agreement between the facility owner and the building owner).	3
Final list of households or other entities served with name, address, subscription share, and income status of qualifying low-income households served, and the income verification method used.	4
Spreadsheet demonstrating the expected financial benefit to low-income subscribers to demonstrate the 20% bill credit discount rate	4

G. Post-Allocation Compliance

1. Disqualification after receiving an allocation.

The Treasury Department and the IRS recognize that because, under section 48(e)(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 48(e)(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, the Treasury Department and the IRS propose that a facility that was awarded a Capacity Limitation allocation is disqualified from receiving that 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 nameplate capacity of the facility increases such that it exceeds the less than 5-megawatt alternating current output limitation provided in section 48(e)(2)(A)(ii) or 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 48(e)(2)(B)(ii) as planned (if

applicable) or cannot satisfy the financial benefits requirements under section 48(e)(2)(C) as planned (if applicable); (4) the eligible property which 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 such that the Ownership criteria is no longer satisfied, unless a) the original applicant retains an ownership interest in the entity that owns the facility and b) the successor owner attests that after the five year recapture period, the original applicant that met the Ownership Criteria will become the owner of the facility or that this original applicant will have the right of first refusal.

2. Recapture of section 48(e) Increase.

Section 48(e)(5) requires the Secretary, by regulations or other guidance, to provide rules for recapturing the benefit of any section 48(e) Increase with respect to any property which ceases to be property eligible for such section 48(e) Increase (but which 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 48(e) Increase, the eligibility of such property for such section 48(e) Increase is restored. Such restoration of a section 48(e) Increase is not available more than once with respect to any facility.

The Treasury Department and the IRS propose that the following circumstances result in a recapture event if the property ceases to be eligible for the increased credit under section 48(e): (1) property described in section 48(e)(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 48(e)(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 48(e)(2)(C) ceases to provide at least 50 percent of the financial benefits of the electricity produced to qualifying households as described under section 48(e)(2)(C)(i) or (ii), or fails to provide those households the required minimum 20 percent bill credit discount rate; (4) for property described under section 48(e)(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 48(e)(2)(B)(i), if applicable; and (5) a facility increases its output such that the facility's output is 5 MW AC or greater, unless the applicant can prove that the output increase is not attributable to the original facility but rather is output associated with a new facility under the 80/20 Rule (the cost of the new property plus the value of the used property). See Rev. Rul. 94-31, 1994-1 C.B. 16.

Proposed Applicability Date

These proposed rules are proposed to apply to taxable years ending on or after the date that final rules adopting these proposed rules are published in the *Federal Register*.

Special Analyses

I. Regulatory Planning and Review – Economic Analysis

Executive Orders 13563 and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing

costs, of harmonizing rules, and of promoting flexibility.

These proposed rules have been designated by the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) as subject to review under Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget (OMB) regarding review of tax rules. OIRA has determined that the proposed rulemaking is significant and subject to review under Executive Order 12866 and section 1(b) of the Memorandum of Agreement. Accordingly, the proposed rules have been reviewed by OMB.

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 48(e) Increase. This information in the collections of information would generally be used by the IRS and 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 Section 1.6001-1(e). These records are required for IRS to validate that taxpayers have met the regulatory requirements and are entitled to receive section 48(e) 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 regulation also mentions 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 Low-Income Communities Bonus Credit 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, with copies to the Internal Revenue Service. Find this particular information collection by selecting "Currently under Review - Open for Public Comments" then by using the search

function. Submit electronic submissions for the proposed information collection to the IRS via email at pra.comments@irs.gov (indicate REG-110412-23 on the Subject line). Comments on the collection of information should be received by [**INSERT DATE THAT IS 30 DAYS AFTER FILING OF THIS DOCUMENT IN THE FEDERAL REGISTER**]. Comments are specifically requested concerning:

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. The accuracy of the estimated burden associated with the proposed collection of information. How the quality, utility, and clarity of the information to be collected may be enhanced. 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 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 for purposes of participation in the program to allocate the environmental justice solar and wind capacity limitation under § 48(e) for the Low-Income Communities Bonus Credit Program. The proposed rule is expected to encourage applicants to invest in solar and wind energy. 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 Low-Income Communities Bonus Credit Program commences.

3. Impact of the Rules

The recordkeeping and reporting requirements would increase for applicants that participate in the Low-Income Communities Bonus Credit 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 exclusively using a lottery system for all over-subscribed categories, rather than creating reservations for facilities meeting additional selection criteria. Although a lottery system may ultimately need to be used for an oversubscribed category, the Treasury Department and the IRS decided that it was important to propose reserving Capacity Limitation for facilities that meet certain additional selection criteria that further the policy goals of the Low-Income Communities Bonus Credit Program.

Additionally, when considering how to define “in connection with,” the Treasury Department and the IRS were mindful that the statute requires the energy storage technology to be installed in connection with a qualifying solar or wind facility to be eligible for an increase in the energy percentage used to calculate the amount of the section 48 credit. Different alternatives were considered on how to address this definition. For example, the Treasury Department and the IRS considered but ultimately decided not to incorporate the proposed safe harbor (deeming the energy storage technology to be charged at least 50 percent by the facility if the power rating of the energy storage technology is less than 2 times the capacity rating of the connected wind or solar) as part of the general rule to define “in connection with.” The proposed general rule instead requires the energy storage technology to have a sufficient nexus to the other eligible property because it is part of the single project and is significantly charged by the eligible property.

Another example where different alternatives were considered was with respect

to application materials. Section 48(e)(4)(A) directs the Secretary to provide procedures to allow for an efficient allocation process, and section 48(e)(4)(E)(i) allows an applicant up to four years after receiving a Capacity Limitation allocation to place eligible property into service. Alternatives were considered on how best to balance these statutory requirements, considering practical issues for taxpayers and residents as well as the traditional structure and arrangement of these solar and wind transactions, including considerations on the type of facility (BTM or FTM) and the capacity of the facility. Among other things, the Treasury Department and the IRS considered whether an application for an interconnection agreement or an executed interconnection agreement should be required as part of the application materials. The proposed regulations are based on the view that the executed interconnection agreement, if applicable, is an essential documentation to demonstrate sufficient project maturity.

Additionally, the Treasury Department and the IRS considered a variety of bill credit discounts for Category 4 qualified low-income benefit project facilities. The bill credit discounts considered included 10 percent, 15 percent, or 20 percent. Alternatively, the Treasury Department and the IRS considered the option of a range of discounts from 10 percent to 20 percent from which applicants could choose which discount rate to provide low-income customers. However, to ensure that low-income customers are receiving meaningful financial benefits, the Treasury Department and the IRS decided to propose a 20 percent discount.

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 Low-Income Communities Bonus Credit 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 Tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. This proposed rule does not include any Federal mandate that may result in expenditures by State, local, or 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 regulations do not have federalism implications and do not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

Comments

Before these proposed rules are adopted as final rules, consideration will be given to comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed rules. Any electronic or paper comments submitted will be made available at *https://www.regulations.gov* or upon request.

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.

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

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