DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 10025]

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

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

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

DATES: These regulations are effective on January 13, 2025.

FOR FURTHER INFORMATION CONTACT: Concerning these final regulations, Whitney Brady, IRS Office of Associate Chief Counsel (Passthroughs & Special Industries) at (202) 317–6853 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Authority

This document amends the Income Tax Regulations (26 CFR part 1) by adding regulations authorized to be issued by the Secretary of the Treasury or her delegate (Secretary) under sections 48E(i) and 7805(a) of the Internal Revenue Code (Code) regarding the application of section 48E(h) of the Code (final regulations).

Section 48E(i) provides an express delegation of authority to the Secretary to provide guidance regarding the implementation of section 48E, stating, ''[n]ot later than January 1, 2025, the Secretary shall issue guidance regarding implementation of this section.''

The final regulations are also issued under the express delegation of authority under section 7805(a), which provides that ''the Secretary shall prescribe all needful rules and regulations for the enforcement of [the Code], including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.''

Background

I. Overview

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

II. Increase to Section 48E Credit

The amount of section 48E credit for a taxable year generally is calculated by multiplying the qualified investment for such taxable year with respect to any qualified facility placed in service during that taxable year by the applicable percentage (as defined in section 48E(a)(2)). If an applicable facility is awarded an allocation of Capacity Limitation, section 48E(h) increases the amount of the section 48E credit with respect to the applicable facility by increasing the applicable percentage used to calculate the amount of the section 48E credit (section 48E(h) Increase). The term *applicable facility* is defined in section 48E(h)(2) to mean any qualified facility that (i) is not described in section 45Y(b)(2)(B) of the Code (relating to combustion and gasification facilities); (ii) has a maximum net output of less than five megawatts (MW) (as measured in alternating current (AC)); and (iii) is described in at least one of four categories in section 48E(h)(2)(A)(iii) (as further described in part III of this Background).

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

A. In General

Section 48E(h)(4)(A) directs the Secretary to establish a program, not later than January 1, 2025, to allocate amounts of Capacity Limitation to applicable facilities. Section 48E(h)(4) also provides that in establishing a program the Secretary establish procedures for an efficient allocation process. Section 48E(h)(4) contemplates the collection and review of applications to consider facilities for an allocation.

B. Facility Categories and Increase Amount

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

C. Capacity Limitation

Under section 48E(h)(4)(C), the total annual Capacity Limitation that may be allocated is 1.8 gigawatts of direct current capacity for each of the calendar years during the period beginning on January 1, 2025, and ending on December 31 of the applicable year (as defined in section 45Y(d)(3)), and zero thereafter. Under section 48E(h)(4)(D)(i), if the annual Capacity Limitation for any calendar year exceeds the aggregate amount allocated for such year, the excess is carried forward to the next year. No amount of Capacity Limitation may be carried to any calendar year after the third calendar year following the applicable year (as defined in section 45Y(d)(3)). Under section 48E(h)(4)(D)(ii), if the annual Capacity Limitation for calendar year 2024 under section 48(e)(4)(D) of the Code exceeds the aggregate amount allocated for such year, the excess amount may be carried over and applied to the annual Capacity Limitation under section 48E(h) for calendar year 2025. The annual Capacity Limitation for calendar year 2025 shall be increased by the amount of such excess.

D. Allocation Amount

Section 48E(h)(1)(B) provides that any section 48E(h) Increase for any taxable year with respect to all eligible property

that is part of a facility shall not exceed the amount which bears the same ratio to the amount of such increase as the amount of the Capacity Limitation allocated to such facility bears to the total megawatt nameplate capacity of such facility, as measured in direct current. Therefore, if an allocation is made to a particular applicable facility, the Capacity Limitation amount allocated is based on the nameplate capacity of that applicable facility.

E. Claiming the Section 48E(h) Increase

Taxpayers that own an applicable facility which received an allocation may claim the section 48E(h) Increase once the applicable facility has been placed in service, as part of its claim for the section 48E credit. For a taxpayer to claim the section 48E(h) Increase for any property which is part of the applicable facility, section 48E(h)(4)(E)(i) requires that the eligible property be placed in service within 4 years after the date of allocation.

IV. Notice of Proposed Rulemaking

On September 3, 2024, the Department of the Treasury (Treasury Department) and the IRS published in the **Federal Register** (89 FR 71193) a notice of proposed rulemaking (REG–108920–24, 2024–38 I.R.B. 607), corrected in 89 FR 77467 on September 23, 2024, under section 48E(h) (Proposed Regulations) relating to the Program. Comments were requested in response to the Proposed Regulations by October 3, 2024, and a public hearing on the Proposed Regulations was held on October 17, 2024. On September 27, 2024, the Treasury Department held a consultation with Tribal leaders on the Proposed Regulations.

The areas of comment and the revisions to the Proposed Regulations are discussed in the following Summary of Comments and Explanation of Revisions section of this preamble. Other minor, editorial, and clarifying revisions made to the Proposed Regulations as adopted in these final regulations are not discussed in the Summary of Comments and Explanation of Revisions section of this preamble.

V. Additional Guidance

As announced in the Proposed Regulations, the Treasury Department and the IRS are also providing procedural guidance applicable to the Program opening in calendar year 2025 and future Program years which will be provided in guidance published in the Internal Revenue Bulletin. These procedural rules provide guidance necessary to implement the Program, including, in relevant part, information an applicant must submit, the application review process, and the manner of obtaining an allocation. Many of the procedural aspects of the Program will be similar to the Low-Income Communities Bonus Credit Program established under section 48(e) available for calendar years 2023 and 2024.

Summary of Comments and Explanation of Revisions

I. Overview

The Treasury Department and the IRS received 45 written comments in response to the Proposed Regulations. The comments are available for public inspection at *https://www.regulations.gov* or upon request. After full consideration of all comments received, the testimony heard at the public hearing, and the consultation with Tribal leaders, these final regulations adopt the Proposed Regulations with modifications in response to the comments and testimony as described in this Summary of Comments and Explanation of Revisions.

Comments summarizing the statute or the Proposed Regulations, recommending statutory revisions, grammatical edits, and addressing issues that are outside the scope of this rulemaking (such as revising other Federal regulations, recommending changes to tax forms, website portals, or procedural guidance published in the Internal Revenue Bulletin) are generally not addressed in this Summary of Comments and Explanation of Revisions or adopted in these final regulations. In addition to addressing the comments received in response to the Proposed Regulations, the final regulations also include non-substantive grammatical or stylistic changes to the Proposed Regulations. Unless otherwise indicated in this Summary of Comments and Explanation of Revisions, provisions of the Proposed Regulations with respect to which no comments were received are adopted without substantive change.

II. General Rules

A. In General

Consistent with section 48E(h)(1), proposed § 1.48E(h)–1(a)(1) would provide that for purposes of section 46 of the Code, if an allocation of Capacity Limitation is made with respect to eligible property (as defined in proposed § 1.48E(h)–1(c)) that is part of any applicable facility (as defined in proposed § 1.48E(h)–1(b)) placed in service in connection with low-income communities under the Program established under section 48E(h)(4), the applicable percentage used to calculate the amount of the section 48E credit is increased under section 48E(h)(1). The final regulations adopt this rule.

B. Certain Terms

Proposed § 1.48E(h)–1(a)(2) would describe certain terms used in the Proposed Regulations. Proposed § 1.48E(h)–1(a)(2)(i) would explain that the term *applicant* would be used interchangeably with *taxpayer* in accordance with the context of a particular rule. Proposed § 1.48E(h)–1(a)(2)(ii) would explain that the term Internal Revenue Bulletin has the meaning provided in § 601.601. The final regulations adopt these terms and descriptions with certain additions to define the term *applicant.* Section 1.48E(h)–1(a)(2)(i) of the final regulations adds language to clarify that the owner of the facility, and the taxpayer which intends to claim the section 48E credit, is the applicant. The final regulations further clarify that disregarded entities are not eligible applicants and may not apply for an allocation. Instead, the regarded taxpayer that owns the disregarded entity is the applicant for purposes of the Program.

III. Applicable Facility

A. Definition of Applicable Facility

The term *applicable facility* is defined in section 48E(h)(2)(A) to mean any qualified facility (as defined in section 48E(b)(3)) that (i) is not described in section 45Y(b)(2)(B) (related to combustion and gasification facilities); (ii) has a maximum net output of less than 5 MW (as measured in AC); and (iii) is described in at least one of the four categories described in section 48E(h)(2)(A)(iii). Consistent with section 48E(h)(2)(A), proposed § 1.48E(h)–1(b)(1) would define an applicable facility to mean any qualified facility (as defined in section 48E(b)(3)) that (i) is a non-combustion and gasification facility for which the Secretary has determined has a greenhouse gas (GHG) emissions rate of not greater than zero in guidance published either in the **Federal Register** or in the Internal Revenue Bulletin as of the opening date for a Program year; (ii) has a maximum net output of less than 5 MW (as measured in AC); and (iii) is described in at least one of the four categories described in section 48E(h)(2)(A)(iii) and proposed § 1.48E(h)–1(b)(2).

Several commenters requested the final regulations revise the definition of applicable facility to include additional types of technologies that do not otherwise meet the definition of an applicable facility as defined under

section 48E(h)(2)(A). Section 48E(h)(2)(A) defines applicable facility by referencing the section 48E(b)(3) definition of qualified facility. Section 48E(h)(2)(A) provides that a qualified facility that is a combustion and gasification (C&G) facility is not eligible for the Program. However, whether a qualified facility is a C&G facility or not is beyond the scope of these regulations under section 48E(h). On June 3, 2024, the Treasury Department and the IRS published in the **Federal Register** (89 FR 47792) a notice of proposed rulemaking (REG–119283–23) under sections 45Y and 48E (48E Proposed Regulations) that would provide definitions and rules for section 48E generally, including the types of qualified facilities that are C&G and the types of qualified facilities that are non-C&G. The 48E Proposed Regulations requested comments on types of qualified facilities, and such comments will be addressed in the final regulations under section 48E. A facility must first be a qualified facility that is eligible to claim the investment credit under section 48E for the facility to be considered an applicable facility under the Program. Information and rules for qualified facilities and the types of categories of non-C&G-facilities will be included in other guidance, under section 48E, published in the **Federal Register** or the Internal Revenue Bulletin. Consistent with the statute, final § 1.48E(h)–1(b)(1) adopts the proposed rule without revision.

B. Four Categories of Applicable Facilities

Section 48E(h)(2)(A)(iii) establishes four categories of applicable facilities as facilities that are located in a *low-income community* (as defined in section 45D(e)) or on *Indian land* (as defined in section 2601(2) of the Energy Policy Act of 1992 (25 U.S.C. 3501(2))), or facilities that are part of a qualified low-income residential building project or a qualified low-income economic benefit project. The amount of the section 48E(h) Increase is 10 percentage points for facilities located in a low-income community or on Indian land, and 20 percentage points for facilities which are part of a qualified low-income residential building project or part of a qualified low-income economic benefit project.

Proposed § 1.48E(h)–1(b)(2) would generally adopt the statutory language to define each of the four facility categories, with minimal modifications to shorten references to the categories as Category 1, 2, 3, or 4, and to clarify specific category requirements.

Proposed § 1.48E(h)–1(b)(2)(i) would provide that a facility is a *Category 1 facility* if it is located in a low-income community (as defined in section 45D(e)). Proposed § 1.48E(h)–1(b)(2)(i) would also provide clarifying language to explain the term low-income community generally is defined under section 45D(e)(1) as any population census tract for which the poverty rate for such tract is at least 20 percent, or, in the case of a tract not located within a metropolitan area, the median family income for such tract does not exceed 80 percent of statewide median family income, or in the case of a tract located within a metropolitan area, the median family income for such tract does not exceed 80 percent of the greater of statewide median family income or the metropolitan area median family income.

Proposed § 1.48E(h)–1(b)(2)(i) additionally would explain that the term *low-income community* also includes the modifications in sections 45D(e)(4) and (5) for tracts with low population and modification of the income requirement for census tracts with high migration rural counties. Proposed § 1.48E(h)–1(b)(2)(i) also would provide that low-income community information for the New Markets Tax Credit (NMTC) can be found at the U.S. Department of Treasury, Community Development Financial Institutions (CDFI) Fund website and its web page mapping tool, *https://www.cdfifund.gov/cims.* Proposed § 1.48E(h)–1(b)(2)(i) then would clarify that the poverty rate for a census tract generally is based on the most recently released ACS low-income community data for the NMTC. Proposed § 1.48E(h)–1(b)(2)(i) would provide, however, if updated data is released, a taxpayer, in its application, can choose to base the poverty rate for any population census tract on either the prior version of the ACS low-income community data or the updated ACS low-income community data for a period of 1 year following the date of the release of the updated data. Proposed § 1.48E(h)–1(b)(2)(i) would provide that after the 1-year transition period, the updated ACS low-income community data must be used.

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

One commenter opposed reliance on the NMTC definitions to identify communities. This commenter cautioned that the NMTC definition may inadvertently exclude certain disadvantaged areas due to changes in census tracts and reliance on outdated data. This commenter suggested that, instead, the Program should use alternative metrics to identify low-income communities like the Climate and Economic Justice Screening Tool (CEJST) and allowing for case-by-case evaluations for community-level qualifications.

Section 48E(h)(2)(A)(iii)(I) requires that a Category 1 facility be located in a low-income community census tract as defined under section 45D(e) for purposes of the NMTC. Therefore, the section 45D(e) definition of low-income community census tracts must be used to determine whether a facility is located in a low-income community census tract for purposes of determining Category 1 eligibility under this Program. The statute does not permit another metric to identify communities as low-income that have not been identified as low-income community census tracts by the CDFI Fund, for purposes of NMTC. Finally, the Program includes the use of CEJST data under the Additional Selection Criteria Geographic Criteria. These comments are not adopted and final § 1.48E(h)–1(b)(2)(i) retains the language from the proposed rule.

One commenter expressed support for the ability of a developer to choose to base the poverty rate for any population census tract on either the prior version of the ACS low-income community data or the updated ACS low-income community data. The CDFI Fund uses the ACS five-year data to determine the low-income community census tracts for purposes of the NMTC. When the CDFI Fund updates the low-income census tract determination based on the most recent 5-year ACS data, the CDFI Fund allows for a one-year transition period for reliance purposes. The final regulations adopt the CDFI Fund's one-year transition period to allow for the same reliance; however, the final regulations clarify that § 1.48E(h)–1(b)(2)(i) does not provide a blanket ability for applicants to select between prior and current official ACS data. The last update to the low-income community census tracts for the NMTC occurred on September 1, 2023. The transition period, and, therefore, the ability to utilize either the prior or updated data to claim that a facility is located in a low-income area also ended on September 1, 2024. The Treasury Department anticipates the next update will occur in 2028. When a subsequent update occurs, the transition period will

again allow for taxpayers to use either the prior or updated data to determine whether their facility is located in a low-income community census tract.

Proposed § 1.48E(h)–1(b)(2)(ii) would provide that, consistent with section 48E(h)(2)(A)(iii)(I), a facility is a Category 2 facility if it is located on *Indian land* as defined in section 2601(2) of the Energy Policy Act of 1992 (25 U.S.C. 3501(2)). No comments were received on this rule, and, accordingly, the final regulations adopt this rule without modification.

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

Consistent with the statute, proposed § 1.48E(h)–1(b)(2)(iii) would define a facility as a Category 3 facility if it is part of a qualified low-income residential building project, and further would provide 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 that participates in a covered housing program or other affordable housing program described in section 48E(h)(2)(B)(i) and the financial benefits of the electricity produced by such facility are allocated equitably among the occupants of the dwelling units of such building as provided in proposed § 1.48E(h)–1(e). Proposed § 1.48E(h)–1(b)(2)(iii) also would include the term Qualified Residential Property to separately refer to the residential rental building (as opposed to the Category 3 facility). Proposed § 1.48E(h)–1(b)(2)(iii) additionally would clarify that the Qualified Residential Property, and not just its tenants, must participate in a covered housing program or other affordable housing program described in section 48E(h)(2)(B)(i). Proposed § 1.48E(h)–1(b)(2)(iii) would further clarify that a Qualified Residential Property could either be a multifamily rental property or single-family rental property. Additionally, proposed § 1.48E(h)–1(b)(2)(iii) would clarify that a facility does not need to be installed directly on the building to be considered installed on a Qualified Residential Property if the facility is installed on the same or an adjacent parcel of land as the Qualified Residential Property and the other requirements to be a Category 3 facility are satisfied. No comments were submitted on this definition. These final regulations adopt the proposed rule without modification.

The preamble to the Proposed Regulations would include an illustrative list of eligible Federal housing programs for Category 3. The Treasury Department and the IRS, in consultation with other Federal agencies, developed the illustrative list of Federal housing programs and policies that meet the requirements in section 48E(h)(2)(B)(i) of being covered under section 41411(a) of VAWA, administered by the Department of Agriculture under title V of the Housing Act of 1949, or administered by a tribally designated housing entity (as defined in section 4(22) of the Native American Housing Assistance and Self-Determination Act of 1996). The eligible Federal housing program list will be included in guidance published in the Internal Revenue Bulletin, and the list may be updated in future guidance published in the Internal Revenue Bulletin.

Section 48E(h)(2)(B)(i) also authorizes the Secretary to add other affordable housing programs to the list of eligible programs. The Proposed Regulations requested comment on whether other affordable housing programs should be added to the list of eligible programs, and specifically whether and under what conditions certain state programs should be added to the list.

Several commenters named specific state housing programs and requested addition of those programs as eligible Category 3 housing programs. However, those commenters did not explain why the specific program should be included and what comprehensive set of criteria warrant the inclusion of these specific programs over others. One commenter suggested that any property with a 100 percent affordability covenant that has a minimum of 10 years remaining should be included as an eligible program. Similarly, another commenter recommended that state-subsidized affordability restricted housing programs that have affordability restrictions equal to or greater than federal programs listed in the Proposed Regulations, should qualify for Category 3. As an additional recommendation, this commenter suggested guidelines for Naturally Occurring Affordable Housing (NOAH), and provided an example stating that eligibility could be considered if the housing is owned by a non-profit or a LLC with a non-profit as the single member and the property is located in a Justice 40 community or where the average rent does not exceed Department of Housing and Urban Development (HUD) fair market rent. Another commenter urged expansion of the list of affordable housing programs eligible to include state and local programs that provide rental assistance and/or capital investments in affordable housing. This commenter also suggested that state and local programs with affordability and compliance requirements like the Federal programs currently qualifying for Category 3 should be eligible. Similarly, another commenter suggested the inclusion of any state-funded low-income housing or transitional housing program where eligibility for assistance under such program is equivalent to eligibility criteria for any of the enumerated federal covered housing programs.

At this time, the Treasury Department and the IRS have determined that the list of eligible housing programs should only include Federal housing programs, not State and local programs. The statute requires the building participate in a covered hosing program or other affordable housing program; it is not sufficient that the building has certain characteristics, such as being owned by a tax-exempt entity. Additionally, the statute enumerates programs that are eligible based only on their inclusion under VAWA or because the programs are administered by the USDA or a Tribally designated housing entity. There are no standard criteria across these eligible programs which can be applied to objectively consider other programs. Additionally, comments did not provide a comprehensive set of criteria that could be used to determine what additional affordable housing programs should be included. The Treasury Department, under the authority granted under section 48E(h)(2)(B)(i), may decide in the future to include additional programs for Category 3. If additional, specific housing programs are deemed eligible, or if a process is later developed to consider housing programs for inclusion, that information will be

announced through guidance published in the Internal Revenue Bulletin.

Regarding Federal housing programs, commenters recommended additional housing programs, including programs administered by the Department of Hawaiian Home Lands, Native Hawaiian Organizations, and Hawaiian Homestead Associations. In consultation with HUD, the Treasury Department and the IRS have adopted changes to the list of eligible housing programs for Category 3. For the Program year beginning in calendar year 2025, HUD project based vouchers under Section 8 of the United States Housing Act of 1937 and housing programs administered by the Department of Hawaiian Home Lands as defined in Title VIII of the Native American Housing Assistance and Self-Determination Act of 1996 (24 CFR 1006.10), Hawaiian Homestead Associations (HHA) as defined in 43 CFR 48.6, and DHHL or HHA lands administered by Native Hawaiian Organizations as defined in 13 CFR 124.3, have been added to the list of eligible housing programs. Guidance published in the Internal Revenue Bulletin, as updated, will contain the complete list of eligible housing programs for Category 3.

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

Consistent with section 48E(h)(2)(A)(iii)(II), proposed § 1.48E(h)–1(b)(2)(iv), would define a Category 4 facility as a facility that is part of a qualified low-income economic benefit project. Proposed § 1.48E(h)–1(b)(2)(iv) would further provide 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 the facility are provided to households with income of less than 200 percent of the poverty line (as defined in section 36B(d)(3)(A)) applicable to a family of the size involved, or 80 percent of area median gross income (as determined under section 142(d)(2)(B)).

No comments were submitted regarding proposed § 1.48E(h)–1(b)(2)(iv). The final regulations adopt the proposed rule without modification.

C. Less Than Five Megawatts Requirement

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

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

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

Further, the preamble to the Proposed Regulations explained that the Treasury Department and the IRS intended to deprioritize review of applications for an applicable facility that together with other qualified facilities (1) share a point of interconnection, (2) produce electricity using the same technology, (3) are owned by the same taxpayer, and (4) have an aggregate total maximum net output (as determined by the sum of the maximum net output of the applicable facility and each qualified facility under proposed § 1.48E(h)–1(b)(3)(ii)) equal to or greater than five megawatts (as measured in AC). Deprioritized applications would be considered after other applications in the current allocation round, or a subsequent allocation round at the Secretary's discretion.

One commenter stated that the proposed less than 5 MW requirement may allow larger projects to be deceptively segmented into smaller ones to manufacture a false qualification for the bonus credit. This commenter supported the inclusion of stricter aggregation rules to prevent developers from dividing larger projects to monopolize allocations intended for genuinely small facilities. Another commenter expressed support for the proposal to aggregate capacity of qualified facilities with integrated operations. This commenter, however, recommended using only one factor to aggregate facilities, a common point of interconnection. Another commenter suggested that, in evaluating related qualified facilities, the final regulations should consider whether an application is for a project where the developer and its affiliates have multiple interconnection agreements on the same property.

Section 48E(h)(4)(A) provides that ''[i]n establishing such program and to carry out the purposes of this subsection, the Secretary shall provide procedures to allow for an efficient allocation process.'' To further the aims of an efficient allocation process, the Treasury Department and the IRS agree with commenters that the final

regulations should include an aggregation rule to clarify the scope of applications. Clear parameters of what constitutes an ''applicable facility'' for purposes of an application to the Program provides certainty for applicants preparing and submitting applications and for the IRS in its review of applications. For example, the definition of a qualified facility, as defined under the 48E Proposed Regulations, may give the impression to the taxpayer that they must submit multiple applications for a 3 MW solar facility with multiple inverters. Such a result would not create an efficient allocation process. Furthermore, because section 48E(h) is subject to a finite annual Capacity Limitation, the Treasury Department and the IRS believe allocating amounts of Capacity Limitation to a group of related qualified facilities with an aggregate total maximum net output equal to or greater than 5 MW (as measured in AC) could concentrate allocations (and the benefits of clean energy development) in a smaller number of communities, rather than making them more broadly available, which would not further the purpose of an efficient allocation of a Federal tax credit. Accordingly, the final regulations revise the nameplate capacity measurement test to determine whether an applicable facility has a maximum net output of less than 5 MW (as measured in AC).

Solely for the purposes of the less than five megawatts requirement for the Program, if an applicable facility has *integrated operations* with one or more other qualified facilities of the same technology type, then the aggregate nameplate capacity of the applicable facility and other qualified facility must be used to determine the maximum net output of an applicable facility, including in determining eligibility for an allocation of Capacity Limitation. This approach provides clarity to applicants, creates a more efficient allocation process relative to other approaches because it streamlines application intake and processing, and helps address commenters' concerns about fairness in the allocation process.

The final regulations provide at newly added § 1.48E–1(b)(3)(iv) that solely for the purposes of the less than five megawatts requirement for the Program, an applicable facility is treated as having *integrated operations* with one or more other qualified facilities of the same technology type, if the facilities are: (i) owned by the same or related taxpayers; (ii) placed in service in the same taxable year; and (iii) transmit electricity generated by the facilities through the same point of interconnection or, if the facilities are not grid-connected or are delivering electricity directly to an end user behind a utility meter, are able to support the same end user. The final regulations also provide a definition for related taxpayers in newly added § 1.48E–1(b)(4). For purposes of the less than five megawatts requirement, the term *related taxpayers* means members of a group of trades or businesses that are under common control (as defined in § 1.52–1(b)). Related taxpayers are treated as one taxpayer in determining whether an applicable facility has integrated operations.

One commenter requested clarification as to whether facilities with exactly 5 MW are eligible for the Program, or whether projects must restrict their inverter output to 4.99 MW (as measured in AC) to qualify. The statutory language requires that an applicable facility have a maximum net output of less than 5 MW (as measured in AC), and the final regulations provide a nameplate capacity test to determine whether an applicable facility satisfies the statutory requirement. Accordingly, facilities with a maximum net output of 5 MW (as measured in AC) or greater are not applicable facilities and are not eligible. Furthermore, derating or restricting an inverter to get below 5 MW (as measured in AC) would only change the output of the facility but would not change the maximum net output (or nameplate capacity) of the facility.

The Treasury Department and the IRS are aware that certain technologies generate electricity in direct current, not alternating current, and therefore, it is unclear how to determine whether an applicable facility has a maximum net output of less than 5 MW (as measured in AC).

For applicable facilities that generate electrical output in direct current, the final regulations provide an alternative nameplate capacity measurement at newly added § 1.48E–1(b)(3)(iii). Only for qualified facilities that generate electricity in direct current, the taxpayer may choose to determine the maximum net output (in alternating current) of the applicable facility by using the lesser of: (i) nameplate generating capacity of the applicable facility in direct current, which is deemed the nameplate generating capacity of the applicable facility in alternating current; or (ii) the nameplate capacity of the first component of property that inverts the direct current electricity into alternating current.

D. Eligible Property

Section 48E(h)(3) defines *eligible property* as a qualified investment with respect to any applicable facility. Section 48E(b) describes a qualified investment with respect to a qualified facility. Generally, for purposes of section 48E(a), section 48E(b)(1)(A) and (b)(1)(B) provide that the qualified investment with respect to a qualified facility for any taxable year is the sum of the basis of any qualified property placed in service by the taxpayer during such taxable year that is part of a qualified facility, plus the amount of expenditures that are paid or incurred by the taxpayer for qualified interconnection property.

Consistent with section 48E(h)(3), proposed § 1.48E(h)–1(c) would define *eligible property* as a qualified investment (as defined in section 48E(b)) [1] with respect to any applicable facility. The preamble to the Proposed Regulations explained that pursuant to section 48E(h)(3), eligible property does not include any qualified investment with respect to energy storage technology.

Several commenters objected to the exclusion of energy storage technology as eligible property for purposes of the section 48E(h) Increase. Some commenters requested that the final regulations should include energy storage technology as eligible property for purposes of the Program. These commenters cited to the inclusion of co-located energy storage technology as eligible property for purposes of the predecessor program under section 48(e). One commenter asserted that the proposed rule was wrong, and that certain energy storage technology should be includable as a qualified investment by distinguishing between stand-alone energy storage technology and energy storage technology associated with a qualified facility. This commenter asserted that associated energy storage technology is an integral part of the qualified facility and should be includable as a qualified investment. Another commenter similarly requested that the final regulations under sections 48E and 45Y classify energy storage technology as an integral part of the qualified facility, and therefore, further requested that energy storage technology be eligible for the section 48E(h) Increase. Alternatively, this commenter suggested that the final regulations

[1] *See* proposed § 1.48E–2(d), as proposed in the notice of proposed rulemaking (REG–119283–23) published in the **Federal Register** (89 FR 47792) on June 3, 2024, and corrected on July 18, 2024 at 89 FR 58305, for more information regarding the definition of ''qualified investment.''

clarify that facilities that include energy storage technology remain eligible for the bonus credit for the portion of the system that is a qualified facility.

Section 48E(a) defines and provides an investment credit for energy storage technology distinct and separate from a credit for a qualified facility. Eligible property under section 48E(h) only includes a qualified investment with respect to an applicable facility, and therefore, the statute does not support inclusion of energy storage technology in the section 48E(h) Program. If an applicant has a system that includes both an applicable facility and energy storage technology, the applicable facility would still be eligible for a credit under section 48E and the section 48E(h) Increase. Accordingly, the final regulations do not adopt these comments.

E. Location

Proposed § 1.48E(h)–1(d)(1) would treat an applicable facility as *located in a low-income community* or *on Indian land* under section 48E(h)(2)(A)(iii)(I) or located in a geographic area under the Additional Selection Criteria (*see* part VI.B. of this Summary of Comments and Explanation of Revisions) if the facility satisfies the nameplate capacity test (Nameplate Capacity Test for Location) provided in proposed § 1.48E(h)–1(d)(2). Proposed § 1.48E(h)–1(d)(2) would describe the Nameplate Capacity Test for Location, which provides that an applicable facility would be considered located in or on the relevant geographic area described in proposed § 1.48E(h)–1(d)(1) if 50 percent or more of the applicable facility's nameplate capacity is in a qualifying area. The purpose of this proposed rule is to provide applicants that have an applicable facility that is not entirely located in a qualifying area a means to evaluate eligibility. For example, if an applicant's applicable facility is sited on the boundary of a qualifying area, the Nameplate Capacity Test for Location is used to determine if the applicable facility is deemed located in the qualifying area.

One commenter recommended that devices that are offshore but are eligible for section 48E and can attribute their nameplate capacity to where their power conditioning equipment is onshore should be able to satisfy the Nameplate Capacity Test for Location. This commenter noted that this recommendation is consistent with the Nameplate Capacity Attribution Rule found in Notice 2024–30, 16 I.R.B. 878. The final regulations do not adopt this comment because it is not in accordance with the Program's requirements. The commenter's suggestion stems from guidance issued for an increased credit rate for qualifying facilities located in specific energy communities. The statutory requirements for the location of an applicable facility eligible for the Program are different than for a qualifying facility eligible for the energy communities bonus. Moreover, the Treasury Department and the IRS do not expect applicable facilities to be located offshore outside of the boundaries of a qualifying area. Accordingly, for the purposes of the Program, the Nameplate Capacity Test for Location requires that an applicable facility be located in a qualifying area. The final regulations adopt § 1.48E(h)–1(d)(1) as proposed.

IV. Financial Benefits for Category 3 and Category 4 Allocations

A. In General

Section 48E(h)(2)(D) provides that electricity acquired at a below-market rate will not fail to be taken into account as a financial benefit. The Proposed Regulations would propose definitions and requirements related to the term *financial benefit* under section 48E(h)(2)(D), as well as a manner to apply such definitions and requirements, appropriately, to qualified low-income residential building projects (section 48E(h)(2)(B)) and qualified low-income economic benefit projects (section 48E(h)(2)(C)). The proposed definitions and requirements for financial benefits were different for an allocation under Category 3 (section 48E(h)(2)(B)) and Category 4 (section 48E(h)(2)(C)) and these definitions remain different for each respective category in the final regulations, because the statutory language provides distinct financial benefit requirements for these categories. A Summary of Comments and Explanation of Revisions for financial benefits for Category 3 facilities is presented below in section IV.C. and for Category 4 in section IV.D.

B. Renewable Energy Certificates (RECs)

For both Category 3 and Category 4, commenters requested clarity on whether RECs are included in the determination of financial benefits. Commenters generally opposed including RECs as part of the financial benefits determination. Section 48E(h)(2)(B)(ii) and (C) both require distribution of the ''financial benefits of the electricity produced'' by a facility. The Treasury Department and the IRS, understand that accessibility and inclusion of RECs vary across the U.S. depending on the relevant region or state's regulations and overall market. RECs represent environmental or renewable ''attributes'' or ''benefits'' associated with renewable energy generation and RECs are environmental commodities that can be traded separately from wholesale electricity markets. RECs are issued in situations when electricity is generated from a renewable facility and the ability of the owner of the renewable facility to sell RECs has the potential to generate revenue and a financial benefit for the owner. For this reason, any revenue generated by the sale of RECs should be included in determining financial benefits for both Category 3 and Category 4. Similarly, any other certificates or credits (excluding Federal tax credits) that are related to electricity production and that yield revenue to the owner as a result of electricity generated should be included in determining financial benefits. This clarification does not impact any of the Proposed Regulations under Category 3. There were additional comments regarding RECs and the manner by which RECs must be included in determining the bill credit discount rate for Category 4. These comments are summarized and addressed in section IV.D. of this Summary of Comments and Explanations of Revisions.

C. Financial Benefits for Qualified Low-Income Residential Building Projects

For a facility to be treated as part of a qualified low-income residential building project (Category 3 facility), section 48E(h)(2)(B)(ii) provides that the financial benefits of the electricity produced by such facility must be allocated equitably among the occupants of the dwelling units of a Qualified Residential Property.

Consistent with the statute, proposed § 1.48E(h)–1(e)(1) would provide that, to satisfy the requirements of a Category 3 facility, the financial benefits of the electricity produced by the facility must be allocated equitably among the occupants of the dwelling units of the Qualified Residential Property. Proposed § 1.48E(h)–1(e)(1) would also clarify that the same rules for financial benefits for Category 3 facilities apply to both multi-family and single-family Qualified Residential Property. No comments were submitted regarding this proposed rule, and the final regulations adopt this proposed rule for Category 3 financial benefits without modification.

Proposed § 1.48E(h)–1(e)(2) would require that at least 50 percent of the financial value of the electricity produced by the facility (as defined in proposed § 1.48E(h)–1(e)(3)) must be equitably allocated to the Qualified Residential Property's occupants that

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

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

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

A commenter stated that the proposed methodology and calculations established to calculate net financial value and gross financial value are too restrictive and hinder the ability for qualified low-income residential buildings to participate. This commenter also asserted that the required financial benefits would exceed the value of the credit. Two commenters requested that the final regulations eliminate the ''greater of'' language in proposed § 1.48E(h)–1(e)(3) and replace it with ''either'' to allow applicants to choose between using the gross financial value or the net financial value. These commenters asserted that using either method would still result in the 50 percent minimum requirement under the Proposed Regulations to be met.

The Treasury Department and the IRS do not agree with comment observing that the calculations for Category 3 financial benefits will hinder the ability for qualified low-income residential buildings to participate. No other comments were submitted suggesting that the calculations will restrict the participation of low-income residential buildings. The calculations provide clear parameters for applicants and financial benefits to residents. This comment is not adopted with respect to eliminating the ''greater of'' requirement. The ''greater of'' language helps implement the statutory requirement for the equitable distribution of financial benefits to tenants and supports the Program's objectives of providing financial benefits directly to households. Additionally, while the statute requires that the financial benefits of the electricity produced be shared with occupants, the final regulations already recognize that not all the financial value of the electricity produced can be passed on to building occupants, and that a certain portion can be used for lowering the operational costs of electricity consumption for common areas, which benefits all building occupants.

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

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

Proposed § 1.48E(h)–1(e)(5)(iii)(B) would provide that if financial value is

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

No comments were submitted regarding the required methods of delivery of financial benefits for Category 3 facilities. The Proposed Regulations would cite to specific HUD guidance on benefits sharing. In consultation with HUD, the Treasury Department and the IRS understand that HUD's Office of Multifamily Housing, Office of Public and Indian Housing, Office of Native American Programs, and other offices may publish guidance on benefits sharing relevant Category 3 applicable facilities. Accordingly, the final regulations adopt § 1.48E(h)–1(e)(5)(iii)(A) and (B) as proposed with minor clarifications to reflect HUD guidance on benefits sharing.

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

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

No comments were received on the Benefits Sharing Statement or the requirement to notify. Accordingly, the final regulations adopt these rules without modification.

D. Financial Benefits in Qualified Low-Income Economic Benefit Projects

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

Proposed § 1.48E(h)–1(f)(1) would add the term *Qualifying Households* to refer to households which meet the income requirements under section 48E(h)(2)(C)(i) or (ii) and would provide that to satisfy the requirements of a Category 4 facility:

(i) The facility must serve multiple Qualifying Households under section 48E(h)(2)(C)(i) or (ii);

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

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

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

While several commenters supported the proposed bill credit discount rate of 30 percent, many commenters opposed the increase from the 20 percent bill credit discount rate under the predecessor program. These commenters asserted that the market and industry have not sufficiently evolved to account for a bill credit discount rate of 30 percent. Several comments stated that an increase in the bill credit discount rate would favor States with higher utility rates and already established solar markets, while having a negative impact on States with already low electricity prices, or with no or emerging clean energy programs. Commenters who opposed the 30 percent bill credit discount rate generally supported reinstating the 20 percent rate from the predecessor program. Several commenters stated that projects are already in development based on the 20 percent bill credit discount rate from the predecessor program under section 48(e), and the commentors contended that the bill credit discount rate should remain the same. Some commenters also opposed a phased-in approach to increasing the bill credit discount rate citing a lack of Program data to support any increase. Two commenters, however, expressed support for a phased-in approach. Alternatively, some commenters suggested a tiered approach to the bill credit discount rate within Category 4 by adjusting the required bill credit discount rate based on regional market conditions.

After consideration of the comments, the final regulations adopt a bill credit discount rate of 20 percent. The 20 percent bill credit discount rate—as opposed to a 30 percent bill credit discount rate—supports the Program's goal of national impact by allowing a broader range of facilities to apply under Category 4. Given the uncertainty of how the market will evolve and yearslong industry development timelines, the final regulations do not adjust the bill credit discount rate over time. Therefore, as finalized, § 1.48E(h)–1(f)(1)(iii) provides ''[e]ach Qualifying Household must be provided a bill credit discount rate (as defined in § 1.48E(h)–1(f)(2)) of at least 20 percent.'' The final regulations adopt the rest of the proposed § 1.48E(h)–1(f)(1)(i) and (ii) without modification.

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

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

As previously addressed in section IV, generally, of this Summary of Comments and Explanation of Revisions, the final regulations clarify that RECs are included in the financial benefits calculation for both Category 3 and Category 4. Commenters stated that any RECs would already be included in the general bill credit discount calculation provided for under proposed § 1.48E(h)–1(f)(1). Commenters, therefore, questioned why proposed § 1.48E(h)–1(f)(2)(iii) would separate out any RECs, when the RECs would generally be included in determining the pool of financial benefits. The Treasury Department and the IRS understand commenters' concern and agree that clarity is warranted. The final regulations do not adopt proposed § 1.48E(h)–1(f)(2)(iii). Rather, the final regulations clarify that the value derived from the sale of RECs (if any) are included within the financial value calculation associated with the requirement that at least 50 percent of the total financial value of the facility's total production in kilowatts must be assigned to Qualifying Households. Specifically, § 1.48E(h)–1(f)(1) is revised to clarify that the financial value calculation associated with the 50 percent requirement must include other values from electricity production (including any electricity services, products, and credits or certificates such as RECs provided in connection with the electricity produced by such facility, but excluding Federal tax credits), as measured by the utility, independent system operator, or other off-taker procuring electricity (and related services, products, and credits of certificates) from the facility.

Notwithstanding that provision, the Treasury Department and the IRS agree with commenters that any monetary value from the sale of RECs (if any) would already be included in the financial benefits value and general bill credit discount described under § 1.48E(h)–1(f)(2)(i). As such, there is no reason to separately identify such possible REC value in the general bill credit discount rate described therein. However, the value from the sale of RECs is appropriately included under § 1.48E(h)–1(f)(2)(ii) related to the bill credit discount requirements when there is no or nominal cost of participation, in this case focused on the total financial value of the electricity produced by the facility. Specifically, as described in § 1.48E(h)–1(f)(2)(ii), the financial value of electricity produced by the facility includes the sale of any attributes associated with the applicable facility's production (including, for example, any Federal, State, Tribal, or utility incentives or renewable energy certificates but excluding any Federal tax credits). In recognition that utilities may have incentives associated with the production of electricity, the final regulations revise proposed § 1.48E(h)–1(e)(4) to include utility incentives in the parenthetical examples of attributes with financial value. The final regulations at § 1.48E(h)–1(f)(2) also include minor edits for clarity, including revisions to § 1.48E(h)–1(f)(2)(iv)(C) (*Example 3*), to clarify the calculation of financial benefits for Category 4 facilities when there is no or nominal cost of participation.

The preamble to the Proposed Regulations also stated that the Treasury Department and the IRS were considering adding other methods, apart from bill credit discounts, for financial benefits to be shared with Qualifying Households. The Proposed Regulations requested comments on alternative methods for delivering financial benefits in cases in which bill credit discounts are not available or are not feasible for covered technologies. The Proposed Regulations also requested comment on how alternative financial benefits could be verified and how to limit the potential impact of financial benefits on potential recipients' income taxes and eligibility for public assistance programs.

Comments were mixed regarding the inclusion of alternative financial benefits, other than the bill credit discount rate in Category 4. Although several commenters opposed alternative financial benefit delivery methods, many commenters supported alternatives and requested that the framework for other methods allowed under Category 3 be applied to Category 4. A commenter stated that some Federally assisted housing is not able to apply under Category 3 because the housing does not have the proper roof or adequate parcel size to support the facility. In these situations, the commenter stated that households in master-metered buildings should be able to benefit as a Category 4 project and the financial benefits should be applied as they are in Category 3. A commenter suggested that Category 4 benefits could be defined and distributed using the same HUD documents, verification protocols, and Benefit Sharing Statement as used in Category 3. Another commenter similarly suggested that HUD regulations should be promulgated to allow for building improvements, and list, as an example, adding wi-fi service for tenants. Regarding the tax treatment of financial benefits for the residents of the Qualifying Households, one commenter requested that the final regulations provide that financial benefits are not taxable.

The statutory requirements for a Category 4 facility are distinctly different than Category 3 facility requirements. For example, the statutory language under section 48E(h)(2)(C) requires Category 4 financial benefits be ''provided to households'' that meet specific income limits. An applicant is required to demonstrate that the participating households meet the statutory income limits, and further, prove that a minimum of fifty percent of the financial benefits of the electricity produced by the facility are distributed to Qualifying Households. In contrast, the statutory language for Category 3 requires that the financial benefits be allocated equitably to the occupants of

the residential rental building with which this energy facility is associated. The alternative financial benefit options to bill credit discount that are provided under Category 3 may be provided indirectly to the building as a whole as long as the benefit is equitably distributed among the occupants of the dwelling units of the building. Because of this requirement, alternative financial delivery methods that serve the whole building can be easily distributed for Category 3 facilities because all occupants must be within the residential rental building.

Further, investments in applicable facilities may require other investments, such as a new roof that can support a solar installation. Whether an applicant chooses to make such investments in order to be eligible for to apply under a certain category is a decision that is unique to each applicant and is outside the scope of these final regulations.

Therefore, § 1.48E(h)–1(f) of the final regulations do not adopt these comments. The final regulations also do not adopt the comments related to promulgating HUD regulations because such regulations are issued pursuant to HUD's authority. Lastly, the final regulations do not adopt comments regarding the tax treatment of financial benefits because that is outside of the scope of these regulations.

Proposed § 1.48E(h)–1(f)(3)(i) would require applicants to establish that financial benefits are provided to Qualifying Households as defined in proposed § 1.48E(h)–1(f)(1), by submitting documentation in accordance with guidance published in the Internal Revenue Bulletin. The Proposed Regulations also would provide that a Qualifying Household's low-income status is determined at the time the household enrolls in the subscription program and does not need to be re-verified.

Proposed § 1.48E(h)–1(f)(3)(ii) would further provide methods that applicants could use to establish that a household is a Qualifying Household, including the ability to use categorical eligibility or other income verification methods. Proposed § 1.48E(h)–1(f)(3)(ii)(A) would provide that categorical eligibility consists of obtaining proof of the household's participation in a needs-based Federal, State, Tribal, or utility program with income limits at or below the qualifying income level required to be a Qualifying Household, and included a non-exclusive list of Federal programs which could be used for categorical eligibility verification. Proposed § 1.48E(h)–1(f)(3)(ii)(A) would also clarify that the qualifying income level for a Qualifying Household is based on where such household is located.

Proposed § 1.48E(h)–1(f)(3)(ii)(B) would provide other income verification methods including paystubs, Federal or State tax returns, or income verification through crediting agencies and commercial data. Proposed § 1.48E(h)–1(f)(3)(ii)(C) would provide that a self-attestation from a household is not a permissible method to establish a household is a Qualifying Household but clarified that this prohibition on direct self-attestation from a household did not extend to categorical eligibility for needs-based programs with income limits that rely on self-attestation for verification of income.

Commenters requested clarifications of and additions to the income verification methods. One commenter observed that, without clarification or modification, the requirements set forth in Proposed Regulations will not lead to verification methods that demonstrate that a particular household necessarily meets the income parameters of section 48(e)(2)(C).

In response to these comments, the documentation requirements have been modified in the final regulations for Category 4. The predecessor program under section 48(e) required taxpayers who had been awarded an allocation for a Category 4 facility to submit a spreadsheet showing a calculation of the projected financial benefits for the facility and a list of subscribers with the method used to verify income for each subscriber. The final regulations eliminate the subscriber list as a Category 4 documentation requirement under the section 48E(h) Program and modify the spreadsheet documentation rule to instead require the submission of a statement by the applicant to demonstrate how the applicant will fulfill the financial benefits distribution requirements.

The final regulations provide at § 1.48E–1(f)(3) that a Demonstration of Financial Benefits statement is required, which includes certain information to demonstrate that the financial benefits requirements will be met based on the expected annual energy produced by the as-built facility at the time it is placed in service and during the recapture period under section 48E(h)(5) and § 1.48E(h)–1(n). The statement must include a calculation of the total financial value of annual electricity production, the bill credit discount rate calculation, and a description of the means of distributing the required benefits to Qualifying Households. With the Demonstration of Financial Benefits statement, the taxpayer must provide documentation showing the facility is enrolled in a utility tariff, program, or other arrangement to distribute financial benefits to Qualifying Households. Additional information regarding the Demonstration of Financial Benefits statement will be included in guidance published in the Internal Revenue Bulletin to explain submission requirements at application and at placed in service reporting.

Section 1.48E(h)–1(f)(4) of the final regulations retains portions of the income verification rules as a recordkeeping requirement. With the decision to exclude the predecessor program subscriber list requirement from the Program under section 48E(h), taxpayers will not be required to directly report the method of verification used for each household as part of placed in service reporting. However, to submit an accurate application and Demonstration of Financial Benefits statements, and to appropriately claim the section 48E(h) Increase, taxpayers must have a process to verify that the requisite percentage of their subscribers are Qualifying Households, so that the taxpayer will be able to fulfill the Category 4 financial benefits requirements under section 48E(h)(2)(C) and § 1.48E(h)–1(f)(1) and (2). Moreover, in the event of an audit, taxpayers must be able to provide documentation to prove, that, for each year of the recapture period, the taxpayer has fulfilled the financial benefits requirements under section 48E(h)(2)(C) and § 1.48E(h)–1(f)(1) and (2), validly claimed the credit, and is qualified to retain the section 48E(h) Increase. *See* the recapture rules under § 1.48E(h)–1(n) and section 48E(h)(5).

Regarding comments requesting more clarity and additions to the list of needs-based programs which can be used for categorical eligibility verification, the final regulations will not provide an exhaustive list of Federal or Tribal programs and will not provide any list regarding State or utility programs. The list included in the Proposed Regulations was limited to examples where it could readily be established that the Federal programs have the same income limit requirements as this Program does for Category 4 Qualifying Households. The illustrative list was intended to provide examples of types of programs which are need-based and that would demonstrate that the household is a Qualifying Household based on participation in that program. To prevent further confusion, the illustrative list of Federal programs is not included in the final regulations. For reference purposes, the illustrative list of Federal programs from the Proposed Regulations will be included

in procedural guidance for the Program that will be published in the Internal Revenue Bulletin.

Regarding a list of State or utility level eligible programs, such programs are too numerous and varied for the Treasury Department and the IRS to provide a list, even just for illustrative purposes. Moreover, whether a household meets the income limits is dependent on the location of that household. Therefore, it is the responsibility of the taxpayer seeking the section 48E(h) Increase, to determine whether a program, Federal or otherwise, has the same income limitations as required for Qualifying Households, and, if documentation proving that a member or members of a household participate in such is sufficient to qualify that household as a Qualifying Household.

The final regulations also do not adopt the proposed rule regarding state agency documentation. The proposed rule was only intended to clarify that documentation from State agencies may be acceptable provided the program associated with the documentation had the same income limit requirements. However, the general rule already provides that State program documentation is acceptable for categorical eligibility, and therefore this additional rule was unnecessary.

Section 1.48E(h)–1(f)(4)(ii) provides that applicants may use categorical eligibility verification or direct income verification methods to establish that a household is a Qualifying Household. Section 1.48E(h)–1(f)(4)(ii) provides that applicants may use categorical eligibility verification or direct income verification methods to establish that a household is a Qualifying Household. Section 1.48E(h)–1(f)(4)(ii)(A) defines categorical eligibility consistent with the general definition from the Proposed Regulations, excluding the illustrative list of Federal programs and the discussion of state agencies. Section 1.48E(h)–1(f)(4)(ii) also includes language that an individual in the household must currently be approved for assistance from or participation in a program with an award letter or other written documentation within the last 12 months for enrollment in that program to establish categorical eligibility of the household. This language was adopted from another paragraph in the same section of the Proposed Regulations. Finally, the term *other income verification methods,* from the Proposed Regulations has been revised to *direct income verification,* but otherwise § 1.48E(h)–1(f)(4)(ii) adopts the language from the Proposed Regulations.

V. Annual Capacity Limitation

Under section 48E(h)(4)(C), the total annual Capacity Limitation is 1.8 gigawatts of DC capacity for each calendar year during the period beginning on January 1, 2025, and ending on December 31 of the applicable year (as defined in section 45Y(d)(3)), and zero thereafter. Proposed § 1.48E(h)–1(g)(1) would provide that the Capacity Limitation would be divided across the four facility categories described in section 48E(h)(2)(A)(iii) and proposed § 1.48E(h)–1(b)(2), and that the distribution of the annual Capacity Limitation would be announced in future guidance published in the Internal Revenue Bulletin.

Some commenters requested that the Program retain the Capacity Limitation distributions established for the predecessor program under section 48(e). These commenters observed that maintaining the distribution will encourage facility development in categories that were undersubscribed in the predecessor program. To promote facility development in categories that were undersubscribed in the predecessor program and to provide greater certainty in the Program, the Treasury Department and the IRS revise proposed § 1.48E(h)–1(g)(1), and § 1.48E(h)–1(g)(1) of the final regulations provides, in added Table 1, the annual Capacity Limitation distribution across facility categories for each Program year. Additionally, Table 2 has been added to new § 1.48E(h)–1(g)(2) to provide the distribution of Capacity Limitation within Category to the Category 1 sub-reservations (described in § 1.48E(h)–1(i) of the final regulations and Section VII of these Summary of Comments and Explanation of Revisions).

Proposed § 1.48E(h)–1(g)(1) would also provide that, after the Capacity Limitation for each facility category is established in guidance published in the Internal Revenue Bulletin, it may be reallocated later across facility categories and sub-reservation in the event one category or sub-reservation is oversubscribed and another has excess capacity. Proposed § 1.48E(h)–1(g)(1) would also clarify that a facility category or sub-reservation is oversubscribed if it receives qualified applications in excess of Capacity Limitation reserved for the facility category or sub-reservation.

To provide clarity on the redistribution process of Capacity Limitation during a Program year, the final regulations add procedural rules to § 1.48E(h)–1(g)(2)(i) through (iv). These procedural rules detail the process by which the annual Capacity Limitation described in § 1.48E(h)–1(g)(1) will be redistributed in the event that some categories are undersubscribed and others oversubscribed. Additionally, § 1.48E(h)–1(g)(3) includes the definition for *oversubscribed* that was proposed in § 1.48E(h)–1(g)(1) and adds a coordinating definition for the term *undersubscribed.*

Proposed § 1.48E(h)–1(g)(2) would provide that if the annual Capacity Limitation for any calendar year exceeds the aggregate amount of annual Capacity Limitation allocated for a calendar year under proposed § 1.48E(h)–1(g)(1), then the annual Capacity Limitation for the succeeding calendar year shall be increased by the amount of such excess. No comments were received on this proposed rule. The final regulations adopt this rule with some clarifications at § 1.48E(h)–1(g)(4). The final regulations provide that any unallocated Capacity Limitation carried over from the preceding year will be equally distributed across Category 1, 2, 3, and 4, and further equally distributed across non-Additional Selection Criteria and Additional Selection Criteria reservations. Section 1.48E(h)–1(g)(3) also provides that within Category 1, the portion distributed from the carried over Capacity Limitation will be equally distributed across Category 1 sub-reservations and further across the reserves for Additional Selection Criteria within those sub-reservations.

Finally, § 1.48E(h)–1(g)(5) has been added to the final regulations to clarify how allocations of Capacity Limitation in DC, which is stipulated in section 48E(h)(4)(C), are made to facilities which have a nameplate capacity measured in AC. Section 1.48E(h)–1(g)(5) provides that applicable facilities that have a nameplate capacity in AC and that are awarded an allocation, will be awarded an amount of Capacity Limitation in DC that is equal to the facility's reported nameplate capacity in AC.

VI. Additional Selection Criteria

Proposed § 1.48E(h)–1(h)(1) would provide that at least 50 percent of the total Capacity Limitation in each facility category will be reserved for facilities meeting criteria described in proposed § 1.48E(h)–1(h)(2) (relating to ownership criteria) and proposed § 1.48E(h)–1(h)(3) (relating to geographic criteria). In the Proposed Regulations and in these final regulations the ownership criteria and the geographic criteria are collectively referred to as *Additional Selection Criteria.*

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

No comments were submitted directly addressing these general Proposed Regulations for Additional Selection Criteria. However, one commenter encouraged consideration of other potential Additional Selection Criteria, such as facilities that provide increased financial benefits to qualifying low-income households or that are located on previously developed sites, such as building rooftops, at brownfield sites, and co-located with other infrastructure, because projects that meet these criteria could create greater community impact.

The final regulations do not adopt this recommendation because the commenter did not establish how other potential Additional Selection Criteria could potentially create greater community impact. Further, apart from Additional Selection Criteria, the Program reserves Capacity Limitation for BTM facilities located on rooftops. The Additional Selection Criteria established under proposed § 1.48E(h)–1(h) allows applicants to be evaluated for eligibility under the Additional Selection Criteria, and therefore, an increased chance for an allocation award based on characteristics of the applicant and facility, and without the need to compare applicants.

The final regulations generally adopt proposed § 1.48E(h)–1(h)(1) with the addition that if eligible applications for facilities that meet at least one of the two Additional Selection Criteria categories received during the initial 30-day period total less than 50 percent of the Capacity Limitation for a category, then additional Capacity Limitation would be reserved during the rolling application period such that 50 percent of the total Capacity Limitation in the category would be reserved for these facilities.

However, the final regulations revise § 1.48E(h)–1(h)(1) to account for the inclusion of the distribution of annual Capacity Limitation across categories and the redistribution within a Program year in these final regulations under § 1.48E(h)–1(g). The final regulations clarify that, at the beginning of an application period, the reservation for Additional Selection Criteria applicants is 50 percent of the Capacity Limitation reserved for each category or Category 1 sub-reservation. The final regulations retain the informational language that specific procedures under Additional Selection Criteria will be provided in guidance published in the Internal Revenue Bulletin.

Comments regarding specific criteria under either the Ownership Criteria category or the Geographic Criteria category are summarized and addressed where appropriate in the sections following this paragraph.

A. Ownership Criteria

1. In General

Proposed § 1.48E(h)–1(h)(2)(i) would provide criteria based on ownership (Ownership Criteria), stating that the Ownership Criteria category is based on characteristics of the applicant that owns the applicable facility. Proposed § 1.48E(h)–1(h)(2)(i) would provide that an applicable facility meets the Ownership Criteria if it is owned by a Tribal enterprise, an Alaska Native Corporation, a Native Hawaiian Organization, a renewable energy cooperative, or a qualified tax-exempt entity.

No comments were submitted regarding this general definition, and, therefore, the final regulations adopt this general rule without modification.

2. Indirect Ownership

Proposed § 1.48E(h)–1(h)(2)(ii)(A) would provide that if an applicant wholly owns an entity that is the owner of an applicable facility, and the entity is disregarded as separate from its owner for Federal income tax purposes (disregarded entity), then the applicant, and not the disregarded entity, is treated as the owner of the applicable facility for purposes of the Ownership Criteria. No comments were submitted on this proposed rule. Section 1.48E(h)–1(h)(2)(ii)(A) of the final regulations adopts the proposed rule with a clarification that disregarded entities are not eligible for an award and may not submit an application. The final regulations at § 1.48E(h)–1(h)(2)(ii)(A) also provide that for entities wholly owned and chartered under Tribal law and corporations incorporated under the authority of either section 17 of the Indian Reorganization Act of 1934, 25 U.S.C. 5124 or section 3 of the Oklahoma Indian Welfare Act, 25 U.S.C. 5203, an application may be made as a Tribal Enterprise.

3. Partner Qualifying Partnership

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

No comments were received on this proposed rule. The final regulations adopt the proposed rules without modification at § 1.48E(h)–1(h)(2)(ii)(B).

4. Definitions

i. Tribal Enterprise

Proposed § 1.48E(h)–1(h)(2)(iii) would provide that a ''Tribal enterprise'' for purposes of the Ownership Criteria is an entity that is (1) owned at least 51 percent directly by an Indian Tribal government (as defined in section 30D(g)(9) of the Code), or owned at least 51 percent indirectly through an entity that is wholly owned by the Indian Tribal government and is created either under the Tribal laws of the Indian Tribal government or through a corporation incorporated under the authority of either section 17 of the Indian Reorganization Act of 1934, 25 U.S.C. 5124, or section 3 of the Oklahoma Indian Welfare Act, 25 U.S.C. 5203, and (2) subject to Tribal government rules, regulations, and/or codes that regulate the operations of the entity.

ii. Alaska Native Corporation

Proposed § 1.48E(h)–1(h)(2)(iv) would provide that 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).

iii. Native Hawaiian Organization

Proposed § 1.48E(h)–1(h)(2)(v) would provide that a ''Native Hawaiian Organization'' for purposes of the Ownership Criteria is defined in 13 CFR 124.3.

iv. Renewable Energy Cooperative

Proposed § 1.48E(h)–1(h)(2)(vi) would provide that a ''renewable energy cooperative'' for purposes of the Ownership Criteria is an entity that develops applicable facilities and is either (1) a consumer or purchasing cooperative controlled by its members with each member having an equal voting right and with each member having rights to profit distributions based on patronage as defined by proportion of volume of energy or energy credits purchased (kWh), volume of financial benefits delivered ($), or volume of financial payments made ($), and in which at least 50 percent of the patronage in the qualified facility is by cooperative members who are low-income households (as defined in section 48E(h)(2)(C)); or (2) a worker cooperative controlled by its worker-members with each member having an equal voting right.

v. Qualified Tax-Exempt Entity

Proposed § 1.48E(h)–1(h)(2)(vii) would provide that a ''qualified tax-exempt entity'' for purposes of the Ownership Criteria is:

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

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

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

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

No comments were submitted regarding the proposed definitions of Tribal Enterprise, Alaska Native Corporation, Native Hawaiian Organization, and Renewable Energy Cooperative. The final regulations adopt the proposed definitions without change, except that corporation in the definition of Tribal enterprise is replaced with ''entity.''

However, several commenters representing the low-income housing credit (commonly referred to as LIHTC) industry stated that the definition of qualified tax-exempt entity should be revised to reflect LIHTC partnership structure. According to these commenters, a LIHTC partnership generally has an investor with a 99.9 percent ownership interest and the tax-exempt or nonprofit entity has an 0.01 percent ownership interest. Because the Proposed Regulations require that a qualified tax-exempt entity own a one percent interest in each material item of the partnership to qualify the partnership for Additional Selection Criteria, these commenters asserted that this requirement is incompatible with the ownership structure commonly used for LIHTC financed developments. These commenters alternatively requested the final regulations clarify that a special allocation of depreciation and any associated credits would not be considered to be a ''material item'' in determining one percent ownership.

The Treasury and the IRS understand commenters' concerns and the unintended impacts to LIHTC applicants that are seeking to install clean energy facilities on their qualified low-income residential building projects. Accordingly, the final regulations at § 1.48E–1(h)(2)(ii)(C) revise the Ownership Criteria to allow an applicant to include any partnership that (1) owns an applicable facility connected to a residential building to which credits under section 42 of the Code are reasonably anticipated or have been determined and (2) has a partner for Federal income tax purposes that is a qualified tax-exempt (or another eligible entity identified § 1.48E(h)–1(h)(2)(i)(A) through (E)) to qualify the partnership for the purposes of Ownership Criteria. Section 1.48E–1(h)(2)(ii)(C) of the final regulations provides that the transfer of the facility to the partnership is not a disqualification event for purposes of § 1.48E(h)–1(m)(5) or subject to recapture for purposes of § 1.48E(h)–1(m), so long as the requirements of § 1.48E(h)–1(m)(5) are satisfied. This modification is limited only to applicable facilities that are part of a section 42 LIHTC building.

5. Emerging Market Business

The preamble to the Proposed Regulations indicated that the Treasury Department and the IRS were proposing not to carry over to the Program under section 48E(h), the qualified renewable energy company (QREC) category of Ownership Criteria described in § 1.48(e)–1(h)(2)(vi) from the predecessor program under section 48(e). However, the preamble further stated that the Treasury Department and the IRS considered including a category for emerging market businesses, defined as those businesses that do not have large market shares that could be demonstrated by the number of employees, annual revenue, and other factors, similar to the QREC category from the predecessor Program under section 48(e). The Proposed Regulations requested comment on options to include an Ownership Criteria category for emerging market businesses, similar to the former QREC category. This request specifically asked for comments on how an administrable emerging market business Ownership Criteria category could be structured, including what thresholds a definition should include to define market share and size, age of business, the number of employees (both minimum and maximum) and/or annual gross receipts generated by an emerging market business, and the supporting documentation that could be provided as part of the application to verify an applicant meets such criteria.

Some commenters expressed general support for including an emerging market business category but offered no further detail or advice. Several other commenters noted that they qualified as QRECs under the section 48(e) program and asked that the final regulations use the same criteria for ''emerging market business'' Ownership Criteria. One commenter stated that they understood that this particular Ownership Criteria might be more burdensome than the other criteria in the Ownership Criteria category but asked that the QREC criteria be retained in the section 48E(h) Program and final regulations. This commenter seemed focused on burden to the potential applicants by stating that the QREC requirements for majority ownership by individuals and company size thresholds were workable, and that it would not be an undue burden for companies in the QREC size range to provide tax returns, financial statements, operating agreements, and other business organizational documents.

The QREC category, as with all Additional Selection Criteria, was intended to help create a more efficient allocation process and help ensure that allocations were made to the types of applicants and projects that support the purposes of the Program. However, the QREC criteria instead resulted in a disproportionate administrative burden. Applicants frequently applied as QRECs that did not meet the criteria or failed to submit complete information, causing

delays in the allocation process across the program. In response to these comments and in part based on their administration of the predecessor program under section 48(e), the Treasury Department and the IRS have clarified and streamlined the QREC definition used in the predecessor section 48(e) program to make this criterion more administrable. Specifically, the QREC definition was revised to provide more detail on affiliated entities so as to provide taxpayer certainty and promote sound tax administration. Section 1.48E(h)–1(h)(2)(i)(F) has been added to the final regulations to include QREC as an eligible Ownership Criteria category, and § 1.48E(h)–1(h)(2)(viii) has been added to the final regulations to define QREC. The final regulations provide several changes from the section 48(e) program QREC definition.

First, the definition provided in the final regulations clarifies that QRECs must have a general business purpose to serve low-income communities or low-income households. Second, the final regulations remove the option that at least 51 percent of the entity's ownership interest are owned or controlled by a Community Development Corporation (as defined in 13 CFR 124.3), an agricultural or horticultural cooperative (as defined in section 199A(g)(4)(A) of the Code), an Indian Tribal government (as defined in section 30D(g)(9)), an Alaska Native corporation (as defined in section 3 of the Alaska Native Claims Settlement Act, 43 U.S.C. 1602(m)), or a Native Hawaiian organization (as defined in 13 CFR 124.3). These entities are removed from the definition because they are eligible for Additional Selection Criteria as other Ownership criteria. Therefore, the final regulations provide that at least 51 percent of the entity's equity interests are owned and controlled by one or more individuals. Third, the final regulations clarify that entity affiliation for the purposes of determining both the number of full-time equivalent employees and annual gross receipts is defined as: (1) 25 percent or more of an entity's board seats, voting rights, or equity interests, are cumulatively held by another entity and related entities (as described in described in sections 267(b) or 707(b)(1) of the Code); or (2) one or more of an entities' officers, directors, managing members or partners with authority over the board of directors or management and operations also have authority over the board of directors or management and operations of another entity. Lastly, the final regulations remove the requirement included in the section 48(e) program that a QREC must have provided solar services as a contractor or subcontractor to qualified solar or wind facilities as defined in section 48(e)(2)(A) with at least 100 kW of cumulative nameplate capacity located in one or more low-income communities as defined in section 48(e)(2)(A)(iii)(I).

Proposed § 1.48E(h)–1(h)(2)(ii)(B), regarding a partner qualifying a partnership for purposes of the Ownership Criteria, has also been revised to note that this paragraph is not applicable to QREC applicants. Under the regulations for the predecessor program under section 48(e), a partner that qualified as a QREC and held the requisite interest amount in the partnership could qualify the partnership as a QREC. Moreover, a QREC that received an allocation was permitted to transfer the allocation to a partnership without triggering disqualification if the original applicant that qualified as a QREC remained in the partnership and met the requisite interest requirements in the partnership. This inclusion of QRECs under § 1.48(e)–1(h)(2)(ii)(B) (the regulations for the predecessor program under section 48(e)), at times, proved to be incompatible with the purpose of establishing QRECs as an Ownership Criteria category, which was to prioritize small, emerging market businesses for an allocation. Instead, some applicants utilized the presence of a small business partner to then qualify a partnership that is not a small business. Moreover, the inclusion of QRECs to qualify a partnership was often in conflict with the QREC affiliated entities threshold requirements. Therefore, to eliminate confusion and any conflict between the Ownership Criteria provision, these final regulations for the program under section 48E(h) exclude QRECs from the partner qualifying a partnership provisions under § 1.48E(h)–1(h)(2)(ii)(B).

B. Geographic Criteria

Proposed § 1.48E(h)–1(h)(3) would provide criteria based on geography (Geographic Criteria). As described in the preamble of the Proposed Regulations, the Geographic Criteria category is based on where the facility will be placed in service. Geographic Criteria do not apply to Category 2 facilities. To meet the Geographic Criteria, a facility needs to be located in a Persistent Poverty County (PPC) [2] as described in proposed § 1.48E(h)–1(h)(3)(ii) or in certain census tracts identified on the CEJST [3] and as described in proposed § 1.48E(h)–1(h)(3)(iii).

Proposed § 1.48E(h)–1(h)(3)(ii) would describe a PPC as any county where 20 percent or more of residents have experienced high rates of poverty over the past 30 years. Proposed § 1.48E(h)–1(h)(3)(ii) would provide that for purposes of the Program, the Proposed Regulations would use the PPC measure adopted by the United States Department of Agriculture (USDA) to make this determination.

No comments were received recommending modification of these rules, and the Proposed Regulations related to Geographic Criteria are adopted in the final regulations at § 1.48E(h)–1(h)(3)(ii) without modification.

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

Proposed § 1.48E(h)–1(i)(1) would subdivide the Capacity Limitation reservation for facilities seeking a Category 1 allocation with a portion of the Capacity Limitation specifically reserved for eligible residential behind the meter (BTM) facilities, including rooftop solar. This is because the sub-reservation of a substantial portion of the allocation in Category 1 for eligible residential BTM facilities would help ensure that allocations predominantly are awarded to facilities serving residences and consumers, rather than facilities serving businesses. Proposed § 1.48E(h)–1(i)(1) would reserve the remaining Capacity Limitation in Category 1 for applicants with front of the meter (FTM) facilities as well as non-residential BTM facilities. Proposed § 1.48E(h)–1(i)(1) would clarify that the specific amounts of the Category 1 sub-reservations will be provided in future guidance published in the Internal Revenue Bulletin that is applicable to a Program year based on factors such as promoting efficient allocation of Capacity Limitation and allowing like-projects to compete for an allocation. Proposed § 1.48E(h)–1(i)(1) would provide that after the sub-reservation is established in guidance published in the Internal Revenue Bulletin, it may be reallocated later in the event it has excess capacity.

One commenter generally supported the proposal contained in the Proposed Regulations to create a sub-reservation of Category 1 Capacity Limitation for

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

[3] *https://screeningtool.geoplatform.gov/en/#3/33.47/-97.5,* or a successor website such as *IRS.gov*.

residential BTM facilities under proposed § 1.48E(h)–1(i). No other comments were submitted on this proposal. The final regulations under § 1.48E(h)–1(i) adopt the proposed rule without modification.

VIII. Application and Selection Process

Section 48E(h)(4)(A) provides that ''[i]n establishing such program and to carry out the purposes of this subsection, the Secretary shall provide procedures to allow for an efficient allocation process.'' In part based on their administration of the predecessor program under section 48(e), the Treasury Department and the IRS anticipate that the number of eligible applicants within any given category seeking an allocation may exceed the total Capacity Limitation allocation available to be allocated. Accordingly, the Treasury Department and the IRS are designing an application process that both ensures that allocations are awarded to facilities that advance the program goals and facilitates an efficient allocation process.

Proposed § 1.48E(h)–1(j)(1) would provide that applications for a Capacity Limitation allocation will be evaluated according to the procedures specified in guidance published in the Internal Revenue Bulletin. Based on feedback received with respect to the section 48(e) predecessor program and an assessment of operational capabilities set up to administer the Program under section 48E(h), the preamble to the Proposed Regulations explained that the expected process would include one or more initial application windows in which applications received by a certain time and date would be evaluated together, followed by a rolling application process. The final regulations add § 1.48E(h)–1(j)(4) to establish the annual application period. Section 1.48E(h)–1(j)(4) also adds certain procedural rules to explain the initial 30-day application window in which applications received by a certain time and date would be evaluated together, followed by a rolling application process. Additionally, § 1.48E(h)–1(j)(4) explains the process by which Additional Selection Criteria applications are prioritized for review and allocations from a particular reservation of Capacity Limitation.

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

Several comments discussed documentation requirements and related procedural requirements. These comments specifically requested exemptions from having to provide documentation or requested the ability to provide alternate documentation due to circumstances specific to that commenter or specific to a State or utility. Comments regarding specific documentation or procedural requirements are outside the scope of these regulations. State and local rules for energy-generating facilities and low-income clean energy programs vary considerably, and procedures for those rules may not be relevant to or compatible with the requirements under section 48E(h). Consistent with the statute, the Treasury Department and the IRS seek to establish an efficient application and allocation process, as well as promote certainty for applicants as to how their application is being reviewed. To do so, documentation and procedural requirements must be standardized to the extent appropriate and possible, and it would not promote sound tax administration to create separate requirements for each applicant based on their specific circumstances. The Treasury Department and the IRS will periodically assess the Program to determine whether to make any changes to the Program's application process. Specific information related to documentation and procedural requirements will be provided in guidance published in the Internal Revenue Bulletin. The Treasury Department and the IRS expect that the specific application information, documentation, and attestation requirements provided in procedural guidance applicable to the Program published in the Internal Revenue Bulletin will be substantially similar to requirements applicable the section 48(e) Low-Income Communities Bonus Program provided in Revenue Procedure 2024–19, 2024–16 I.R.B. 899. Like the section 48(e) program, some requirements may differ for FTM and BTM facilities and other requirements may differ by facility category and Additional Selection Criteria. The final regulations under § 1.48E(h)–1(j)(1) through (2) adopt the proposed rules without modification.

Although no specific comments were submitted in response to the Proposed Regulations regarding recordkeeping, the Treasury Department and the IRS determined that, in the interest of sound tax administration, a record retention rule is necessary in addition to the specific information, documentation, and attestation requirements set forth in the Proposed Regulations. Consistent with the current applicable periods of limitations under section 6501 of the Code on assessment and collection of tax under chapter 1 with respect to the applicable taxpayer's return filed for the taxable year, § 1.48E(h)–1(o) of the final regulations provide that the applicant is required to retain records and materials related to the application for the following periods: (1) for at least 6 years after the due date (with extensions) for filing the Federal income tax return after the tax year that return is filed to claim the increase in the section 48E credit; and (2) for at least 6 years after the due date (with extensions) for filing the Federal income tax return for the last year that the applicant could be subject to recapture as described in § 1.48E(h)–1(n). These records are considered general tax records under § 1.6001–1(e), and they are required for the IRS to validate that taxpayers have met the regulatory requirements and are entitled to receive the section 48E(h) Increase.

Proposed § 1.48E(h)–1(j)(3) would provide that there is no administrative appeal of Capacity Limitation allocation decisions. No comments were submitted on this provision, and the final regulations at § 1.48E(h)–1(j)(3) adopt this rule without modification.

IX. Placed in Service

A. Documentation and Attestations To Be Submitted When Facility Is Placed in Service

Proposed § 1.48E(h)–1(k)(1) would require facilities that received a Capacity Limitation allocation to report to the Department of Energy (DOE) the date the applicable facility was placed in service. Proposed § 1.48E(h)–1(k)(2) would require facilities that received a Capacity Limitation to submit additional documentation or complete additional attestations with this reporting. At the time of application, applicants would not necessarily be able

to demonstrate compliance with certain eligibility requirements, as the facility would not yet be operating at that time. Requiring placed in service reporting will allow for final verification that the facilities that were awarded a Capacity Limitation Allocation have met certain eligibility requirements under the Program. Therefore, proposed § 1.48E(h)–1(k)(2) would require facilities awarded a Capacity Limitation to submit final eligibility information at the time of placed in service.

Proposed § 1.48E(h)–1(k)(3) would provide that the DOE will review the placed in service documentation and attestations to determine if the facility meets the eligibility criteria for the owner to claim an increased applicable percentage. Proposed § 1.48E(h)–1(k)(3) would provide that the DOE then provides a recommendation to the IRS regarding whether the facility continues to meet the eligibility requirements for the facility to retain its allocation or if the facility should be disqualified (as provided in proposed § 1.48E(h)–1(m)). Proposed § 1.48E(h)–1(k)(3) would generally provide that the IRS reviews recommendations, and if deemed appropriate, issues the final eligibility letter.

No comments were submitted regarding documentation and attestations to be submitted when placed in service. The final regulations adopt proposed § 1.48E(h)–1(k) with minor edits to clarify technical procedures.

B. Placed in Service Prior to Allocation Award

Proposed § 1.48E(h)–1(l)(1) would provide that facilities that are placed in service prior to being awarded an allocation of Capacity Limitation will not be eligible to receive an allocation. Proposed § 1.48E(h)–1(l)(2) would provide that if a facility is placed in service after the application is submitted, but prior to the allocation of Capacity Limitation, and the facility is awarded an allocation, the allocation will be rescinded.

Several commenters recommend that § 1.48E(h)–1(l)(2) be modified so that an award is not rescinded if a Category 1 facility is placed in service after submitting an application but prior to receiving the allocation award. These commenters asserted that this rule is problematic and disruptive in practice for residential-serving rooftop solar projects that have shorter development timelines.

The Treasury Department and the IRS do not adopt this recommendation, and § 1.48E(h)–1(l)(2) is adopted without modification. Awarding an allocation to facilities that have already been placed in service would be inconsistent with the statute and the goal of the Program to promote investment in new clean electricity facilities. Section 48E(h)(4)(E)(i) provides that a facility must be placed in service within four years of receiving an allocation of Capacity Limitation, indicating that allocations should be made to new facilities that have not yet been placed in service. Accordingly, facilities placed in service prior to being awarded an allocation of Capacity Limitation are ineligible to receive an allocation. The final regulations maintain the use of a Category 1 sub-reservation for facilities that serve BTM facilities to support timely review of applications serving residential-serving rooftop solar projects that have shorter development timelines.

X. Post-Allocation Compliance

A. Disqualification After Receiving an Allocation

Proposed § 1.48E(h)–1(m) would provide that a facility that was awarded a Capacity Limitation allocation is disqualified and loses its allocation if prior to or upon the facility being placed in service: (1) the location where the facility will be placed in service changes; (2) the maximum net output of the facility increases such that it exceeds the less than five megawatt requirement provided in section 48E(h)(2)(A)(ii) or the nameplate capacity decreases by the greater of 2 kW or 25 percent of the Capacity Limitation awarded in the allocation; (3) the facility cannot satisfy the financial benefits requirements under section 48E(h)(2)(B)(ii) and proposed § 1.48E(h)–1(e) as planned (if applicable) or cannot satisfy the financial benefits requirements under section 48E(h)(2)(C) and proposed § 1.48E(h)–1(f) as planned (if applicable); (4) the eligible property that is part of the facility that received the Capacity Limitation allocation is not placed in service within four years after the date the applicant was notified of the allocation of Capacity Limitation to the facility or the facility that received the Capacity Limitation allocation is placed in service ahead of allocation of award; or (5) the facility received a Capacity Limitation allocation based, in part, on meeting the Ownership Criteria and ownership of the facility changes prior to the facility being placed in service, unless the original applicant transfers the facility to an entity classified as a partnership for Federal income tax purposes and retains at least a one percent interest (either directly or indirectly) in each material item of partnership income, gain, loss, deduction, and credit of such partnership and is a managing member or general partner (or similar title) under State or Tribal law of the partnership (or directly owns 100 percent of the equity interests in the managing member or general partner) at all times during the existence of the partnership. No comments were received related to proposed § 1.48E(h)–1(m), and this rule is adopted without modification.

B. Recapture of Section 48E(h) Increase

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

Proposed § 1.48E(h)–1(n)(1) would provide that if, at any time during the five year recapture period beginning on the date that an applicable facility under section 48E(h) is placed in service, there is a recapture event under proposed § 1.48E(h)–1(n)(3) with respect to such property, then the Federal income tax imposed on the taxpayer by chapter 1 of the Code for the taxable year in which the recapture event occurs is increased by the recapture percentage of the benefit of the increase in the section 48E credit. Proposed § 1.48E(h)–1(n)(1) would provide that the recapture percentage is determined according to the table provided in section 50(a)(1)(B).

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

§ 1.48E(h)–1(n)(2) would provide that such restoration of an increase pursuant to section 48E(h) is not available more than once with respect to any facility.

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

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

No comments were received related to the recapture provisions contained in the Proposed Regulations. Accordingly, these recapture provisions are adopted in the final regulations without modification.

Applicability Date

The final regulations set forth apply to applicable facilities that are placed in service after December 31, 2024, and during taxable years ending on or after January 13, 2025.

Special Analyses

I. Regulatory Planning and Review—Economic Analysis

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

II. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA) requires that a Federal agency obtain the approval of OMB before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. The collections of information in these final regulations contain reporting and recordkeeping requirements that are required to obtain the section 48E(h) Increase. This information in the collections of information would generally be used 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 final regulation are considered general tax records under § 1.6001–1(e). These records are required for IRS to validate that taxpayers have met the regulatory requirements and are entitled to receive the section 48E(h) Increase. For PRA purposes, general tax records are already approved by OMB under 1545–0123 for business filers, 1545–0074 for individual filers, and 1545–0047 for tax-exempt organizations.

The final regulations also provide reporting requirements related to providing attestations and supporting documentation for initial application, supplemental documentation for specific facilities, and to confirm a facility is placed in service as detailed in these final regulations. 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 IRS will procure certain administration services for the Program. Among other things, these administration services will include establishing a website portal to review the applications for eligibility criteria and providing 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 1545–2327 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.

The IRS solicited feedback on the collection requirements for the application, supporting documentation, and attestations. Although no public comments received by the IRS were directed specifically at the PRA or on the collection requirements, several commenters generally expressed concerns about the burdens associated with the documentation requirements contained in the Proposed Regulations. As described in the relevant portions of this preamble, the Treasury Department and the IRS believe that the documentation requirements are necessary to administer the Program.

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 will not have a significant economic impact on a substantial number of small entities, section 604 of the RFA requires the agency to present a final regulatory flexibility analysis (FRFA) of the final regulations. The Treasury Department and the IRS have not determined whether the final regulations will likely have a significant economic impact on a substantial number of small entities. This determination requires further study and an FRFA is provided in these final regulations.

Pursuant to section 7805(f) of the Code, these final regulations were submitted to the Chief Counsel of Advocacy of the Small Business Administration, and no comments were received.

1. Need for and Objectives of the Rule

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

2. Significant Issues Raised by Public Comments in Response to the IRFA

There were no comments filed that specifically addressed the Proposed Regulations and policies presented in the IRFA. Additionally, no comments were filed by the Chief Counsel of Advocacy of the Small Business Administration.

3. 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 the final 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 final regulation and in the FRFA, these rules may affect a variety of different businesses across serval different industries.

4. Impact of the Rules

The recordkeeping and reporting requirements would increase for applicants that participate in the Program. Although the Treasury Department and the IRS do not have sufficient data to determine precisely the likely extent of the increased costs of compliance, the estimated burden of complying with the recordkeeping and reporting requirements are described in section II. (Paperwork Reduction Act) of the Special Analyses. In particular, section II. of the Special Analyses contains a summary of paperwork burden estimates for the application, supporting documentation, and submissions when projects are placed in service. The IRS solicited feedback on the collection requirements for the application, supporting documentation, and attestations. Although no public comments received by the IRS were directed specifically at the PRA or on the collection requirements, several commenters generally expressed concerns about the burdens associated with the documentation requirements contained in the Proposed Rule. As described in the relevant portions of this preamble, the Treasury Department and the IRS believe that the documentation requirements are necessary to administer the Program.

5. Steps Taken To Minimize Impacts on Small Entities and Alternatives Considered

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

Another example is the revisions to the list of eligible housing programs that can be found in the Summary of Comments and Explanation of Revisions section of this document. In the preamble to Treasury Decision 9979, applicable to the Low-Income Communities Bonus Credit Program established under section 48(e), the HUD tenant-based rental assistance under section 8 of the United States Housing Act of 1937 was included as eligible housing program. The Treasury Department and the IRS considered retaining tenant-based housing assistance programs. However, after consulting with HUD, it was determined that tenant-based assistance is assistance that can only be attributed to a particular tenant, and not a building. Under section 48E(h)(2)(B), for a facility to qualify as a being part of a qualified low-income residential building project, the facility must be installed on a residential rental building that participates in a covered housing program or other affordable housing program (that is, a Qualified Residential Property). Tenant-based housing assistance programs applicable to a particular tenant do not qualify the building in which the tenant resides as participating in a covered housing program or other affordable housing program. Therefore, because tenant-based assistance under Section 8 does not comport with the requirements under section 48E(h)(2)(B), tenant-based housing assistance programs under Section 8 have been removed as an eligible housing program for purposes of the Program under section 48E(h).

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

IV. Unfunded Mandates Reform Act

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

V. Executive Order 13132: Federalism

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

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

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments) prohibits an agency from publishing any rule that has Tribal implications if the rule either imposes substantial, direct compliance costs on Indian Tribal governments, and is not required by statute, or preempts Tribal

law, unless the agency meets the consultation and funding requirements of section 5 of the Executive order. These regulations do not have substantial direct effects on one or more Federally recognized Indian tribes and does not impose substantial direct compliance costs on Indian Tribal governments within the meaning of the Executive order.

Nevertheless, on September 27, 2024, the Treasury Department and the IRS held a consultation with Tribal leaders requesting assistance in addressing questions related to Low-Income Communities Bonus Credit Amount Program, which informed the development of these regulations.

VII. Congressional Review Act

Pursuant to the Congressional Review Act (CRA) (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs has determined that this rule meets the criteria set forth in 5 U.S.C. 804(2).

VIII. Immediate Effective Date

These final regulations have an effective date of January 13, 2025. To the extent that a good cause statement is necessary under any provision of law, the Treasury Department and the IRS find that there would be good cause to make this rule immediately effective upon publication in the **Federal Register**. The IRA added the section 48E credit to the Code, and provided that the section 48E credit applies to property placed in service after December 31, 2024. Pursuant to the IRA, section 48E(h)(4)(A) directs the Secretary, not later than January 1, 2025, to establish a program to allocate amounts of Capacity Limitation to applicable facilities and to ''provide procedures to allow for an efficient allocation'' of Capacity Limitation to applicable facilities. In addition, the public already has been provided notice of the general contents of the rules in the proposed regulations and their proposed applicability to applicable facilities placed in service after December 31, 2024, and during taxable years ending on or after the date of publication of these final regulations. As provided in the IRA, section 48E(h) replaces the existing low-income communities bonus credit program for applicable facilities placed in service after December 31, 2024. The statute and proposed regulations, therefore, provide notice that the rules will apply to applicable facilities placed in service beginning in 2025, and provide notice of the qualification requirements being promulgated in this final rule.

The Treasury Department and the IRS have determined that an expedited effective date of the final regulations is appropriate here because of the January 1, 2025, deadline to establish the Program and to provide certainty to taxpayers.

Consistent with Executive Order 14008 (January 27, 2021), and commenters' requests for final rules, the Treasury Department and the IRS have determined that an expedited effective date of the final regulations is appropriate here given the statutory deadline to establish the Program and to provide certainty to taxpayers. The final regulations provide needed rules on what the law requires for taxpayers to begin job-generating construction of capital-intensive projects qualifying for section 48E(h). Making the final regulations effective as soon as possible will also prevent delays in enabling low-income households to access cost-saving clean electricity in 2025 given the transition from section 48(e) to section 48E(h). Accordingly, to the extent that a finding of good cause is necessary, the Treasury Department and the IRS have found good cause for the rules in this Treasury decision to take effect on the date of publication in the **Federal Register**.

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 regulations is the Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

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

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

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

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(2) Exception to application of recapture.
(3) Recapture events.
(4) Section 50(a) recapture.
(o) Record retention.
(p) Applicability date.

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

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

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

(i) *Applicant.* The terms *applicant* and *taxpayer* are used interchangeably as the context may require. An applicant is the taxpayer that owns the applicable facility and that intends to claim the section 48E credit and will be applying for an allocation of Capacity Limitation for purposes of the section 48E(h) Increase. A disregarded entity is not eligible to be an applicant. The regarded taxpayer that owns the disregarded entity is the owner of the applicable facility and, therefore, the applicant, for purposes of the Program and this section.

(ii) *Disregarded entity.* The term *disregarded entity* means an entity that is disregarded as separate from its owner for Federal income tax purposes.

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

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

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

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

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

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

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

(iii) *Category 3 facility.* A facility is a *Category 3 facility* if it is part of a qualified low-income residential building project. A facility will be treated as part of a qualified low-income

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

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

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

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

(3) *Less than five megawatts requirement*—(i) *In general.* For purposes of this paragraph (b), the less than five megawatts requirement in paragraph (b)(1)(ii) of this section is measured at the level of the applicable facility in accordance with section 48E(h)(2)(A)(ii). The maximum net output of an applicable facility is measured only by nameplate generating capacity of the applicable facility, which includes only functionally interdependent components of the applicable facility, at the time the applicable facility is placed in service. Components of property are functionally interdependent if the placing in service of each component is dependent upon placing in service other components to produce electricity.

(ii) *Nameplate capacity for purposes of the less than five megawatts requirement.* The determination of whether an applicable facility has a maximum net output of less than 5 MW (as measured in AC) is based on the nameplate capacity of the applicable facility. If an applicable facility has *integrated operations* with one or more other qualified facilities of the same technology type, then the aggregate nameplate capacity of the applicable facility and each other qualified facility is used to determine whether the less than five megawatts requirement in paragraph (b)(1)(ii) of this section is met. If an applicable facility has a maximum net output equal to or more than 5MW (as measured in AC), it is not eligible for the Program. The nameplate capacity for purposes of the less than five megawatts requirement in paragraph (b)(1)(ii) of this section is the maximum electrical generating output in MW that the applicable facility is capable of producing on a steady state basis and during continuous operation under standard conditions, as measured by the manufacturer and consistent with the definition of nameplate capacity provided in 40 CFR 96.202. If applicable, the International Standard Organization conditions should be used to measure the maximum electrical generating output of an applicable facility.

(iii) *Nameplate capacity for an applicable facility that generates in direct current for purposes of the less than five megawatts requirement.* Only for applicable facilities that generate electricity in direct current, the taxpayer may choose to determine the maximum net output (in alternating current) of the applicable facility by using the lesser of:

(A) The nameplate generating capacity of the applicable facility in direct current, which is deemed the nameplate generating capacity of the applicable facility in alternating current; or

(B) The nameplate capacity of the first component of property that inverts the direct current electricity into alternating current.

(iv) *Integrated operations.* For the purposes of the less than five megawatts requirement in paragraph (b)(1)(ii) of this section, an applicable facility is treated as having *integrated operations* with one or more other qualified facilities of the same technology type if the facilities are:

(A) Owned by the same or related taxpayers;

(B) Placed in service in the same taxable year; and

(C) Transmit electricity generated by the facilities through the same point of interconnection or, if the facilities are not grid-connected or are delivering electricity directly to an end user behind a utility meter, are able to support the same end user.

(4) *Related taxpayers*—(i) *Definition.* For purposes of this paragraph (b), the term *related taxpayers* means members of a group of trades or businesses that are under common control (as defined in § 1.52–1(b)).

(ii) *Related taxpayer rule.* For purposes of this paragraph (b), related taxpayers are treated as one taxpayer in determining whether an applicable facility has integrated operations.

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

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

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

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

power before converting to AC (for example, solar photovoltaic), should use nameplate capacity in DC, otherwise the nameplate capacity in AC should be used.

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

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

(3) *Financial value of the electricity produced by the facility.* Financial benefits are calculated as the financial value of the electricity produced by the applicable facility. For purposes of this paragraph (e), *financial value of the electricity produced by the facility* means the greater of:

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

(ii) The net financial value (as defined in paragraph (e)(5) of this section) of the annual electricity produced by the applicable facility.

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

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

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

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

(5) *Net financial value defined*—(i) *Common ownership.* For purposes of this paragraph (e), if the facility and Qualified Residential Property are commonly owned, *net financial value* means:

(A) The gross financial value of the annual electricity produced; minus

(B) The annual average (or levelized) cost of the applicable facility over the useful life of the facility (including debt service, maintenance, replacement reserve, capital expenditures, and any other costs associated with constructing, maintaining, and operating the facility).

(ii) *Third-party ownership.* For purposes of this paragraph (e), if the facility and the Qualified Residential Property are not commonly owned and the facility owner enters into a power purchase agreement or other contract for electricity services with the Qualified Residential Property owner and/or building occupants, *net financial value* means:

(A) The gross financial value of the annual electricity produced; minus

(B) Any payments made by the building owner and/or building occupants to the facility owner for electricity services associated with the facility in a given year.

(iii) *Equitable allocation of financial benefits.* Paragraphs (e)(5)(iii)(A) and (B) of this section provide rules regarding an equitable allocation of financial benefits in circumstances where financial value is distributed to building occupants via utility bill savings or via different means, respectively. Distributed financial benefits or investments previously made to the Qualified Residential Property are not considered eligible financial benefits for this purpose.

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

(B) *If financial value is not distributed via utility bill savings.* If financial value is not distributed via utility bill savings, financial benefits will be considered to be allocated equitably if at least 50 percent of the financial value of the electricity produced by the facility is distributed to occupants using one or more methods described in HUD guidance regarding benefits sharing for master-metered HUD-assisted housing, such as the Treatment of Financial Benefits to HUD-Assisted Tenants Resulting from Participation in Solar Programs Notice (Housing Notice 2023–09) located at *https://www.hud.gov/sites/dfiles/OCHCO/documents/2023-09hsgn.pdf,* or other applicable HUD guidance, or other guidance or notices from the Federal agency that oversees the applicable housing program identified in section 48E(h)(2)(B). In the case of a solar facility, applicants must comply with applicable HUD guidance for how residents of master-metered HUD-assisted housing can benefit from owners' sharing of financial benefits

accrued from an investment in solar electricity generation to ensure that HUD-assisted tenants' calculations for utility allowances and annual income for rent are not negatively impacted. In the absence of applicable guidance from a Federal agency, applicants should apply principles similar to those articulated in HUD guidance in the case of any other applicable facility.

(6) *Benefits sharing statement*—(i) *In general.* The facility owner must prepare a *Benefits sharing statement* to submit at placed in service reporting, which must include:

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

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

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

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

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

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

(f) *Financial benefits for a Category 4 facility*—(1) *In general.* The requirements of each of paragraph (f)(1)(i) through (iii) of this section must be met to satisfy the requirements of a Category 4 facility as provided in paragraph (b)(2)(iv) of this section.

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

(ii) At least 50 percent of the total financial benefits of the electricity produced by the applicable facility must be assigned to Qualifying Households. Total financial benefits is calculated as the sum of all value from electricity production as measured by the utility, independent system operator, or other off-taker procuring electricity, and any additional value (including, for example, any electricity services, products, and credits or certificates such as RECs provided in connection with the electricity produced by such facility, but excluding any Federal tax credits), from the facility.

(iii) Each Qualifying Household must be provided a bill credit discount rate (as defined in paragraph (f)(2) of this section) of at least 20 percent.

(2) *Bill credit discount rate*—(i) *With cost to participate.* A *bill credit discount rate* is the difference between the amount of the total financial benefits provided to a Qualifying Household (including utility bill credits, reductions in a Qualifying Household's electricity rate, or other monetary benefits accrued by the Qualifying Household on their utility bill) and the cost by a Qualifying Household for participating in the program (including, but not limited to subscription payments for zero carbon and any other fees or charges, such as consolidated billing fees), expressed as a percentage of the amount of the total financial benefits provided to a Qualifying Household. The bill credit discount rate must be calculated by starting with the amount of the total financial benefits provided to a Qualifying Household, subtracting all payments made by a Qualifying Household (or payments remitted on behalf of the Qualifying Household through net crediting, consolidated billing, or similar arrangements) to the facility owner and any related third parties as a condition of receiving that financial benefit to determine the net financial benefit (cost savings) to a Qualified Household, then dividing that difference by the amount of the total financial benefit provided to the Qualifying Household.

(ii) *No or nominal cost of participation.* In cases in which the Qualifying Household has no or only a nominal cost of participation, and financial benefits are delivered through a utility or government body, the bill credit discount rate must be calculated as the net financial benefits (cost savings) provided to a Qualifying Household (including utility bill credits, reductions in a Qualifying Household's electricity rate, or other monetary benefits accrued by a Qualifying Household on their utility bill) divided by the amount of the total financial benefit assigned to a Qualifying Household.

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

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

(A) *Example 1.* A Qualifying Household signs a community solar subscription agreement with the facility owner. Each month, the facility owner will assign a portion of the electricity generated (or its value) by the facility to the household's utility bill, and the household will pay the facility owner. The amount the household pays the facility owner cannot exceed 80 percent of the monetary value of the assigned generation. The remaining 20 percent is a cost savings to the household on electricity. In this example, over the course of the first year the facility owner or their agent cause $180 in utility bill credits to be placed on the Qualifying Household's bill, and the Qualifying Household pays $144, inclusive of any upfront fees. The subsequent year, due to variation in solar generation and/or the compensation paid by the utility for solar generation, the facility owner, in accordance with the community solar subscription agreement, causes $240 in bill credits to be provided to the Qualifying Household's bill and the household pays $192. In each year of facility operation described within this example, a bill credit discount rate of 20 percent is maintained (($180–$144)/$180 = 20%) and (($240–$192)/$240 = 20%), respectively.

(B) *Example 2.* Due to the regulatory structure of the applicable jurisdiction or program, the terms of the community solar subscription, the use of a *net-crediting* mechanism, or other reason, the Qualifying Household does not make a direct payment to the facility owner, but rather payment is remitted on their behalf by the utility. In this example, over the course of the first year the facility owner or their agent cause $200 in utility bill credits to be placed on the Qualifying Household's bill, and the Qualifying Household's utility remits $160 to the facility owner, inclusive of any upfront fees. The subsequent year, due to variation in solar generation and/or the compensation paid by the utility for solar generation, the facility owner, in accordance with the community solar subscription agreement, causes $240 in bill credits to be provided to the Qualifying Household's bill and the utility remits $192 to the facility owner. In each year of facility operation described within this example, a bill credit discount rate of 20 percent is maintained (($200–$160)/$200 = 20%) and (($240–$192)/$240 = 20%), respectively.

(C) *Example 3.* Assume the facility is part of a program by which the financial benefits are delivered to 100 Qualifying Households through a utility or government body, and each Qualifying Household pays no cost to participate. Assume that the financial value of the electricity produced by the facility's total output is $120,000 in the first year and $160,000 in the second year.

Assume that 50% of the facility's financial value of the electricity is assigned to Qualifying Households and is therefore calculated as $60,000 in the first year ($120,000 × 50% = $60,000) and $80,000 in the second year ($160,000 × 50% = $80,000). Assume further that each Qualifying Household is assigned the same total financial benefit ($600 in the first year and $800 in the second year). If the bill credit discount rate for each Qualifying Household is 20 percent in each year, the net financial benefits (or cost savings) provided to each Qualifying Household is $120 in the first year ($120/$600 = 20%) and $160 in the second year ($160/$800 = 20%).

(3) *Demonstration of financial benefits statement.* The facility owner must prepare a *Demonstration of Financial Benefits Statement,* which must include:

(i) A calculation of the total financial benefits of annual electricity production, as described in paragraph (f)(1)(ii) of this section;

(ii) The percent of the total financial benefits provided and/or assigned to Qualifying Households;

(iii) The bill credit discount rate method used (with cost to participate or no or nominal cost of participation);

(iv) A calculation of the bill credit discount rate;

(v) A description of the means of distributing the required benefits to Qualifying Households; and

(vi) Documentation that the facility is enrolled in the applicable utility tariff, program, or other arrangement used to distribute financial benefits to Qualifying Households.

(4) *Low-income verification and recordkeeping*—(i) *In general.* Taxpayers must verify that a household meets the income limits under section 48E(h)(2)(C)(i) or (ii), whichever is applicable to the household based on the household's location, for the household to be a Qualifying Household under paragraph (f)(1)(i) of this section. A household's low-income status is determined at the time the household enrolls in the subscription program and does not need to be re-verified. The qualifying income level for a Qualifying Household is based on where such household is located. Taxpayers must additionally maintain records of the verification for each household that prove the taxpayer has provided requisite percentage of financial benefits to Qualifying Households.

(ii) *Methods of verification.* Applicants may use categorical eligibility verification or direct income verification methods, but not an impermissible verification method described in paragraph (f)(4)(ii)(C) of this section, to establish that a household is a Qualifying Household.

(A) *Categorical eligibility.* Categorical eligibility consists of obtaining proof of the household's participation in a needs-based Federal, State, Tribal, or utility program with income limits at or below the qualifying income level required to be a Qualifying Household. An individual in the household must currently be approved for assistance from or participation in a program with an award letter or other written documentation within the last 12 months for enrollment in that program to establish categorical eligibility of the household.

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

(C) *Impermissible verification method.* A self-attestation from a member or members of a household is not a permissible method to establish a household is a Qualifying Household. This prohibition on direct self-attestation from a household, for purposes of this Program, does not extend to categorical eligibility verification where the eligible needs-based Federal, State, Tribal, or utility programs with income limits rely on self-attestation for verification of income, and the taxpayer has obtained proof of a member or members of a household's participation in such a program.

(g) *Annual Capacity Limitation*—(1) *In general.* Under section 48E(h)(4)(C), the total annual Capacity Limitation is 1.8 gigawatts of DC capacity (Annual Capacity Limitation) for each calendar year of the Program. The Annual Capacity Limitation for each Program year is divided across the four facility categories described in section 48E(h)(2)(A)(iii) and paragraph (b)(2) of this section based on factors such as the anticipated number of applications that are expected for each category and the amount of Capacity Limitation that needs to be reserved for each category to encourage market participation in each category. The initial distribution of the Annual Capacity Limitation for each Program year is:

TABLE 1 TO PARAGRAPH (g)(1) OF THIS SECTION

Category	Capacity limitation (DC)
1: Located in a Low-Income Community.	600 MW.
2: Located on Indian Land	200 MW.
3: Qualified Low-Income Residential Building Project.	200 MW.
4: Qualified Low-Income Economic Benefit Project.	800 MW.

(2) *Sub-reservations.* The reservation of Capacity Limitation for Category 1 is further divided into Category 1 sub-reservations, which are described in paragraph (i) of this section. The category 1 sub-reservation distribution of Capacity Limitation is:

TABLE 2 TO PARAGRAPH (g)(2) OF THIS SECTION

Eligible FTM facilities and non-residential BTM facilities.	200 MW.

(3) *Redistribution within Program year.* At the close of the application period for a Program year, if some categories or sub-reservations are undersubscribed, while others are oversubscribed, capacity will be redistributed within the Program year for allocation to applicants in another Category or sub-reservation. A category or sub-reservation is undersubscribed if the amount of capacity applied for in all eligible applications within a reservation is less than the amount of the Capacity Limitation portion distributed to that reservation. A category or sub-reservation is oversubscribed if the amount of capacity applied for in all eligible applications within a particular reservation is in excess of the Capacity Limitation portion distributed to that reservation. Capacity Limitation will be redistributed within a Program year in the following manner:

(i) Capacity will first be redistributed within a category from the undersubscribed reservation to the oversubscribed reservation. For example, if the Additional Selection Criteria reservation is undersubscribed while the non-Additional Selection Criteria reservation is oversubscribed, the remaining capacity reservation for the Additional Selection Criteria will be redistributed to and increase the non-Additional Selection Criteria reservation or sub-reservation in the same category.

(ii) If there is remaining capacity in a category after redistribution under paragraph (g)(3)(i) of this section, or, in general, if a category is, as a whole,

undersubscribed such that paragraph (g)(3)(i) of this section does not apply to that category, then, any remaining capacity in any category will be redistributed to and increase the reservation for Category 1 residential BTM facilities, but only if Category 1 residential BTM is oversubscribed. If both the Additional Selection Criteria and non-Additional Section Criteria reservations are oversubscribed for Category 1 residential BTM, then consistent with paragraph (h)(1) of this section, the redistributed capacity limitation will first increase the reservation for Additional Selection Criteria applications, and then if any capacity is remaining it will be added to the reservation for non-Additional Selection Criteria applications.

(iii) If there is remaining capacity after redistribution under paragraphs (g)(3)(i) and (ii) of this section, or if redistribution under paragraph (g)(3)(ii) of this section is inapplicable due to undersubscription in Category 1 residential BTM, then the remaining capacity will be redistributed to and increase the reservation for Category 4. If both the Additional Selection Criteria and the non-Additional Selection Criteria reservations under Category 4 are oversubscribed, then consistent with paragraph (j)(4)(ii) of this section, the redistributed capacity limitation will first increase the reservation for Additional Selection Criteria applications, and then if any capacity is remaining it will be added to the reservation for non-Additional Selection Criteria applications.

(iv) If there is remaining capacity after redistribution under paragraphs (g)(3)(i) through (iii) of this section, or if redistribution under paragraph (g)(3)(iii) of this section is inapplicable due to undersubscription in Category 1 residential BTM and Category 4, then the remaining capacity will be redistributed to and increase the reservation for Category 3. If both the Additional Selection Criteria and the non-Additional Selection Criteria reservations under Category 3 are oversubscribed, then consistent with paragraph (j)(4)(ii) of this section, the redistributed capacity limitation will first increase the reservation for Additional Selection Criteria applications, and then if any capacity is remaining it will be added to the reservation for non-Additional Selection Criteria applications.

(v) If there is remaining capacity after redistribution under paragraphs (g)(3)(i) through (iv) of this section, or if redistribution under paragraph (g)(3)(iv) of this section is inapplicable due to undersubscription in Category 1 residential BTM, Category 4, and Category 3 then the remaining capacity will be redistributed to and increase the reservation for Category 2. If both the Additional Selection Criteria and the non-Additional Selection Criteria reservations under Category 2 are oversubscribed, then consistent with paragraph (j)(4)(ii) of this section, the redistributed capacity limitation will first increase the reservation for Additional Selection Criteria applications, and then if any capacity is remaining it will be added to the reservation for non-Additional Selection Criteria applications.

(vi) If there is remaining capacity after redistribution under paragraphs (g)(3)(i) through (v) of this section, or if redistribution under paragraph (g)(3)(iv) of this section is inapplicable due to undersubscription in Category 1 residential BTM, Category 4, Category 3, and Category 2, then the remaining capacity will be redistributed to and increase the reservation for Category 1 Eligible FTM facilities and non-residential BTM facilities. If both the Additional Selection Criteria and the non-Additional Selection Criteria reservations under Category 1 Eligible FTM facilities and non-residential BTM facilities are oversubscribed, then consistent with paragraph (j)(4)(ii) of this section, the redistributed capacity limitation will first increase the reservation for Additional Selection Criteria applications, and then if any capacity is remaining it will be added to the reservation for non-Additional Selection Criteria applications.

(vii) If after redistribution under paragraphs (g)(3)(i) through (vi) of this section, there is remaining Capacity Limitation at the close of a Program year, the unallocated amount of Capacity Limitation will be carried forward to the succeeding year as described in paragraph (g)(4) of this section.

(4) *Carryover of unallocated Annual Capacity Limitation.* If the Annual Capacity Limitation, as described in paragraph (g)(1) of this section, for any calendar year exceeds the aggregate amount of Annual Capacity Limitation allocated for a given calendar year, the Annual Capacity Limitation for the succeeding calendar year will be increased by the amount of such excess or remainder from previous Program Year. No amount of Capacity Limitation may be carried to any calendar year after the third calendar year following the applicable year (as defined in section 45Y(d)(3) of the Code). Any unallocated Capacity Limitation carried over from the preceding year will be equally distributed across Category 1, 2, 3, and 4. Within Category 1, the portion distributed from the carried over Capacity Limitation will be equally distributed across Category 1 sub-reservations and further across the reservation for Additional Selection Criteria within those sub-reservations. The portion of the carried over Capacity Limitation distributed to each of Category 2, 3, and 4 will be equally distributed within each category to the Additional Selection Criteria reservation and the non-Additional Selection Criteria reservation.

(5) *Allocations to applicable facilities with nameplate capacity in alternating current.* For applicable facilities which have a nameplate capacity in AC, and which are awarded an allocation, such an applicable facility will be awarded an amount of Capacity Limitation in direct current that is equal to the applicable facility's reported nameplate capacity in alternating current.

(h) *Reservations of Capacity Limitation allocation for facilities that meet certain Additional Selection Criteria*—(1) *In general.* 50 percent of the total Capacity Limitation in each facility category described in paragraph (b) of this section and Category 1 sub-reservation (described in paragraph (i) of this section) will be reserved at the beginning of an application period for applicable facilities meeting the Additional Selection Criteria described in paragraph (h)(2) of this section (relating to ownership criteria) and paragraph (h)(3) of this section (relating to geographic criteria). The reservation of Capacity Limitation for applicable facilities meeting the Additional Selection Criteria may be redistributed across facility categories and sub-reservations as described in paragraph (g)(3) of this section. If after the initial 30-day period an Additional Selection Criteria reservation for a category or Category 1 sub-reservation is undersubscribed, such Additional Selection Criteria reservation of 50 percent is maintained. The procedures for applying under these Additional Selection Criteria are provided in guidance published in the Internal Revenue Bulletin.

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

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

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

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

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

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

(F) A qualified renewable energy company (as defined in paragraph (h)(2)(viii) of this section).

(ii) *Indirect ownership*—(A) *Disregarded entities.* If an applicant wholly owns a disregarded entity that is the owner of an applicable facility, then the applicant, and not the disregarded entity, is treated as the owner of the applicable facility for purposes of the ownership criteria. For entities wholly owned and chartered under Tribal law and corporations incorporated under the authority of either section 17 of the Indian Reorganization Act of 1934, 25 U.S.C. 5124, or section 3 of the Oklahoma Indian Welfare Act, 25 U.S.C. 5203, an application may be made as a Tribal Enterprise. Disregarded entities are not eligible for an award and may not submit an application.

(B) *Partner qualifying partnership under ownership criteria.* Except as described in paragraph (h)(2)(ii)(C) of this section, if an applicant is an entity classified as a partnership for Federal income tax purposes, and an entity described in paragraphs (h)(2)(i)(A) through (E) of this section owns at least a one percent interest (either directly or indirectly) in each material item of partnership income, gain, loss, deduction, and credit of the partnership and is also a managing member or general partner (or similar title) under State or Tribal law of the partnership (or directly owns 100 percent of the equity interests in the managing member or general partner) at all times during the existence of the partnership, the applicable facility will be deemed to meet the ownership criteria. If the partnership described in the preceding sentence becomes the owner of the facility after an allocation is made to an entity described in paragraphs (h)(2)(i)(A) through (E) of this section, then the transfer of the facility to the partnership is not a disqualification event for purposes of paragraph (m)(5) of this section, so long as the requirements of paragraph (m)(5) of this section are satisfied. Nothing in this paragraph (h)(2)(ii)(B) applies to an applicant described in paragraph (h)(2)(i)(F) of this section.

(C) *Partner qualifying partnership involving low-income housing credit under ownership criteria.* If an applicant is an entity classified as a partnership for Federal income tax purposes and is the owner of an applicable facility connected to a residential building to which credits under section 42 of the Code are reasonably anticipated or have been determined and has a partner for Federal income tax purposes that is an entity described in paragraphs (h)(2)(i)(A) through (E) of this section, the applicable facility will be deemed to meet the ownership criteria. If the partnership becomes the owner of the facility after an allocation is made to an entity described in paragraph (h)(2)(i)(E) of this section, and complete ownership is transferred to a partnership that owns a qualified low-income building within the meaning of section 42(c)(2) (including, through a disregarded entity owned by the partnership), then the transfer of the facility to the partnership is not a disqualification event for purposes of paragraph (m)(5) of this section or subject to recapture for purposes of paragraph (n) of this section, so long as the requirements of paragraph (m)(5) of this section are satisfied.

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

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

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

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

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

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

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

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

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

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

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

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

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

(viii) *Qualified renewable energy company.* A qualified renewable energy company (QREC) for purposes of the ownership criteria is an entity that serves low-income communities and provides pathways for the adoption of clean energy by low-income households. To be a QREC, an entity must meet all of the requirements in paragraphs (h)(2)(vii)(A) through (D) of this section.

(A) The entity's business purpose must be to serve low-income households or low-income communities, and this purpose must be stated in governing documents and dated at least two years prior to application submission;

(B) At least 51 percent of the entity's equity interests must be owned and controlled by one or more individuals;

(C) The entity must have first installed, operated, or provided services as a contractor or subcontractor to an applicable facility two or more years prior to the date of application; and

(D) The entity must have at least one but less than 10 full-time equivalent employees (as determined under section 4980H(c)(2)(E) and (c)(4) of the Code) and less than $20 million in annual gross receipts in the previous two calendar years. The number of full-time equivalent employees and amount in annual gross receipts must include the full-time equivalent employees and

annual gross receipts of all affiliated entities. An entity is considered to be an affiliated entity if—

(*1*) 25 percent or more of an entity's board seats, voting rights, or equity interests, are cumulatively held by another entity and related entities (as described in described in section 267(b) or section 707(b)(1) of the Code); or

(*2*) One or more of an entities' officers, directors, managing members or partners with authority over the board of directors or management and operations also have authority over the board of directors or management and operations of another entity.

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

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

(iii) *Certain census tracts under Climate and Economic Justice Screening Tool.* A census tract that is described in the latest official Climate and Economic Justice Screening Tool (CEJST), as greater than or equal to the 90th percentile for energy burden and greater than or equal to the 65th percentile for low income, or as greater than or equal to the 90th percentile for $PM_{2.5}$ exposure and greater than or equal to the 65th percentile for low income.

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

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

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

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

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

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

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

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

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

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

(j) *Process of application evaluation*—(1) *In general.* Applications for a Capacity Limitation allocation will be evaluated according to the procedures specified in guidance published in the Internal Revenue Bulletin.

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

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

(4) *Application period*—(i) *Opening and closing dates.* For calendar year 2026 and each succeeding calendar year of the Program, the application period will open the first Monday of February at 9 a.m. EST and close the first Friday of August at 11:59 p.m. EST. The application period for calendar year 2025 will be announced in guidance published in the Internal Revenue Bulletin.

(ii) *Initial 30-day period.* For each year, there will be an initial 30-day period during which all applications submitted will be considered to be submitted at the same time and date. The initial 30-day period will begin on the opening day of the application period described in paragraph (j)(4)(i) of this section, and end at 11:59 p.m. EST on the 30th calendar day after the opening day of the application period. The opening day is included in calculating the 30-day period. All applications submitted within the 30-day period will be ordered for review and consideration of an allocation of Capacity Limitation within the same category based on a process described in procedural guidance published in the Internal Revenue Bulletin. If during the initial 30-day period, an Additional Selection Criteria reservation for a category or Category 1 sub-reservation is oversubscribed with Additional Selection Criteria applications, Capacity Limitation from the applicable category or sub-reservation may be reallocated to

prioritize review and consideration of Additional Selection Criteria applications. Additional Selection Criteria applications received during the initial 30-day period receive priority over other applications received during the initial 30-day period.

(iii) *Applications submitted after the initial 30-day period*—(A) *In general.* Applications submitted after the close of the initial 30-day period will be held for review and consideration of an allocation of Capacity Limitation after the applications in the same category or Category 1 sub-reservation which were submitted during the initial 30-day period. Review of such applications will occur only if sufficient Capacity Limitation remains to be allocated in a given category or Category 1 sub-reservation, and in conjunction with the redistribution provisions described under paragraph (g)(2) of this section. Provided sufficient Capacity Limitation remains in a given category or Category 1 sub-reservation, these applications submitted after the initial 30-day period will be reviewed and considered for an allocation in the order in which they are received.

(B) *Additional Selection Criteria Applications submitted after the initial 30-day period.* If the Additional Selection Criteria reservation for a category or Category 1 sub-reservation is undersubscribed after the initial 30-day period ends, then the Additional Selection Criteria reservation of 50 percent is maintained. Additional Selection Criteria applications submitted after the initial 30-day period will be prioritized for review and consideration of an allocation of Capacity Limitation from the Additional Selection Criteria reservation in the applicable category or Category 1 sub-reservation until such Additional Selection Criteria reservation is allocated or is reallocated.

(k) *Placed in service*—(1) *Requirement to report date placed in service.* For any facility that receives an allocation of Capacity Limitation, the owner of the facility must report the date the eligible property was placed in service.

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

(3) *Confirmation.* The placed in service documentation and attestations demonstrating that the facility meets the eligibility criteria for the owner to claim an increased applicable percentage will be reviewed. A recommendation will then be considered by the IRS regarding whether the facility continues to meet the eligibility requirements for the facility to retain its allocation or if the facility should be disqualified (as provided in paragraph (m) of this section). Based on this recommendation and underlying facts and circumstances analysis, the IRS will decide whether the facility should retain its allocation or if the facility should be disqualified. Eligibility is determined, prior to the owner (or a partner or shareholder in the case of a partnership or S corporation) claiming the increased credit amount on Form 3468, *Investment Credit* (or Form 3800, *General Business Credit*), or successor form, or, if eligible, making a transfer election under section 6418 of the Code, or an elective payment election under section 6417 of the Code.

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

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

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

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

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

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

(1) The location where the facility will be placed in service materially changes or is in a different census tract.

(2) The maximum net output of the facility increases such that it exceeds the less than five megawatts AC requirement provided in section 48E(h)(2)(A)(ii) or the nameplate capacity decreases by the greater of 2 kW or 25 percent of the Capacity Limitation awarded in the allocation. However, the amount of bonus credit capacity allocated will not be exceeded from the original allocation amount.

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

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

(5) The facility received a Capacity Limitation allocation based, in part, on meeting the ownership criteria and ownership of the facility changes prior to the facility being placed in service, unless the original applicant transfers the facility to an entity classified as a partnership for Federal income tax purposes and retains at least a one percent interest (either directly or indirectly) in each material item of partnership income, gain, loss, deduction, and credit of such partnership and is a managing member or general partner (or similar title) under State or Tribal law of the partnership (or directly owns 100 percent of the equity interests in the managing member or general partner) at all times during the existence of the partnership.

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

event occurs is increased by the recapture percentage of the benefit of the increase in the section 48E credit. The recapture percentage is determined according to the table provided in section 50(a)(1)(B).

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

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

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

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

(iii) Property described under section 48E(h)(2)(C) ceases to provide at least 50 percent of the financial benefits of the electricity produced to Qualifying Households as described under section 48E(h)(2)(C)(i) or (ii), or fails to provide those households the required minimum 20 percent bill credit discount rate, as required by paragraph (f) of this section;

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

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

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

(o) *Record retention.* The applicant is required to retain records and materials related to the application for the following periods:

(1) For at least 6 years after the due date (with extensions) for filing the Federal income tax return after the tax year that return is filed to claim the increase in the section 48E credit; and

(2) For at least 6 years after the due date (with extensions) for filing the Federal income tax return for the last year that the applicant could be subject to recapture as described in paragraph (n) of this section.

(p) *Applicability date.* This section applies to applicable facilities placed in service after December 31, 2024, and during taxable years ending on or after January 13, 2025.

Douglas W. O'Donnell,

Deputy Commissioner.

Approved: December 26, 2024.

Aviva R. Aron-Dine,

Deputy Assistant Secretary of the Treasury (Tax Policy).

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