

**Payments for Specified Energy Property in Lieu of Tax Credits
Under the American Recovery and Reinvestment Act of 2009**

FREQUENTLY ASKED QUESTIONS AND ANSWERS

Application Procedures

1. Question: Must an applicant submit all of the required documentation at the same time the application is submitted?

Answer: An applicant should submit all of the required documentation at the same time the application is submitted. Not doing so will delay payment. An application will not be considered complete until all required documentation has been submitted.

2. Question: What documentation must be submitted with an application?

Answer: All applicants must submit documentation demonstrating that (1) the property is eligible; (2) the property has been placed in service; and (3) the amount requested is accurate.

To show eligibility, design plans stamped by a licensed professional engineer are required for all properties.

To establish that a property has been placed in service, a commissioning report is required. For properties interconnected with a utility, an interconnection agreement must be provided.

To establish that the amount requested is accurate, a detailed breakdown of all costs included in the cost basis is required. For properties with a cost basis of more than \$500,000 an Independent accountant's certification is required.

Applicants may also be asked to submit documentation beyond what is listed here to fully demonstrate eligibility. Examples include, but are not limited to, power purchase agreements, equipment lease agreements, and certain invoices. If such additional documentation is required applicants will be notified.

See also, Questions #3 and #4 below.

3. Question: What additional documentation must be submitted with an application for property that is placed in service after December 31, 2011?

Answer: If the property is placed in service after December 31, 2011, the documentation must show that construction began in 2009, 2010 or 2011. Paid invoices and/or other financial documents demonstrating that physical work of a significant nature had begun on the property during 2009, 2010, or 2011 are required.

4. Question: Is any other documentation required?

Answer: Additional documentation is required in certain cases as follows:

Property that has a minimum or maximum nameplate capacity requirement: (applies to open-loop biomass facility using livestock waste nutrients, marine and hydrokinetic renewable energy facility, fuel cell property, microturbine property, combined heat and power system property, and small wind energy property) documentation demonstrating nameplate capacity is required.

Other specific types of property: please refer to Page 9 of the Program Guidance for information on additional documentation requirements for fuel cell property; microturbine property; combined heat and power; closed-loop biomass facility modified to use closed-loop biomass to co-fire with coal, other biomass or both; incremental hydropower production projects; and hydropower facilities installed on a nonhydroelectric dam.

Lessees: applicants that are lessees of the property must submit a written agreement with the lessor that meets the requirements described on page 17 of the program guidance.

Applicants who select "Other" in section 1A of the Application: must submit documentation explaining the business structure of the applicant

Applications and Terms and Conditions signed by a person who is not an officer or employee of the applicant: must include documentation evidencing the person's authority to legally bind the applicant.

5. Question: Who can sign the Application and Terms and Conditions?

Answer: Applications and Terms and Conditions must be signed by an authorized representative of the applicant entity. If the person signing both documents is not an officer or employee of the applicant entity, the application must include evidence of the person's authority to bind the applicant entity.

6. Question: Can a vendor of energy property, for example a company that sells solar energy systems, sign the application on behalf of its customer, the entity applying for payment?

Answer: Only if the vendor submits written evidence of its authority to bind the applicant. If this authority does not exist, the application must be signed by an officer or employee of the applicant entity.

7. Question: When should an application be submitted if the property has not yet been placed in service but construction has begun?

Answer: The purpose of submitting an application for a property that is not yet placed in service and will not be placed in service in 2009, 2010 or 2011 is to demonstrate that construction has begun during the required time period of 2009, 2010 or 2011. If the eligible property will be placed in service before the end of 2011, submitting an application after construction has begun but before the property is placed in service will not accelerate payment and is not

recommended. If the property will not be placed in service by the end of 2011, the applicant should submit the application after construction has begun but no later than September 30, 2012. See Question #8 for property placed in service on or after October 1, 2012.

8. Question: When does supplemental information need to be submitted for properties not yet placed in service?

Answer: For properties that are placed in service on or after October 1, 2012, applicants have 90 days after the property is placed in service to provide Treasury with supplemental information necessary to make a determination.

9. Question: Will an applicant receive a response if the application is submitted prior to the property being placed in service?

Answer: Yes, the applicant will be informed that it has or has not sufficiently demonstrated that construction began.

10. Question: Can applications for multiple properties be submitted on a single application? For example, may a company that leases solar panels to hundreds of different properties, consolidate these properties into a single application?

Answer: No. Because key information for each property, such as property location and placed in service date is likely to differ and design plans and other documentation are likely to be unique for each property, applications for multiple properties cannot be consolidated. However, if documentation submitted to support one application applies to other applications submitted by the same applicant, an applicant need not re-submit the documentation with each application. Instead, the applicant can cross-reference the application that includes the documentation.

11. Question: Are payments to successful applicants made by Fedwire®?

Answer: No. Payments to successful applicants are made through the Automated Clearing House (ACH). Applicants must ensure that the bank account into which they direct their payment is able to accept ACH payments.

12. Question: Can payments be assigned to entities other than financial institutions?

Answer: Assignments of payments must comply with the Federal Assignment of Claims Act which only permits assignments to banks, trust companies or other financing institutions. In general this means that assignments may only be made to entities that are in the business of providing financing.

13. Question: Are decisions on applications final? What options are available to an applicant whose application is denied?

Answer: While we will make every effort to work with an applicant during the review process to ensure that the applicant has the opportunity to address any deficiencies in its application, once a determination is made, that determination is final. No administrative appeal is available.

- 13a. Question: What actions may Treasury or other governmental entities take with respect to an application after a Section 1603 payment is issued?

Answer: Consistent with the Terms and Conditions, each applicant has agreed that any information provided to Treasury may be shared with other federal entities, including the Internal Revenue Service, as needed by those entities to conduct official agency business including audits, examinations, and evaluations after issuance of a payment in order to confirm that Section 1603 funds were properly obtained. Treasury or other relevant federal entities may take appropriate action, including action to seek repayment, if it is determined that an overpayment was made. This is true even in those cases where the payment may have already been reduced at the payment stage relative to the claimed level.

14. Question: May an application be withdrawn? If so, can an application that has been withdrawn be re-submitted?

Answer: Yes, an application may be withdrawn at any time prior to a final determination. If an application is withdrawn it can be re-submitted.

15. Question: If an applicant does not know its final costs at the time an application is submitted may a supplemental application be submitted once those costs are known?

Answer: Applicants should not submit an application until all costs are known and final.

16. Question: Is there a cap on funds available to a specific project or applicant?

Answer: No, funding for the program has no overall cap. The amount payable to any applicant for a qualifying project or projects is not limited. However, the maximum amount payable for any project is limited to 30% or 10% of the eligible costs depending on the type of project. The payment may not exceed a specified amount for each kilowatt of capacity for qualified fuel cell property and qualified microturbine property.

Applicant Eligibility

17. Question: Are schools, colleges or universities eligible applicants?

Answer: Schools, colleges or universities that are agencies or instrumentalities of a Federal, State or Local government are not eligible for payment. Additionally, schools, colleges or universities that are organizations described in section 501(c) of the Internal Revenue Code and exempt from taxation under section 501(a) of the Internal Revenue Code are not eligible for payment.

18. Question: Are manufacturers of specified energy property eligible applicants?

Answer: Payments are only available to entities that place specified energy property into service. An entity that manufactures specified energy property but does not own the property at the time it is placed in service is not eligible for payment. If a manufacturer continues to own the property once it is placed in service (for example, a manufacturer who leases rather than sells its property), it may be eligible.

19. Question: Do builders or contractors who install solar systems on residential properties qualify for payment?

Answer: No, unless they continue to own the solar property.

20. Question: Is an applicant who has received a prior USDA or other federal or state-funded grant for the same property eligible?

Answer: Yes, receipt of other federal or state grants does not impact an applicant's eligibility. However, receipt of other federal grants, state grants, or rebates may have an impact on the eligible cost basis of the property. If the rebate or grant is includable in taxable income of the applicant, the basis on which the payment is computed is not reduced. If the rebate or grant is not includable in the income of the applicant, a basis reduction may be required.

21. Question: Is an applicant who owns eligible energy property eligible to receive payment if the energy property is leased to a non-profit or otherwise ineligible entity?

Answer: Yes. If the owner of the energy property is the applicant and is otherwise eligible, the fact that the property is being leased to an ineligible entity does not impact the eligibility of the owner/applicant provided that the lease is a true lease and not a disguised sale.

22. Question: If the owner of the property is an LLC that is disregarded for federal tax purposes, is the proper applicant the disregarded LLC or its parent?

Answer: The proper applicant is the owner of the property which would be the disregarded LLC.

23. Question: If an applicant is not one of the entities listed in Section 1A of the application is the applicant ineligible?

Answer: Not necessarily. If the applicant is an entity that is not listed in Section 1A of the application it may still be eligible as long as it is not an entity that is expressly excluded from eligibility (see Program Guidance page 4). The applicant should select "Other" and provide an explanation and supporting documentation sufficient to establish that it is not ineligible.

24. Question: Can a lessee of eligible property receive payment?

Answer: Yes, if the lessor/owner of the property waives its right to payment and elects to pass it on to the lessee and the property would be eligible if owned by the lessee. See Question 4 for documentation that must be submitted if the applicant is the lessee of the property.

25. Question: Is a partnership that has a foreign entity as a partner eligible?

Answer: Having as a partner a foreign entity does not make an entity ineligible, unless the foreign entity is tax-exempt.

26. Question: Can a taxable corporation that is wholly-owned by an ineligible entity be eligible?

Answer: A taxable corporation can be an eligible applicant even if wholly owned by an ineligible entity.

Property Eligibility

27. Question: Is energy property that is used at a residence eligible?

Answer: Generally no, but energy property used at a residence may be eligible in some circumstances. Property used in a building that is used for residential purposes may be eligible if it is subject to depreciation or amortization in lieu of depreciation by its owner. This means that the property must be used in a trade or business or for the production of income. For example, if the applicant is a business that installed an otherwise eligible solar energy system on the roof of a residence that the business rents out for the production of income, the property would be eligible. If, however, the applicant is a homeowner who installed a solar energy system on the roof of his/her home and uses the solar energy property for personal purposes, the property would not be subject to depreciation and therefore would not be eligible.

28. Question: If a business receives a section 1603 payment for energy property used at a residential rental property, and subsequently sells the residential property to the tenant within five years, will the business be required to return all or part of the section 1603 payment?

Answer: Yes. The property ceases to be specified energy property when it is sold to a person who cannot depreciate the property because that person will use the property for personal purposes.

29. Question: What about energy property that is part of a building used for both business and residential purposes? For example, can a solar energy system installed on a building that is used both as a residence and a place of business be eligible?

Answer: A solar energy system installed on a building that is used as both a residence and a place of business may be eligible for a section 1603 payment based on the portion of the basis of the solar energy property used for business purposes. The portion that is used for business purposes must be demonstrated by either a separate meter, an allocation based on square footage or other reasonable means.

30. Question: Can a property that is located in Puerto Rico be eligible?

Answer: Generally, to be eligible, the property must be used predominantly in the United States. An exception to this general rule is property described in the Internal Revenue Code, section 168(g)(4) which includes property owned by a domestic corporation or U.S. citizen that is used predominantly in a U.S. possession. The corporation must not have an election in effect under section 936 of the Internal Revenue Code and the U.S. citizen must not be entitled to the benefits of section 931 or section 933 of the Internal Revenue Code.

31. Question: Can property that contains "used" or "refurbished" parts qualify for the Section 1603 program?

Answer: For a property to be eligible, the original use of the property must begin with the applicant. If the cost of any used parts in a facility is less than 20% of the total cost of the facility, the property will not be considered "used" for purposes of determining original use.

32. Question: Can dead and diseased trees resulting from pine beetle infestation qualify as open-loop biomass?

Answer: Yes, provided the trees have no commercial value other than use in producing energy from biomass. For this purpose, infested trees from which lumber or pulp could be recovered with appropriate processing may, nevertheless, have no commercial value if they are located in an area without milling or pulping facilities or if they are in excess of the area's milling and pulping capacity.

33. Question: Can a facility that produces electricity from pyrolysis oil derived from open-loop biomass qualify as an open-loop biomass facility?

Answer: Yes. Open-loop biomass facilities include, in addition to facilities that burn open-loop biomass, facilities that burn gases or liquids derived from open-loop biomass.

34. Question: In the case of a qualified facility that produces electricity by burning gases or liquids derived from a qualified energy resource such as open-loop biomass or municipal solid waste, can the equipment used to convert the qualified energy resource into a gas or liquid qualify for a Section 1603 payment?

Answer: Yes, but only if the equipment used to produce the gas or liquid (the conversion equipment) is an integral part of the qualified facility. In general, conversion equipment that is owned by the same person and located at the same site as the qualified facility will be treated as an integral part of the facility. In addition, the conversion equipment may be treated as an integral part of the qualified facility, even if under different ownership or at a different site, if it is established that the conversion equipment is integrated into the facility. Factors that may be relevant in determining whether the conversion equipment is integrated into the facility include whether the conversion equipment and the facility are placed in service simultaneously, the extent to which the gas or liquid produced is dedicated to the facility (for example, under an exclusive long-term supply contract), and the dependence of the facility on the gas or liquid produced by the conversion equipment. Conversion equipment generally will not be treated as an integral part of a qualified facility if less than 75 percent of the gas or liquid produced is dedicated to the facility. In addition, if conversion equipment is treated as an integral part of a qualified facility but not all the gas or liquid produced is dedicated to that facility, the conversion equipment's eligible cost basis is limited to the percentage of its otherwise eligible cost corresponding to the percentage of its production that is dedicated to the qualified facility.

35. Question: If components of a facility are owned by different persons, must each owner submit a separate application for a Section 1603 payment?

Answer: Yes, a separate application must be submitted for each part of the facility with a different ownership structure. For example, if an open-loop biomass facility consists of conversion equipment owned by corporation X and generation equipment owned by corporation Y, X and Y must submit separate applications to receive Section 1603 payments for their portions of the facility. All owners of the facility (including owners of portions of the facility that are not eligible for a Section 1603 payment) must join in each separate application for the Section 1603 payment and agree to the terms and conditions, including the

waiver of the right to claim a credit under section 45 with respect to the facility. In any such case, the application and the terms and conditions will be appropriately modified to reflect the participation of persons other than the claimant.

36. Question: Can conversion equipment that is an integral part of a qualified facility qualify for a Section 1603 payment if the combustion equipment included in the facility was placed in service before 2009?

Answer: Only if, for purposes of determining depreciation with respect to the conversion equipment, it is placed in service in 2009, 2010, or 2011 or (for equipment on which construction begins in 2009, 2010, or 2011) in 2012 or 2013. Conversion equipment placed in service at a later date than the original facility may, nevertheless, be an integral part of the facility if, for example, the facility was not initially dependent on the conversion equipment because an alternative source of biomass fuel was available when the combustion equipment was placed in service. In that case, the combustion equipment and the conversion equipment are not treated as a single unit of property for purposes of determining the beginning of construction or the date property is placed in service.

37. Question: Is the eligible cost basis of the conversion equipment reduced if the qualifying facility of which it is a part burns fuel other than fuel that the conversion facility produces from qualified energy resources?

Answer: No, not if all fuel produced by the conversion equipment is used by the qualifying facility in the production of electricity.

Use of Awarded Funds

38. Question: Do the "Buy American" provisions in the American Recovery and Reinvestment Act of 2009 apply to the Section 1603 program?

Answer: No.

39. Question: Does the Davis-Bacon Act apply to the Section 1603 program?

Answer: Receipt of funds under Section 1603 does not trigger the requirements of the Davis-Bacon Act.

Eligible Basis

40. Question: What costs qualify for a Section 1603 payment?

Answer: The amount of the Section 1603 payment is a percentage of the eligible basis of the property. The basis of property generally is its cost (IRC section 1012), unreduced by any other adjustment to basis, such as that for depreciation, and includes all items properly included by the taxpayer in the depreciable basis of the property, such as installation costs and the cost for freight incurred in construction of the specified energy property.

41. Question: If an applicant has received another federal or state grant or a rebate for the same property, must the basis be reduced?

Answer: If the rebate or grant is includable in taxable income of the applicant, the basis on which the payment is computed is not reduced. If the rebate or grant is not includable in the income of the applicant, a basis reduction may be required.

42. Question: In an earlier communication on its website concerning evaluations of the cost basis for solar photovoltaic properties, Treasury presented price benchmarks that it uses in evaluating applicants' claimed basis. Has Treasury updated those benchmarks since the release of that communication?

Answer: No updated benchmarks have been published. While Treasury continues to compare applicants' claimed basis with typical market pricing during the relevant time period, such comparisons have been used and continue to be used as only one of several factors in assessing whether Treasury requires additional information from the applicant to support the claimed basis prior to Treasury's issuance of payment. Just as one property's eligible basis may exceed a national benchmark, another property's eligible basis may fall below that benchmark. As a result, we have determined that continuing to publish benchmarks is not useful.

43. Question: Is there a particular level of development fee or profit that Treasury may accept as part of determining the eligible basis?

Answer: As stated in the Program Guidance, cost basis for purposes of Section 1603 is determined in accordance with the general rules for determining the basis of property for federal income tax purposes. In those circumstances in which inclusion of a development fee, profit, or other components of markups above a property's direct costs (e.g., for allocated indirect costs) is appropriate, the appropriate level of development fee, profit, or markup is case-specific and depends on many factors. Therefore, applicants with a claimed basis that implicitly or explicitly reflects markups of any kind above the property's direct cost should be able to support the appropriateness of the specific level of markup with reference to particular facts and circumstances relevant to their property.

44. Question: How does Treasury evaluate appraisals or other information submitted in support of a property's fair market value?

Answer: In certain circumstances (such as those generally described in a document titled "Evaluating Cost Basis for Photovoltaic Property," to be found at http://www.treasury.gov/initiatives/recovery/Documents/N%20Evaluating_Cost_Basis_for_Solar_PV_Properties%20final.pdf) applicants must be able to demonstrate that their claimed basis is consistent with their property's fair market value (FMV). Applicants typically submit an appraisal to make this demonstration. In evaluating appraisals, Treasury often considers the appraiser's various judgments and analyses for consistency with market data and with any property-specific information that may offer insight about the property's value.

With respect to property-specific information, it is often the case that a developer enters into a transaction with an unrelated investor involving the project in which the Section 1603 eligible property is employed. Such a transaction is typically structured in a way that the unrelated investor receives (either directly or through a partnership distribution or otherwise) some or all of the project's cash flows in exchange for a cash payment, capital investment or

lease payments. In these cases, the terms negotiated between the unrelated investor and the developer (assuming such terms are negotiated at arm's length and are not influenced by peculiar circumstances) can offer significant information regarding the value of the entire project. For example, the projected return on investment that a developer agrees to provide an unrelated investor offers information regarding the developer's assessment of the value of the project's expected cash flows. Thus, it should be possible to reconcile an applicant's claimed basis, and any appraised valuation supporting that claimed basis, with what the terms of any such transaction imply about the project's value, taking into account that the value of the Section 1603 eligible *property* may be less than the value of the overall *project* in which it is used if some of the project's value reflects the value of other ineligible assets associated with the project. Also, to the extent that a project's purchase price depends in part on the project's developer making an investment in the project or making some other financial commitment associated with the project's operation (e.g., agreeing to a lease agreement in a sale-leaseback), applicants should be able to demonstrate that the terms of the project developer's involvement are consistent with terms to which a party not involved in the project's development would reasonably agree.

Helpful Links

Department of Energy: <http://www.energy.gov/taxbreaks.htm>;
<http://www.energy.gov/recovery/48C.htm>

Energy Star: http://www.energystar.gov/index.cfm?c=tax_credits.tx_index

DSIRE: <http://www.dsireusa.org/>

U.S. Department of Agriculture: <http://www.rurdev.usda.gov/>

IRS: <http://www.irs.gov/newsroom/article/0,,id=204335,00.html?portlet=6>

Department of Housing & Urban Development: www.hud.gov