



## IRS issues guidance on section 48C qualifying advanced energy project credit Tax Alert

### Overview

On February 13, 2023, Treasury Department and the IRS issued [Notice 2023-18](#) (the “Notice”), establishing the program under [section 48C\(e\)](#) to allocate \$10 billion of tax credits to qualifying advanced energy projects (\$4 billion of which may be allocated only to projects located in certain energy communities) (“section 48C(e) program”). The Notice provides that at least two allocation rounds are anticipated. On May 31, 2023, the first allocation round (“Round 1”) begins, allocating credits of \$4 billion (\$1.6 billion of which expected for projects located in certain energy communities). To be considered for Round 1, taxpayers must submit concept papers to the Department of Energy (DOE) by July 31, 2023. Treasury and the IRS intend to issue a supplemental notice by May 31, 2023, that will provide additional guidance (“Additional section 48C(e) program guidance”).

### Background

Section 48C(e), as modified by the [Inflation Reduction Act of 2022 \(P.L. 117-169\)](#) (IRA), directs the IRS to establish a program to allocate up to \$10 billion of tax credits to qualifying advanced energy projects. Out of the \$10 billion, at least \$4 billion of credit must be allocated to projects located in a census tract or directly adjoining census tract:

- In which after December 31, 1999, a coal mine has closed, or after December 31, 2009, a coal-fired electric generating unit has been retired, and
- Which had no project that received a certification and allocation of section 48C credit prior to the IRA (coal census tract).

For each qualifying advanced energy project, the tax credit is equal to 30% of the basis of eligible property placed in service by the taxpayer. The tax credit is reduced to 6%, if the prevailing wage and apprenticeship requirements are not met. See the January 13, 2023 issue of [Tax News & Views](#) for more on the prevailing wage and apprenticeship guidance.

There are three categories of qualifying advanced energy projects.

1. **Clean energy manufacturing and recycling projects**: Establishes, expands or re-equips manufacturing or industrial facilities for the production or recycling of specified advanced energy property
2. **Greenhouse gas emission reduction projects**: Re-equips an industrial or manufacturing facility with equipment designed to reduce greenhouse gas emissions by at least 20%, through the installation of:
  - Low or zero-carbon process heat systems,
  - Carbon capture, transport, utilization and storage systems,
  - Energy efficiency and reduction in waste form industrial processes, or
  - Any other industrial technology designed to reduce greenhouse gas emissions; examples include electrification of direct fuel use processes, adoption of renewable or low-emissions fuels and feedstocks
3. **Critical material projects**: Re-equips, expands or establishes an industrial facility for the processing, refining, or recycling of critical materials including certain critical minerals (as defined in section 7002(a) of the Energy Act of 2020)

Specified advanced energy property (SAEP) means any of the following:

- Property designed for use in the production of energy from the sun, water, wind, geothermal deposits (within the meaning of [section 613\(e\)\(2\)](#)), or other renewable resources
- Fuel cells, microturbines, or energy storage systems and components (*e.g.*, stationary batteries, stationary hydrogen fuel cells, hydrogen storage vessels, pumps and turbines for pumped hydropower storage systems, and the specialized components of any such equipment, including equipment for sensing communication, and control)
- Electric grid modernization equipment or components (*e.g.*, grid equipment for electricity delivery, transformers, power electronics, advanced cables and conductors, components for sensing communication, and control)
- Property designed to capture, transport, remove, use, or sequester carbon oxide emissions (*e.g.*, equipment necessary to compress, treat, process, liquefy, pump, or perform other action to capture carbon oxides, including solvents; membranes; sorbents; chemical processing equipment; and well components such as packers, casing strings, steel tubulars, well head, valves, and sensors suitable for use in Class VI wells)
- Property designed to refine, electrolyze, or blend any fuel, chemical, or product which is renewable, or low-carbon and low-emission (*e.g.*, mixing devices, pumps, separation devices, bioprocessing equipment, biomass preprocessing equipment, and reactors)
- Property designed to produce energy conservation technologies (including residential, commercial, and industrial applications) (*e.g.*, grid interactive devices for certain efficiency improvements; equipment that directly reduces net energy use in industrial applications, such as ultra-efficient heat pumps, insulation, ultra-efficient hot water systems, sensors, and controls)
- Light-, medium-, or heavy-duty electric or fuel cell vehicles, as well as technologies, components, or materials for such vehicles, and associated charging or refueling infrastructure (*e.g.*, batteries, electric drive systems, fuel cells, and the materials and subcomponents therein)
- Hybrid vehicles with a gross vehicle weight rating of not less than 14,000 pounds as well as technologies, components, or materials for such vehicles (*e.g.*, traction batteries, converters, and power electronics), or
- Other advanced energy property designed to reduce greenhouse gas emissions as may be determined by the Secretary (*e.g.*, specialized components and equipment for nuclear power reactors or their fuels, and equipment used to reduce the emissions of industrial processes)

Critical materials are:

- [List of critical minerals](#) published by the U.S. Geological Survey (USGS), and

- Any additional critical materials to be determined by DOE and posted on the [DOE website](#) by July 31, 2023

**Observation:**

The critical minerals published by USGS are: aluminum, antimony, arsenic, barite, beryllium, bismuth, cerium, cesium, chromium, cobalt, **dysprosium**, **erbium**, **europium**, **fluorspar**, gadolinium, gallium, germanium, graphite, hafnium, **holmium**, indium, iridium, lanthanum, lithium, **lutetium**, magnesium, manganese, neodymium, **nickel**, **niobium**, palladium, platinum, praseodymium, rhodium, rubidium, ruthenium, samarium, scandium, tantalum, tellurium, **terbium**, **thulium**, tin, titanium, tungsten, vanadium, **ytterbium**, **yttrium**, **zinc**, and zirconium.

In response to prior comments requesting USGS to include certain minerals in the updated critical minerals list, USGS added 13 new critical minerals (bolded above).

There is no purity requirement for critical minerals under section 48C, unlike under [section 45X](#).

Appendix A of the Notice provides examples of eligible and ineligible property for each category. These examples provide a good insight into the kinds of manufacturing or industrial activities that are incentivized under section 48C(e) program.

The tax credit is 6% or 30% of the basis of eligible property. Eligible property is:

- Property which is necessary for the clean energy manufacturing and recycling project, greenhouse gas emissions reduction project, critical materials project,
- Property which is tangible personal property or other tangible property that is used as an integral part of the qualifying advanced energy project, and
- Property with respect to which depreciation (or amortization in lieu of depreciation) is allowable.

Taxpayers may not claim the section 48C tax credit for any qualified investment for which a tax credit is allowed under sections [48](#), [48A](#), [48B](#), [48E](#), [45Q](#), or [45V](#). Additionally, property is not an “**eligible component**” for purposes of the tax credit under section [45X](#) if it is produced at a facility and the basis of any property which is part of such facility is taken into account for purposes of section 48C after August 16, 2022.

Certain entities eligible for the section 48C credit may be eligible to elect direct pay or transferability under [sections 6417](#) and [6418](#), respectively.

Definitions

The Notice provides the following notable definitions:

- “**Industrial facility**” means a facility that produces, processes, or refines materials or products from raw or manufactured inputs
- “**Manufacturing facility**” means a facility that makes or processes raw materials into finished products (or accomplishes any intermediate stage in that process)
- “**Recycling facility**” means a facility that: reclaims, recovers, or otherwise processes waste materials (including, but not limited to, property and components of property at end-of-service), the result of which is a useful product or material for use in the manufacture of a useful product; or performs an activity or series of activities in these processes
- **Placed in service:** Eligible property is placed in service in the earlier of the following taxable years:

- The taxable year in which, under the taxpayer's depreciation practice, the period for depreciation with respect to the property begins, or
- The taxable year in which the property is placed in a condition or state of readiness and availability for a specifically assigned function

## Section 48C credit allocation program under the Notice

### Round 1 of the section 48C(e) program

Treasury and the IRS anticipate providing at least two allocation rounds under the section 48C(e) program. Round 1 will begin on May 31, 2023, and Treasury and the IRS anticipate allocating \$4 billion of section 48C credits out of which approximately \$1.6 billion to be allocated to projects located in certain coal census tracts. Additional section 48C(e) program guidance will provide a mapping tool to determine whether a project is located in a certain coal census tract.

### Concept paper

To be considered for an allocation of section 48C tax credits for Round 1, taxpayers must submit concept papers describing the proposed project to the DOE through the [eXCHANGE portal](#), an online application portal used by DOE (or any successor interface) by July 31, 2023. Concept papers will be evaluated against criteria that may include eligibility requirements, definitions for qualifying advanced energy projects, reasonable expectation of commercial viability, and other factors described in the additional section 48C(e) program guidance.

Following the preliminary review of a concept paper, DOE will send a letter to the applicant encouraging or discouraging the submission of a joint application for DOE recommendation and for IRS section 48C(e) certification ("section 48C(e) application").

#### **Observation:**

Taxpayers may submit concept papers anytime between May 31, 2023 and July 31, 2023. There is no benefit for submitting the concept paper earlier.

There are two submissions: 1) concept paper, and 2) section 48C(e) application. The Notice does not provide the due date for the application nor all requirements for the concept paper or the application.

### Joint application to DOE and IRS (section 48C(e) application)

Taxpayers submit section 48C(e) applications through the eXCHANGE portal. All taxpayers who submit concept papers are eligible to submit a section 48C(e) application, regardless of DOE's response to its concept paper. The due date of the application for Round 1 will be provided in the additional section 48C(e) program guidance.

The eXCHANGE portal will prompt an applicant to enter necessary information and will provide corresponding instructions regarding the requirements for the application. The information will include:

- Name, address, federal EIN, and unique entity identifier number of the taxpayer, and if applicable, name, address, and TIN of the common parent of the group
- Name, telephone number, and email address of a contact person
- Census tract where the project will be located
- Whether taxpayer will satisfy the prevailing wage and apprenticeship requirements and seeks a 30% credit, and if applicable, the initial PWA confirmation
- Other information as requested by DOE

DOE will review the applications based on (1) technical review criteria, and (2) program policy factors. DOE's recommendation provided to the IRS will include a ranking of projects in descending order (that is, first, second, third, etc.).

#### Technical review criteria

Technical review criteria will include selection criteria described in section 48C(d)(3) and additional criteria which will be described in additional section 48C(e) program guidance.

Selection criteria in section 48C(d)(3) are:

- Reasonable expectation of commercial viability
- Domestic job creation (both direct and indirect) during the credit period
- Greatest net impact in avoiding or reducing air pollutants or anthropogenic emissions of greenhouse gases
- Technological innovation and commercial deployment
- Lowest levelized cost of generated or stored energy, or of measured reduction in energy consumption or greenhouse gas emission (based on costs of the full supply chain), and
- Shortest project time from certification to completion

Additional criteria anticipated to be included are:

- Net impact of the project in avoiding or reducing greenhouse gas ("GHG") emissions
- Community benefits of the proposed projects, including community and labor engagement and commitment to high quality and accessible jobs and workforce pathways

#### Program policy factors

In addition to technical review criteria, DOE may consider one or more of policy factors. DOE may consider giving priority to qualifying projects not eligible for support from other DOE financial assistance programs funded by the [Infrastructure Investment and Jobs Act \(Public Law 117-58\)](#) or the IRA. However, in some cases, benefits towards the program's goals may be enhanced if a project receives both section 48C credit and complementary assistance from other programs. DOE may consider whether the application sufficiently justifies the need for and benefits of receiving assistance from multiple programs.

The additional section 48C(e) program guidance will indicate specific priority technologies that would address any specific gaps, vulnerabilities, or risks to relevant domestic supply chains.

#### **Observations:**

Questions have arisen as to whether receiving non-tax assistance would work against the applications. The Notice is clear that receiving other non-section 48C assistance does not per se disqualify or lower the ranking of the project. However, it is important that the applications provide sufficient reasons to justify the need for the project to receive multiple assistance.

Where requested by an applicant, DOE will offer a debriefing to an applicant who received a letter of encouragement, submitted a section 48C(e) application, and was not allocated a credit. Such debriefing was not provided under prior allocation rounds conducted in 2009 and 2012. Since there will be Round 2 and possibly Round 3, this debriefing will be beneficial to understand how to improve the application for subsequent Rounds.

## Questions to DOE

DOE provides an [email address](#) to which taxpayers may submit questions or comments regarding the non-tax aspects of the Notice. Upon receipt of the questions, DOE may post questions and answers on eXCHANGE portal (select section 48C from the list of options to view questions and answers specific to notice). Any questions or comments received under this notice are subject to public release pursuant to the Freedom of Information Act.

### **Allocation Letter**

The IRS will make allocations to successive projects according to DOE recommendations and ranking until the amount available for allocation is exhausted. The IRS will send each applicant an Allocation Letter (also known as Acceptance Letter) or a Denial Letter and will notify DOE. The Allocation Letter will state the amount of the credit allocated to the project. The date of the Allocation Letter is the date of acceptance of the section 48C(e) application.

*What happens if the project is transferred to a party other than the taxpayer who requested and received an allocation letter?*

- The Allocation Letter applies only to the taxpayer that requested it. Any successor in interest may request by a letter that the IRS transfer the credit allocation for the project to the successor in interest. The request must be made no later than 30 days prior to the due date (including extensions) of the successor in interest's federal income tax return for the taxable year in which the transfer occurs. The letter must be submitted through the eXCHANGE portal. The IRS will review the request and will notify the successor in interest of its decision.
- If the successor in interest acquired the project at or before the project is placed in service and the credit allocation is not transferred to the successor in interest, the credit is fully forfeited. If acquired after the project is placed in service, the credit will be recaptured pursuant to [section 50](#).

### **Certification Letter**

Within 2 years from the date of acceptance of the section 48C(e) application, a taxpayer must notify DOE through the eXCHANGE portal evidence establishing that it has met all requirements necessary to commence construction of the project.

A project is eligible for certification only if the taxpayer has received all permits from federal, state, tribal, and local governmental bodies for construction of the project at the planned location, including environmental authorization or reviews necessary to commence construction of the project.

Upon receipt, DOE will notify the IRS and will send an acknowledgement to the taxpayer. Thereafter, IRS will notify the taxpayer, by letter, of the IRS's decision regarding certification. The date of the Certification Letter is the date of issuance of the certification.

After receiving a Certification Letter, a taxpayer may make an election to claim section 48C credit with respect to the qualified progress expenditures paid or incurred as provided under [Treas. Reg. § 1.46-5\(o\)](#). This election cannot be made prior to receiving a Certification Letter.

Upon making a certification, the IRS will publish results of Round 1 and will disclose the identity of the taxpayer and the amount of the section 48C credits allocated to the taxpayer that has received a certification.

### **Placed in service**

**Within 2 years** of receiving the Certification Letter, the taxpayer must notify DOE through the eXCHANGE portal that the project has been placed in service.

DOE will notify the taxpayer and the IRS that it has received the taxpayer's notification. A taxpayer that does not notify DOE will forfeit the section 48C credits allocated to the taxpayer for such project.

If the taxpayer has placed the project in service **within the 2-year period** and has notified DOE, the taxpayer claims the section 48C credit on its income tax return for the taxable year in which the project was placed in service.

#### Coordination with other credits

- A taxpayer must provide a certification statement that it did not claim a credit for that same investment under any of the sections 48, 48A, 48B, 48E, 45Q, or 45V; the certification statement must be attached with the 48C(e) application and at the time it notifies DOE that the project has been placed in service
- Furthermore, property is not an **"eligible component"** for purposes of the credit under section 45X if it is produced at a facility and the basis of any property which is part of such facility is taken into account for purposes of section 48C after August 16, 2022; Treasury will issue guidance regarding this coordination rule in additional guidance under section 45X

#### Prevailing wage and apprenticeship

A taxpayer who intends to apply for and receive an allocation of section 48C credit calculated at the 30% rate must confirm that it intends to satisfy the prevailing wage and apprenticeship requirements as part of the section 48C(e) application ("Initial Prevailing Wage and Apprenticeship (PWA) Confirmation") and must confirm such satisfaction when the taxpayer notifies DOE that it has placed the project in service ("Final PWA Confirmation").

If both Initial and Final PWA confirmations are not made, the taxpayer must claim the section 48C credit at the 6% credit rate and the remainder of the credits allocated to the project will be forfeited and available for subsequent allocation round.

#### **Round 2 and more**

After Round 1, the IRS will conduct one or more additional allocation rounds under the section 48C(e) program. Guidance issued after the additional section 48C(e) program guidance will prescribe the procedures applicable to future allocation rounds.

## Appendix

Below is a list of helpful websites referenced in the Notice:

- [Login.gov](https://www.login.gov), potential applicants must have an account under the same email address to register under the eXCHANGE portal
- <https://infrastructure-exchange.energy.gov/>, the eXCHANGE portal to submit concept papers
- <https://infrastructure-exchange.energy.gov/Manuals.aspx>, the eXCHANGE portal login guide
- <https://www.federalregister.gov/documents/2022/02/24/2022-04027/2022-final-list-of-critical-minerals>, for the currently effective final list of critical minerals as determined by the US Geological Survey (for Critical Material projects)
- <https://www.energy.gov/criticalmaterials>, for any additional critical materials that may qualify
- <https://energycommunities.gov/energy-community-tax-credit-bonus>, for the determination of the locations of energy communities satisfying the coal mine closure and coal-fired generating unit retirement geographies



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