

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.201: Rulings and determination letters.

Rev. Proc. 2023-27

SECTION 1. PURPOSE

This revenue procedure provides the process under § 48(e) of the Internal Revenue Code (Code)¹ to apply for an allocation of environmental justice solar and wind capacity limitation (Capacity Limitation). Receipt of an allocation increases the amount of an energy investment credit determined under § 48(a) (§ 48 credit) for the taxable year in which certain solar and wind-powered electricity generation facilities are placed in service.

SECTION 2. BACKGROUND

.01 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 § 48(e) to the Code. Section 48(e) increases the amount of the § 48 credit with respect to eligible

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

property that is part of a qualified solar or wind facility that is awarded an allocation of Capacity Limitation as part of the low-income communities bonus credit program for the energy investment credit (Program). The § 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 § 48(a)(2)). Section 48(e) increases the § 48 credit by increasing the energy percentage used to calculate the amount of the § 48 credit (§ 48(e) Increase) in the case of qualified solar and wind facilities that receive an allocation of Capacity Limitation.

.02 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 Low-Income Communities Bonus Credit Program and provided definitions and other guidance related to the program. On June 1, 2023, the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) published in the Federal Register (88 FR 35791) a notice of proposed rulemaking (REG-110412-23, 2023-26 I.R.B. 1098) under § 48(e) (Proposed Regulations) relating to the Low-Income Communities Bonus Credit Program. The Treasury Department and IRS adopted the Proposed Regulations with modifications in Treasury Decision 9979 (Final Regulations).

.03 This revenue procedure provides the process for the Low-Income Communities Bonus Credit Program. These procedural rules provide guidance necessary to implement the Low-Income Communities Bonus Credit Program, including, in relevant part, information an applicant must submit, the application review process, and the manner of obtaining an allocation from the IRS.

SECTION 3. CAPACITY LIMITATION RESERVATIONS AVAILABLE FOR ALLOCATION

The amount of Capacity Limitation available for allocation through the application process provided in this Revenue Procedure is limited to the annual Capacity Limitation of 1.8 gigawatts of direct current capacity for each of calendar years 2023 and 2024. As provided in § 1.48(e)-1(g), the annual Capacity Limitation available for allocation is divided across the four facility categories described in § 1.48(e)-1(b)(2). For 2023, the Treasury Department and the IRS plan to reserve the total annual Capacity Limitation of 1.8 gigawatts of direct current capacity as shown in Table 1 below. As described in § 1.48(e)-1(g), the Treasury Department and the IRS may later re-allocate these reservations across facility categories in the event any category is oversubscribed or has excess capacity. In addition, as described in the preamble to the Final Regulations, the Treasury Department and the IRS may adjust this initial reservation of capacity in future guidance as needed to achieve the goals of the Program and ensure an efficient allocation process.

Table 1

| | |
|---|---------------|
| 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 | 200 megawatts |
| Project | 700 megawatts |
| Category 4: Qualified Low-Income Economic Benefit Project | |

SECTION 4. CATEGORY 1 SUB-RESERVATIONS

The 700 megawatts of Capacity Limitation reserved for Category 1 Facilities will be subdivided for facilities seeking a Category 1 allocation with 490 megawatts of Capacity

Limitation reserved specifically for eligible residential behind the meter (BTM) facilities described in § 1.48(e)-1(i)(2)(ii), including rooftop solar. The remaining 210 megawatts of Capacity Limitation reserved for Category 1 is available for applicants with front of the meter (FTM) facilities described in § 1.48(e)-1(i)(2)(iii) as well as non-residential BTM facilities that meet the requirements of § 1.48(e)-1(i)(2)(i). As described in § 1.48(e)-1(i)(1), the Treasury Department and the IRS may adjust this initial reservation of capacity in future guidance based on factors such as promoting efficient allocation of Capacity Limitation and allowing like-projects to compete for an allocation.

SECTION 5. APPLICATION

An applicant (defined in section 6 of this revenue procedure) must submit an application to apply for an allocation of Capacity Limitation. The application must contain all information, documentation, and attestations specified in section 7 of this revenue procedure and any additional information required by the Department of Energy's (DOE) publicly available written procedures. Applicants must submit applications for a particular category of facility described in § 1.48(e)-1(b)(2) (that is, Category 1 Facility, Category 2 Facility, Category 3 Facility, or Category 4 Facility). Applicants may only submit one application per facility per the allocation year. DOE will publicly announce opening and closing dates for the application.

SECTION 6. APPLICANT

.01 In general. The owner of the solar or wind facility is the applicant who must apply for an allocation of Capacity Limitation. The owner of the facility is the recipient of the allocation of Capacity Limitation.

.02 Disregarded entities. If a qualified solar or wind facility is owned by an entity that is disregarded as separate from its owner for federal income tax purposes, the owner of

the disregarded entity is the owner of the facility and is the applicant.

.03 Partnerships and S corporations. If a qualified solar or wind facility is owned by a partnership or S corporation, then the partnership or S corporation is the owner of the facility and is the applicant, not the partners or shareholders.

SECTION 7. APPLICATION PROCESS

.01 Registration.

(1) In general. Applications are collected through the portal hosted by the Department of Energy (portal). Applicants must follow DOE's publicly available procedures to register in the portal and to submit applications.

(2) Application Submission. The applicant's application and any required attestations must be submitted under penalties of perjury and dated by the applicant. The person submitting the application must have personal knowledge of the facts. Further, the application and any required attestations must be submitted by a person authorized under state law to bind the applicant. For example, an application may be authorized by an officer on behalf of a corporation, a general partner of a state law partnership, a member-manager on behalf of a limited liability company, a trustee on behalf of a trust, or the proprietor in the case of a sole proprietorship. If the applicant is a member of an affiliated group filing consolidated returns, the submission also must be authorized by a duly authorized officer of the common parent of the group.

.02 Applicant Information. The application must include the following identifying information:

- (1) The name of the applicant;
- (2) The unique federal taxpayer identification number for the applicant (if available);

(3) The applicant's address;

(4) If the applicant is a subsidiary corporation of a consolidated group, the legal name and federal taxpayer identification number of the parent corporation of the consolidated group;

(5) The name and telephone number of the person submitting the application on behalf of the applicant; and

(6) Any other information required by DOE's publicly available written procedures.

.03 Facility Information.

(1) In general. The application must include the information described in sections 70.02(2) and 7.03(3) of this revenue procedure.

(2) Facility maximum net output and nameplate capacity.

(a) Wind facility. Applicants seeking an allocation for a wind facility must report the expected maximum net output of the facility defined as the nameplate capacity of the facility in alternating current. Wind facilities selected for an allocation will be awarded an amount of Capacity Limitation in direct current that is equal to the facility's reported nameplate capacity in alternating current.

(b) Solar facility. Applicants seeking an allocation for a solar facility must report the expected maximum net output of the facility as measured in alternating current and the nameplate capacity of the facility in direct current. Solar facilities selected for an allocation will be awarded an amount of Capacity Limitation in direct current that is equal to the facility's reported nameplate capacity in direct current.

(3) Facility location. Applicants are required to report the location of the facility, including street address (if applicable) and coordinates (latitude and longitude).

.04 Documentation.

(1) In general. Applicants must submit the documentation specified in sections 7.04(2) and 7.04(3) of this revenue procedure with an application for an allocation of Capacity Limitation. An application is not complete and may be rejected if any required documentation is not included.

(2) Facility documentation. The following documents are required for each facility for which an application is submitted:

Table 2

| Document Requirement | FTM ² | BTM ³ <= 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, in their entirety inclusive of any amendments, appendices, consumer disclosures, and schedules thereto. | No | Yes | Yes |
| A copy of the final executed interconnection agreement, if applicable (see below). | Yes | No | Yes |

² As defined in § 1.48(e)-1(i)(2)(iii), for the purposes of the Program, a qualified solar or wind facility is front of the meter (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 the purposes of Category 4, a qualified solar or wind 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.

³ As defined in § 1.48(e)-1(i)(2)(i), a qualified wind or solar facility is behind the meter (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 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.

| | | | |
|--|--|--|--|
| <p>If the facility is located in a market where the interconnection agreement cannot be signed prior to construction or interconnection of the facility, a signed conditional approval letter from the jurisdictional utility and/or an affidavit stating that an interconnection agreement cannot be executed until after construction of the facility signed by an individual with authority to bind the applicant.</p> <p>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.</p> | | | |
|--|--|--|--|

(3) Facility category specific document. The application must include the following documents for the applicable facility category:

Table 3

| 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, including a draft Benefits Sharing Statement. | No | No | Yes | No |
| <u>If applying under Additional Selection Criteria:</u> Documentation demonstrating applicant meets Ownership Criteria Documentation including, but not limited to: IRS determination letter of tax-exempt status; informational tax filings (Form 990); tax returns and employment tax returns ⁴ ; articles of incorporation or certificate of formation and by-laws; financial statements prepared by a third-party and/or certified by an officer of the entity; partnership agreement; and employee records. | Yes | Yes | Yes | Yes |

.05 Attestations.

(1) In general. An application must include attestations specified in sections 7.05(2) and 7.05(3) of this revenue procedure. An application is not complete and may be rejected if any required attestation is not included.

⁴ Redact Taxpayer Identification Numbers (TINs) before submitting tax returns and employment tax returns.

(2) For all facilities. The following attestations are required for each facility for which an application is submitted:

Table 4

| 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. For a facility on Indian Lands under 25 U.S. Code § 3501(2)(A)-(C), applicant has obtained the applicable approval of the relevant tribal government or Alaska Native Corporation landowner. | 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. ⁵ | Yes | Yes | Yes |
| The applicant is in compliance with all federal, state, and local laws, including consumer protection provisions, and safety obligations, and that the applicant did not and will not engage in any unfair or deceptive acts or practices. | Yes | Yes | Yes |

⁵ Non-ministerial permits are permits in which one or more officials or agencies consider various factors and exercise some discretion in deciding whether to issue or deny permits. This does not include ministerial permits based upon a determination that the request complies with established standards such as electrical or building permits. Non-ministerial permits typically come with conditions and usually require public notice or hearings. Examples of non-ministerial permits include local planning board authorization, conditional use permits, variances, and special orders.

| | | | |
|--|-----|-----|-----|
| The applicant has appropriately sized the facility, or that customer/offtaker subscriptions will be sized to meet the customer’s energy needs, considering historical customer load and/or reasonable future load projections, in accordance with applicable state and local requirements. | Yes | Yes | Yes |
| The proposed location of the facility has been determined suitable for installation. | Yes | Yes | Yes |

(3) Facility and category specific attestations. The application must include the following attestations for the applicable facility category:

Table 5

| Attestation Requirement | Category 1 | Category 2 | Category 3 | Category 4 |
|---|------------|------------|--|------------|
| Facility location is eligible. ⁶ | Yes | Yes | No | No |
| Consumer disclosures informing customers of their legal rights and protections have been provided to customers prior to executing a contract to subscribe or purchase power from the facility, or lease a facility. | Yes | Yes | Yes (provided to tenants as applicable) | Yes |

⁶ For Category 1, the facility will be located in a low-income community as defined in the final rules for the Program, specifically § 1.48(e)-1. A map that captures applicable census tracts will be available in DOE’s publicly available written procedures to assist applicants. For Category 2, the facility will be located on Indian Land as defined in § 2601(2) of the Energy Policy Act of 1992 (25 U.S.C. 3501(2)).

| | | | | |
|---|-----|----|-----|-----|
| 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 |
| <u>If applying under Additional Selection Criteria:</u> Facility location is eligible based on PPC/CEJST. ⁷ | Yes | No | Yes | Yes |

SECTION 8. REVIEW AND SELECTION PROCESS

.01 In general. DOE will review applications and provide a recommendation to the IRS regarding whether to award an applicant an amount of Capacity Limitation with respect to a facility. Based on DOE’s recommendation, the IRS will award the applicant a Capacity Limitation allocation or reject the application.

.02 Order of application review.

(1) First 30 days. At the start of each program year, there will be a 30-day period during which time applications will initially be accepted for each category. All applications submitted within the 30-day period will be treated as submitted on the same date and at the same time.

(2) Rolling application review. Following the 30-day period, DOE will generally accept applications on a rolling basis and will review applications and provide recommendations to the IRS in the order applications are received until the IRS allocates all Capacity Limitation in a program year. The IRS will award the applicants in the order that it receives recommendations from DOE.

(3) Lottery. If at the conclusion of the 30-day period described in section 8.02(1) of

⁷ Maps that capture applicable census tracts will be available in DOE’s publicly available written procedures to assist applicants.

this revenue procedure any category or Category 1 sub-reservation of Capacity Limitation is oversubscribed (as provided in §1.48(e)-1(g)), applications in those oversubscribed categories or sub-reservation will be entered into a lottery to determine the order of DOE's review. DOE will first separate applications to group all applications which purport to meet additional selection criteria described in §1.48(e)-1(h)(2) (Ownership Criteria) and §1.48(e)-1(h)(3) (Geographic Criteria). These applications will be prioritized and processed as described in section 8.03 of this revenue procedure.

(4) Applications submitted after the 30-day period. Applications may still be submitted in oversubscribed categories or for the Category 1 sub-reservation of Capacity Limitation after the 30-day period and until the close of a program year. Those applications may be reviewed in the order received only after DOE's review and the IRS's award determinations regarding all applications submitted within the first 30 days. Applications submitted will only be reviewed if there is remaining Capacity Limitation.

(5) Close of program year. After the IRS awards all the Capacity Limitation within each category, or the program year is closed, DOE will cease review of any remaining applications. After the end of the program year, no further action will be taken on applications submitted but not awarded an allocation. Applicants may reapply in the next program year if they remain eligible.

.03 Processing Additional Selection Criteria applications.

(1) In general. Fifty percent of the Capacity Limitation in each facility category will be reserved for qualified solar or wind facilities meeting the Ownership Criteria described in §1.48(e)-1(h)(2) and the Geographic Criteria described in §1.48(e)-1(h)(3) (Additional Selection Criteria). As described in § 1.48(e)-1(h)(1), the Treasury

Department and the IRS may adjust this initial reservation of capacity in future guidance.

(2) Review of Additional Selection Criteria applications. Applications purporting to meet an Additional Selection Criteria are generally evaluated on the same schedule as other applications unless a facility category is oversubscribed at the close of the initial 30-day application period described in section 8.02(2) of this revenue procedure in which case such applications are considered first and other applications are entered into a lottery to determine the order of review (see section 8.02(3) of this revenue procedure). If the eligible applications for Capacity Limitation for facilities that meet at least one of the two Additional Selection Criteria exceed the Capacity Limitation for a category, facilities purporting to meet both of the Additional Selection Criteria are reviewed before other applications within each facility category described in § 48(e)(2)(A)(iii) and §1.48(e)-1(b)(2). Allocations for facilities meeting one or more of the Additional Selection Criteria will be made from the 50-percent reserve for such facilities before additional amounts reserved for a facility category are allocated. A lottery will be used to determine the order of review of applications purporting to meet Additional Selection Criteria if such applications exceed the Capacity Limitation reserved for the facility category.

.04 Cure period for application defects.

(1) In general. If the assigned DOE reviewer identifies a defect with a submitted application, such as missing or incorrect information or documentation, the DOE will contact the applicant via the portal. The reviewer will request that the applicant submit additional information or documentation to correct or complete the application via the

portal.

(2) Timing for applicant response. An applicant that is contacted by a DOE reviewer to submit additional information or documentation or provide corrected information will have 21 business days to respond and provide such requested information or documentation.

(3) Consequences for failure to respond or provide information. If an applicant fails to respond and/or provide the requested information or documentation within the 21-day cure period, DOE will cease review and mark the application as withdrawn. If withdrawn, the applicant may create and submit a new application for review at a later date if the facility remains eligible.

SECTION 9. NOTIFICATION OF ALLOCATION DECISION FROM IRS

.01 In general. The IRS will send final decision letters through the portal to inform applicants of the outcome of the application process. For any applicant that receives an award of Capacity Limitation, the letter will state the amount of the allocated Capacity Limitation.

.02 Allocation amount. The Capacity Limitation allocated to a facility will be determined based on the nameplate capacity of the facility as stated in the application. The Capacity Limitation allocation will be provided in direct current. For wind facilities, alternating current will be treated as equivalent to direct current for purposes of determining the amount of a Capacity Limitation allocation. The facility that receives the final allocation of Capacity Limitation in each facility category or Category 1 sub-reservation may receive an allocation less than its nameplate capacity.

SECTION 10. PLACED IN SERVICE

.01 In general. To satisfy the requirements of §1.48-1(k), for any facility that received an allocation of Capacity Limitation, the owner of the facility must report to the DOE the date the facility was placed in service.

.02 Documentation and attestation requirements. To satisfy the requirements of §1.48-1(k), the owner must provide the following:

(1) An attestation confirming that there has been no material ownership and/or facility changes from the application;

(2) Permission to Operate (PTO) letter (or commissioning report verifying for off-grid facilities) confirming that the facility has been placed in service and the location of the facility being placed in service;

(3) Final, Professional Engineer (PE) stamped (if required by applicable state or local law) as-built design plan, PTO letter with nameplate capacity listed, or other documentation from an unrelated party verifying as-built nameplate capacity;

(4) For Category 3 Facilities, a Benefits Sharing Statement as defined in §1.48(e)-1(e)(4);

(5) For Category 4 Facilities, a final list of low-income households served with name, address, subscription share, and the income verification method used; and

(6) For Category 4 Facilities, a spreadsheet demonstrating the expected financial benefit to low-income subscribers to demonstrate the 20 percent bill credit discount rate.

SECTION 11. EFFECT OF ALLOCATION OR OTHER NOTIFICATION

A Capacity Limitation allocation or a notification that a facility has met the eligibility requirements under the Low-Income Communities Bonus Credit Program at the time the facility is placed in service is not a final determination that property is eligible for an

increased credit under § 48(e). The IRS may, upon examination, determine that property does not qualify for the increased credit.

SECTION 12. CLAIMING THE ENERGY PERCENTAGE INCREASE

.01 In general. After the facility is placed in service, and the applicant submits the additional documentation and attestations described in §1.48-1(k), the applicant is notified that it (or the applicable partners or shareholders in the case of a partnership or an S corporation) may claim the energy percentage increase on Form 3468, *Investment Credit* (or successor form) or Form 3800, *General Business Credit* (or successor form), if eligible, make a transfer election under § 6418, or, if eligible, make an elective payment election under § 6417.

.02 Reduction in Increased Energy Percentage. In cases where the facility size is larger than the allocated capacity when placed in service (but still below 5 MW AC), the 10 percentage or 20 percentage point increase will be reduced by a reduction factor which is calculated by the amount of Capacity Limitation allocated (kW) divided by the total nameplate capacity installed (kW) at the time the owner of the facility claims the energy percentage increase under § 48(e). See § 48(e)(2)(B).

SECTION 13. SUCCESSOR IN INTEREST

.01 In general. Except as otherwise provided in this section 13, a Capacity Limitation allocation award applies only to the taxpayer who applied for and received an allocation award for the facility the taxpayer owns. If a taxpayer wants to request a transfer of an allocation, it should refer to DOE's publicly available written procedures to initiate a transfer request with the IRS.

.02 Additional Selection Criteria. Applicants who received an allocation based on the Additional Selection Criteria should refer to §1.48(e)-1(m)(v) regarding potential

disqualification if the original applicant does not retain an ownership interest in an entity that owns the facility or the successor does not provide the required attestation.

SECTION 14. APPLICABILITY DATE

This revenue procedure applies to taxable years ending on or after the date of publication of the Final Regulations.

SECTION 15. PAPERWORK REDUCTION ACT

This revenue procedure is not creating a new collection of information as described by the Paperwork Reduction Act (44 U.S.C. 3507(d)). The collections of information contained within this revenue procedure, and their associated burdens, have been submitted to the Office of Management and Budget as part of TD 9979 and will be approved under OMB Control Number 1545-2308.

SECTION 16. DRAFTING INFORMATION

The principal author of this revenue procedure is the Office of Associate Chief Counsel (Passthroughs & Special Industries). However, other personnel from the Treasury Department and the IRS participated in its development. For further information regarding this revenue procedure, call the energy security guidance contact number at (202) 317-5254 (not a toll-free call).