

**(F) Excessive payment****(i) In general**

In the case of any amount treated as a payment which is made by the taxpayer under paragraph (1), or any payment made pursuant to subparagraph (A), which the Secretary determines constitutes an excessive payment, the tax imposed on such taxpayer by chapter 1 for the taxable year in which such determination is made shall be increased by an amount equal to the sum of—

(I) the amount of such excessive payment, plus

(II) an amount equal to 20 percent of such excessive payment.

**(ii) Reasonable cause**

Clause (i)(II) shall not apply if the taxpayer demonstrates to the satisfaction of the Secretary that the excessive payment resulted from reasonable cause.

**(iii) Excessive payment defined**

For purposes of this subparagraph, the term “excessive payment” means, with respect to property for which an election is made under this subsection for any taxable year, an amount equal to the excess of—

(I) the amount treated as a payment which is made by the taxpayer under paragraph (1), or the amount of the payment made pursuant to subparagraph (A), with respect to such property for such taxable year, over

(II) the amount of the credit which, without application of this subsection, would be otherwise allowable (determined without regard to section 38(c)) under subsection (a) with respect to such property for such taxable year.

**(3) Denial of double benefit**

In the case of a taxpayer making an election under this subsection with respect to the credit determined under subsection (a), such credit shall be reduced to zero and shall, for any other purposes under this title, be deemed to have been allowed to the taxpayer for such taxable year.

**(4) Mirror code possessions**

In the case of any possession of the United States with a mirror code tax system (as defined in section 24(k)), this subsection shall not be treated as part of the income tax laws of the United States for purposes of determining the income tax law of such possession unless such possession elects to have this subsection be so treated.

**(5) Basis reduction and recapture**

Rules similar to the rules of subsections (a) and (c) of section 50 shall apply with respect to—

(A) any amount treated as a payment which is made by the taxpayer under paragraph (1), and

(B) any payment made pursuant to paragraph (2)(A).

**(6) Regulations**

The Secretary shall issue such regulations or other guidance as may be necessary or ap-

propriate to carry out the purposes of this subsection, including—

(A) regulations or other guidance providing rules for determining a partner’s distributive share of the tax exempt income described in paragraph (2)(A)(i)(III), and

(B) guidance to ensure that the amount of the payment or deemed payment made under this subsection is commensurate with the amount of the credit that would be otherwise allowable (determined without regard to section 38(c)).

**(e) Termination of credit**

The credit allowed under this section shall not apply to property the construction of which begins after December 31, 2026.

(Added Pub. L. 117-167, div. A, §107(a), Aug. 9, 2022, 136 Stat. 1393.)

**Editorial Notes**

## REFERENCES IN TEXT

The date of the enactment of the Revenue Reconciliation Act of 1990, referred to in subsec. (b)(5), is the date of enactment of Pub. L. 101-508, which was approved Nov. 5, 1990.

Section 9901(6) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, referred to in subsec. (c)(1), means section 9901(6) of Pub. L. 116-283, but probably should be a reference to section 9901(8) of the Act, which defines “foreign entity of concern” and which is classified to section 4651(8) of Title 15, Commerce and Trade.

The date of the enactment of this section, referred to in subsec. (d)(2)(B), is the date of enactment of Pub. L. 117-167, which was approved Aug. 9, 2022.

## PRIOR PROVISIONS

A prior section 48D, added Pub. L. 111-148, title IX, §9023(a), Mar. 23, 2010, 124 Stat. 877, provided for a qualifying therapeutic discovery project credit, prior to repeal by Pub. L. 115-141, div. U, title IV, §401(d)(3)(A), Mar. 23, 2018, 132 Stat. 1209.

**Statutory Notes and Related Subsidiaries**

## EFFECTIVE DATE

Section applicable to property placed in service after Dec. 31, 2022, and, for any property the construction of which begins prior to Jan. 1, 2023, only to the extent of the basis thereof attributable to the construction, reconstruction, or erection after Aug. 9, 2022, see section 107(f) of Pub. L. 117-167, set out as an Effective Date of 2022 Amendment note under section 905 of Title 2, The Congress.

**§ 48E. Clean electricity investment credit****(a) Investment credit for qualified property****(1) In general**

For purposes of section 46, the clean electricity investment credit for any taxable year is an amount equal to the applicable percentage of the qualified investment for such taxable year with respect to—

(A) any qualified facility, and

(B) any energy storage technology.

**(2) Applicable percentage****(A) Qualified facilities**

Subject to paragraph (3)—

**(i) Base rate**

In the case of any qualified facility which is not described in subclause (I) or

(II) of clause (ii) and does not satisfy the requirements described in subclause (III) of such clause, the applicable percentage shall be 6 percent.

**(ii) Alternative rate**

In the case of any qualified facility—

(I) with a maximum net output of less than 1 megawatt (as measured in alternating current),

(II) the construction of which begins prior to the date that is 60 days after the Secretary publishes guidance with respect to the requirements of paragraphs (3) and (4) of subsection (d), or

(III) which—

(aa) satisfies the requirements of subsection (d)(3), and

(bb) with respect to the construction of such facility, satisfies the requirements of subsection (d)(4),

the applicable percentage shall be 30 percent.

**(B) Energy storage technology**

Subject to paragraph (3)—

**(i) Base rate**

In the case of any energy storage technology which is not described in subclause (I) or (II) of clause (ii) and does not satisfy the requirements described in subclause (III) of such clause, the applicable percentage shall be 6 percent.

**(ii) Alternative rate**

In the case of any energy storage technology—

(I) with a capacity of less than 1 megawatt,

(II) the construction of which begins prior to the date that is 60 days after the Secretary publishes guidance with respect to the requirements of paragraphs (3) and (4) of subsection (d), or

(III) which—

(aa) satisfies the requirements of subsection (d)(3), and

(bb) with respect to the construction of such property, satisfies the requirements of subsection (d)(4),

the applicable percentage shall be 30 percent.

**(3) Increase in credit rate in certain cases**

**(A) Energy communities**

**(i) In general**

In the case of any qualified investment with respect to a qualified facility or with respect to energy storage technology which is placed in service within an energy community (as defined in section 45(b)(11)(B)), for purposes of applying paragraph (2) with respect to such property or investment, the applicable percentage shall be increased by the applicable credit rate increase.

**(ii) Applicable credit rate increase**

For purposes of clause (i), the applicable credit rate increase shall be an amount equal to—

(I) in the case of any qualified investment with respect to a qualified facility described in paragraph (2)(A)(i) or with respect to energy storage technology described in paragraph (2)(B)(i), 2 percentage points, and

(II) in the case of any qualified investment with respect to a qualified facility described in paragraph (2)(A)(ii) or with respect to energy storage technology described in paragraph (2)(B)(ii), 10 percentage points.

**(B) Domestic content**

Rules similar to the rules of section 48(a)(12) shall apply.

**(b) Qualified investment with respect to a qualified facility**

**(1) In general**

For purposes of subsection (a), the qualified investment with respect to any qualified facility for any taxable year is the sum of—

(A) the basis of any qualified property placed in service by the taxpayer during such taxable year which is part of a qualified facility, plus

(B) the amount of any expenditures which are—

(i) paid or incurred by the taxpayer for qualified interconnection property—

(I) in connection with a qualified facility which has a maximum net output of not greater than 5 megawatts (as measured in alternating current), and

(II) placed in service during the taxable year of the taxpayer, and

(ii) properly chargeable to capital account of the taxpayer.

**(2) Qualified property**

For purposes of this section, the term “qualified property” means property—

(A) which is—

(i) tangible personal property, or

(ii) other tangible property (not including a building or its structural components), but only if such property is used as an integral part of the qualified facility,

(B) with respect to which depreciation (or amortization in lieu of depreciation) is allowable, and

(C)(i) the construction, reconstruction, or erection of which is completed by the taxpayer, or

(ii) which is acquired by the taxpayer if the original use of such property commences with the taxpayer.

**(3) Qualified facility**

**(A) In general**

For purposes of this section, the term “qualified facility” means a facility—

(i) which is used for the generation of electricity,

(ii) which is placed in service after December 31, 2024, and

(iii) for which the anticipated greenhouse gas emissions rate (as determined under subparagraph (B)(ii)) is not greater than zero.

**(B) Additional rules****(i) Expansion of facility; incremental production**

Rules similar to the rules of section 45Y(b)(1)(C) shall apply for purposes of this paragraph.

**(ii) Greenhouse gas emissions rate**

Rules similar to the rules of section 45Y(b)(2) shall apply for purposes of this paragraph.

**(C) Exclusion**

The term “qualified facility” shall not include any facility for which—

(i) a renewable electricity production credit determined under section 45,

(ii) an advanced nuclear power facility production credit determined under section 45J,

(iii) a carbon oxide sequestration credit determined under section 45Q,

(iv) a zero-emission nuclear power production credit determined under section 45U,

(v) a clean electricity production credit determined under section 45Y,

(vi) an energy credit determined under section 48, or

(vii) a qualifying advanced coal project credit under section 48A,

is allowed under section 38 for the taxable year or any prior taxable year.

**(4) Qualified interconnection property**

For purposes of this paragraph, the term “qualified interconnection property” has the meaning given such term in section 48(a)(8)(B).

**(5) Coordination with rehabilitation credit**

The qualified investment with respect to any qualified facility for any taxable year shall not include that portion of the basis of any property which is attributable to qualified rehabilitation expenditures (as defined in section 47(c)(2)).

**(6) Definitions**

For purposes of this subsection, the terms “CO<sub>2</sub>e per KWh” and “greenhouse gas emissions rate” have the same meaning given such terms under section 45Y.

**(c) Qualified investment with respect to energy storage technology****(1) Qualified investment**

For purposes of subsection (a), the qualified investment with respect to energy storage technology for any taxable year is the basis of any energy storage technology placed in service by the taxpayer during such taxable year.

**(2) Energy storage technology**

For purposes of this section, the term “energy storage technology” has the meaning given such term in section 48(c)(6) (except that subparagraph (D) of such section shall not apply).

**(d) Special rules****(1) Certain progress expenditure rules made applicable**

Rules similar to the rules of subsections (c)(4) and (d) of section 46 (as in effect on the

day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of subsection (a).

**(2) Special rule for property financed by subsidized energy financing or private activity bonds**

Rules similar to the rules of section 45(b)(3) shall apply.

**(3) Prevailing wage requirements**

Rules similar to the rules of section 48(a)(10) shall apply.

**(4) Apprenticeship requirements**

Rules similar to the rules of section 45(b)(8) shall apply.

**(5) Domestic content requirement for elective payment**

In the case of a taxpayer making an election under section 6417 with respect to a credit under this section, rules similar to the rules of section 45Y(g)(12) shall apply.

**(e) Credit phase-out****(1) In general**

The amount of the clean electricity investment credit under subsection (a) for any qualified investment with respect to any qualified facility or energy storage technology the construction of which begins during a calendar year described in paragraph (2) shall be equal to the product of—

(A) the amount of the credit determined under subsection (a) without regard to this subsection, multiplied by

(B) the phase-out percentage under paragraph (2).

**(2) Phase-out percentage**

The phase-out percentage under this paragraph is equal to—

(A) for any qualified investment with respect to any qualified facility or energy storage technology the construction of which begins during the first calendar year following the applicable year, 100 percent,

(B) for any qualified investment with respect to any qualified facility or energy storage technology the construction of which begins during the second calendar year following the applicable year, 75 percent,

(C) for any qualified investment with respect to any qualified facility or energy storage technology the construction of which begins during the third calendar year following the applicable year, 50 percent, and

(D) for any qualified investment with respect to any qualified facility or energy storage technology the construction of which begins during any calendar year subsequent to the calendar year described in subparagraph (C), 0 percent.

**(3) Applicable year**

For purposes of this subsection, the term “applicable year” has the same meaning given such term in section 45Y(d)(3).

**(f) Greenhouse gas**

In this section, the term “greenhouse gas” has the same meaning given such term under section 45Y(e)(2).

**(g) Recapture of credit**

For purposes of section 50, if the Secretary determines that the greenhouse gas emissions rate for a qualified facility is greater than 10 grams of CO<sub>2</sub>e per KWh, any property for which a credit was allowed under this section with respect to such facility shall cease to be investment credit property in the taxable year in which the determination is made.

**(h) Special rules for certain facilities placed in service in connection with low-income communities****(1) In general**

In the case of any applicable facility with respect to which the Secretary makes an allocation of environmental justice capacity limitation under paragraph (4)—

(A) the applicable percentage otherwise determined under subsection (a)(2) with respect to any eligible property which is part of such facility shall be increased by—

(i) in the case of a facility described in subclause (I) of paragraph (2)(A)(iii) and not described in subclause (II) of such paragraph, 10 percentage points, and

(ii) in the case of a facility described in subclause (II) of paragraph (2)(A)(iii), 20 percentage points, and

(B) the increase in the credit determined under subsection (a) by reason of this subsection for any taxable year with respect to all property which is part of such facility shall not exceed the amount which bears the same ratio to the amount of such increase (determined without regard to this subparagraph) as—

(i) the environmental justice capacity limitation allocated to such facility, bears to

(ii) the total megawatt nameplate capacity of such facility, as measured in direct current.

**(2) Applicable facility**

For purposes of this subsection—

**(A) In general**

The term “applicable facility” means any qualified facility—

(i) which is not described in section 45Y(b)(2)(B),

(ii) which has a maximum net output of less than 5 megawatts (as measured in alternating current), and

(iii) which—

(I) is 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

(II) is part of a qualified low-income residential building project or a qualified low-income economic benefit project.

**(B) Qualified low-income residential building project**

A facility shall be treated as part of a qualified low-income residential building project if—

(i) such facility is installed on a residential rental building which 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)),<sup>1</sup> 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

(ii) the financial benefits of the electricity produced by such facility are allocated equitably among the occupants of the dwelling units of such building.

**(C) Qualified low-income economic benefit project**

A facility shall 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—

(i) 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

(ii) less than 80 percent of area median gross income (as determined under section 142(d)(2)(B)).

**(D) Financial benefit**

For purposes of subparagraphs (B) and (C), electricity acquired at a below-market rate shall not fail to be taken into account as a financial benefit.

**(3) Eligible property**

For purposes of this subsection, the term “eligible property” means a qualified investment with respect to any applicable facility.

**(4) Allocations****(A) In general**

Not later than January 1, 2025, the Secretary shall establish a program to allocate amounts of environmental justice capacity limitation to applicable facilities. In establishing such program and to carry out the purposes of this subsection, the Secretary shall provide procedures to allow for an efficient allocation process, including, when determined appropriate, consideration of multiple projects in a single application if such projects will be placed in service by a single taxpayer.

**(B) Limitation**

The amount of environmental justice capacity limitation allocated by the Secretary under subparagraph (A) during any calendar year shall not exceed the annual capacity limitation with respect to such year.

**(C) Annual capacity limitation**

For purposes of this paragraph, the term “annual capacity limitation” means 1.8 gigawatts of direct current capacity for each

<sup>1</sup>So in original. Another closing parenthesis probably should precede the comma.

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.

**(D) Carryover of unused limitation**

**(i) In general**

If the annual capacity limitation for any calendar year exceeds the aggregate amount allocated for such year under this paragraph, such limitation for the succeeding calendar year shall be increased by the amount of such excess. No amount may be carried under the preceding sentence to any calendar year after the third calendar year following the applicable year (as defined in section 45Y(d)(3)).

**(ii) Carryover from section 48 for calendar year 2025**

If the annual capacity limitation for calendar year 2024 under section 48(e)(4)(D) exceeds the aggregate amount allocated for such year under such section, such excess amount may be carried over and applied to the annual capacity limitation under this subsection for calendar year 2025. The annual capacity limitation for calendar year 2025 shall be increased by the amount of such excess.

**(E) Placed in service deadline**

**(i) In general**

Paragraph (1) shall not apply with respect to any property which is placed in service after the date that is 4 years after the date of the allocation with respect to the facility of which such property is a part.

**(ii) Application of carryover**

Any amount of environmental justice capacity limitation which expires under clause (i) during any calendar year shall be taken into account as an excess described in subparagraph (D)(i) (or as an increase in such excess) for such calendar year, subject to the limitation imposed by the last sentence of such subparagraph.

**(5) Recapture**

The Secretary shall, by regulations or other guidance, provide for recapturing the benefit of any increase in the credit allowed under subsection (a) by reason of this subsection with respect to any property which ceases to be property eligible for such increase (but which does not cease to be investment credit property within the meaning of section 50(a)). The period and percentage of such recapture shall be 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 taxpayer becomes aware (or reasonably should have become aware) of such property ceasing to be property eligible for such increase, the eligibility of such property for such increase is restored. The preceding sentence shall not apply more than once with respect to any facility.

**(i) Guidance**

Not later than January 1, 2025, the Secretary shall issue guidance regarding implementation of this section.

(Added Pub. L. 117-169, title I, §13702(a), Aug. 16, 2022, 136 Stat. 1990.)

**Editorial Notes**

REFERENCES IN TEXT

The date of the enactment of the Revenue Reconciliation Act of 1990, referred to in subsec. (d)(1), is the date of enactment of Pub. L. 101-508, which was approved Nov. 5, 1990.

The Housing Act of 1949, referred to in subsec. (h)(2)(B)(i), is act July 15, 1949, ch. 338, 63 Stat. 413. Title V of the Act is classified generally to subchapter III (§1471 et seq.) of chapter 8A of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of Title 42 and Tables.

**Statutory Notes and Related Subsidiaries**

EFFECTIVE DATE

Pub. L. 117-169, title I, §13702(c), Aug. 16, 2022, 136 Stat. 1997, provided that: “The amendments made by this section [enacting this section and amending sections 46, 49 and 50 of this title] shall apply to property placed in service after December 31, 2024.”

**§ 49. At-risk rules**

**(a) General rule**

**(1) Certain nonrecourse financing excluded from credit base**

**(A) Limitation**

The credit base of any property to which this paragraph applies shall be reduced by the nonqualified nonrecourse financing with respect to such credit base (as of the close of the taxable year in which placed in service).

**(B) Property to which paragraph applies**

This paragraph applies to any property which—

(i) is placed in service during the taxable year by a taxpayer described in section 465(a)(1), and

(ii) is used in connection with an activity with respect to which any loss is subject to limitation under section 465.

**(C) Credit base defined**

For purposes of this paragraph, the term “credit base” means—

(i) the portion of the basis of any qualified rehabilitated building attributable to qualified rehabilitation expenditures,

(ii) the basis of any energy property,

(iii) the basis of any property which is part of a qualifying advanced coal project under section 48A,

(iv) the basis of any property which is part of a qualifying gasification project under section 48B,

(v) the basis of any property which is part of a qualifying advanced energy project under section 48C, and

(vi) the basis of any qualified property (as defined in subsection (b)(2) of section 48D) which is part of an advanced manufac-