PUBLICATION

Guidance for 48C(e) Advanced Energy Project Credit Released by Treasury

February 14, 2023

On February 13, the Treasury Department released guidance for a major clean energy tax credit program. As noted in a prior alert, the Section 48C(e) Advanced Energy Project Credit, recently provided by the Inflation Reduction Act (IRA), is a competitive tax credit program that effectively acts as a competitive grant. Up to $10 billion in tax credits could be obtained for up to 30 percent of the amount invested in a wide array of projects related to greenhouse gas emission reduction.

To be considered for Round 1 of the § 48C(e) program, taxpayers must submit concept papers to the Department of Energy (DOE) between May 31 and July 31, 2023. The Treasury Department anticipates allocating $4 billion of 48C(e) credits with approximately $1.6 billion to projects in certain energy communities.

Manufacturers seeking this credit should consider consulting advisors to:

1. Assess project eligibility.

2. Assess timeline of the project.

3. Compare with other IRA tax credits and programs.

4. Assess bonus credit eligibility based on recently released Treasury guidance on wage and apprenticeship rules and "energy community" eligibility.

5. Consider criteria the DOE might weigh in determining the project's ranking.

Eligibility

To receive a bonus rate of 30 percent, taxpayers must satisfy the prevailing wage requirements for the establishment, expansion, or re-equipping of a manufacturing facility and for five years after the project is placed into service, as well as satisfy the apprenticeship requirements during construction of the project. Taxpayers cannot claim both the 48C credit and certain other IRA tax credits.

Treasury's February 13th guidance provides examples of specific eligible and ineligible projects but generally, qualified projects include those:

that re-equip, expand, or establish an industrial or manufacturing facility for the production or recycling of …

property designed to be used to produce 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;

electric grid modernization equipment or components;

property designed to capture, remove, use, or sequester carbon oxide emissions;

equipment designed to refine, electrolyze, or blend any fuel, chemical, or product that is …

renewable or

low-carbon and low-emission;

property designed to produce energy conservation technologies (including residential, commercial, and industrial applications);

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;

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, or

other advanced energy property designed to reduce greenhouse gas emissions as may be determined by the Secretary;

that re-equips an industrial or manufacturing facility with equipment designed to reduce greenhouse gas emissions by at least 20 percent through the installation of …

low- or zero-carbon process heat systems;

carbon capture, transport, utilization, and storage systems;

energy efficiency and reduction in waste from industrial processes; or

any other industrial technology designed to reduce greenhouse gas emissions, as determined by the Secretary, or

that re-equips, expands, or establishes an industrial facility for the processing, refining, or recycling of critical materials (as defined in Section 7002(a) of the Energy Act of 2020 (30 U.S.C. 1606(a)).

Key Criteria for Evaluation

The DOE has indicated it will assess projects based on their net impact in avoiding or reducing greenhouse gas emissions. The DOE will evaluate how a project addresses specific gaps, vulnerabilities, or risks in the domestic production of clean energy products, while also considering the project's community benefits, which may include labor engagement and commitment to high-quality jobs.

The DOE may consider giving priority to projects not eligible for support from other programs funded by the Infrastructure Investment and Jobs Act (Public Law 117-58) or the Inflation Reduction Act of 2022 (Public Law 117-169). The DOE will also weigh whether an applicant has connections to a foreign country of risk (China, Russia, etc.).

DOE's **Office of Manufacturing and Energy Supply Chains** will lead DOE's efforts. Further guidance detailing criteria is anticipated when additional program guidance is issued on or before May 31, 2023.

Timeline

Given the guidance, taxpayers could claim the 48C credit as soon as this year if a project can be certified and placed into service this year, but have about four years to place a project in service.

1. For Round 1, taxpayers must submit concept papers to the Department of Energy (DOE) after May 31, 2023, and before July 31, 2023.

2. The DOE will review the concept paper and send the taxpayer a letter encouraging or discouraging the submission of an application.

3. Taxpayers will then submit applications to the DOE, which will review applications for compliance with eligibility and other threshold requirements. If the application complies with all such requirements, DOE will conduct a technical review of the application to form a DOE recommendation.

4. The DOE will then provide a recommendation to the IRS regarding the acceptance or rejection of each application and a ranking of the applications.

5. The IRS will make a decision regarding the acceptance or rejection of each application based on DOE's recommendation and ranking, and notify each taxpayer having submitted an application of the outcome by sending a letter allocating 48C credits in the case of an acceptance (Allocation Letter) or denying the requested allocation (Denial Letter).

6. Within two years of receiving an Allocation Letter, a taxpayer must notify the DOE that the certification requirements have been met. The IRS will certify the project by sending a letter (Certification Letter). Notably, a project is eligible for certification only if the taxpayer has received all permits from federal, state, tribal, and local authorities, including environmental authorization or reviews necessary to commence construction.

7. Within two years of receiving the Certification Letter, the taxpayer must notify the DOE that the project has been placed in service. If the taxpayer has placed the project in service within the required two-year period and has notified the DOE, the taxpayer claims the 48C credit on its income tax return for the taxable year in which the project was placed in service.

Energy Communities Set-Aside

The program sets aside at least $4 billion and as much as $6 billion for qualifying "Energy Community Census Tracts" projects. These census tracks are those in which, after December 31, 1999, a coal mine closed, or after December 31, 2009, a coal-fired electric generating unit was retired, or that is directly adjoining to these census tracts.

An applicant will be able to determine whether its project is in an Energy Communities Census Tract using the mapping tool that will be referenced in the additional program guidance. For now, a preliminary assessment of where energy communities are likely to be from the American Clean Power Association can be found here.

If you have any questions related to this program or other Inflation Reduction Act programs, please contact any member of Baker Donelson's Government Relations and Public Policy practice.