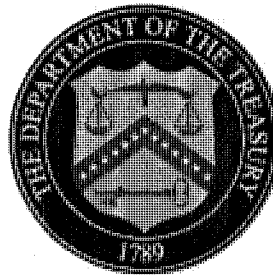


Payments for Specified Energy Property in Lieu of Tax Credits
under the
AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009



U.S. Treasury Department
Office of the Fiscal Assistant Secretary
July 2009/ Revised March 2010/ Revised April 2011

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Program Guidance

Under Section 1603 of the American Recovery and Reinvestment Tax Act of 2009 (Section 1603), the United States Department of the Treasury (Treasury) makes payments to eligible persons who place in service specified energy property and apply for such payments. The purpose of the payment is to reimburse eligible applicants for a portion of the expense of such property. Eligible property under this program includes only property used in a trade or business or held for the production of income. Nonbusiness energy property described in section 25C of the Internal Revenue Code (IRC) and residential energy efficient property described in section 25D of the IRC do not qualify for payments under this program but may qualify for tax credits under those provisions.

By receiving payments for property under section 1603, applicants are electing to forego tax credits under sections 48 and 45 of the IRC with respect to such property for the taxable year in which the payment is made or any subsequent taxable year. Applicants must agree to the terms and conditions applicable to the Section 1603 program.

This Guidance establishes the procedures for applying for payments under the Section 1603 program and is intended to clarify the eligibility requirements under the program. Treasury welcomes questions about the program and the application process at 1603Questions@do.treas.gov.

I. Overview

On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act of 2009 (Public Law 111-5). The purpose of the Recovery Act is to preserve and create jobs and promote economic recovery in the near term and to invest in infrastructure that will provide long-term economic benefits.

Section 1603 of the Act's tax title, the American Recovery and Reinvestment Tax Act, as amended by Section 707 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (Public Law 111-312), appropriates funds for payments to persons who place in service specified energy property during 2009, 2010, or 2011 or after 2011 if construction began on the property during 2009, 2010 or 2011 and the property is placed in service by a certain date known as the credit termination date (described more fully below in the Property and Payment Eligibility section). Treasury will make Section 1603 payments to qualified applicants in an amount generally equal to 10% or 30% of the basis of the property, depending on the type of property. Applications will be reviewed and payments made within 60 days from the later of the date of the

complete application or the date the property is placed in service. Applicants who receive payments for property under Section 1603 are not eligible for the production or investment tax credit under sections 45 and 48 of the IRC with respect to the same property for the taxable year of the payment or subsequent years. In addition, any credit under section 48 previously allowed with respect to progress expenditures for the property will be recaptured.

It is expected that the Section 1603 program will temporarily fill the gap created by the diminished investor demand for tax credits. In this way, the near term goal of creating and retaining jobs is achieved, as well as the long-term benefit of expanding the use of clean and renewable energy and decreasing our dependency on non-renewable energy sources.

II. Application Procedures

Applicants interested in receiving payments under Section 1603 may submit an application on-line by going to www.treasury.gov/recovery. Applications may only be submitted after the property to which the application relates is placed in service, or is under construction. A completed application will include the signed and complete application form; supporting documentation; signed Terms and Conditions; and complete payment information. All applications must be received before the statutory deadline of October 1, 2012.

For property placed in service in 2009, 2010 or 2011, applications must be submitted after the property has been placed in service and before October 1, 2012. Treasury will review the applications and make payment to qualified applicants within 60 days from the date the completed application is received by Treasury.

For property not placed in service in 2009, 2010 or 2011 but for which construction began in 2009, 2010 or 2011, applications must be submitted after construction commences but before October 1, 2012. If the property has been placed in service at the time of the application, Treasury will make payments to qualified applicants within 60 days from the date the completed application is received. For property not yet placed in service at the time of the application, Treasury will review such applications and notify the applicant if all eligibility requirements that can be determined prior to the property being placed in service have been met. If so notified, applicants must then submit, within 90 days after the date the property is placed in service, supplemental information sufficient for Treasury to make a final determination. Treasury will conduct a final review of the application at that time and make payment to qualified applicants within 60 days after the supplemental information is received by Treasury. Instructions provided on the application will indicate which portions of the application must be completed at the time the application is initially submitted and which portions must be completed at the time the application is supplemented.

If an applicant is applying for Section 1603 payments for multiple units of property that are treated as a single, larger unit of property (see Section IV. D. below), all such units may be included in a single application.

The application form requests, among other identifying data elements, the applicant's Data Universal Numbering System (DUNS) number from Dun and Bradstreet. If the applicant does not already have a DUNS number, it may request one at no cost by calling the dedicated toll-free DUNS Number request line at 1-866-705-5711.

Applicants must also register with the System for Awards Management (SAM). To register, go to <https://www.sam.gov/portal/public/SAM/>. The SAM registration must be completed before a payment can be made.

When Treasury determines that an application is approved, it will send a notice to the applicant. The notice informs the applicant that the payment will be made and incorporates the information contained in the applicant's completed application form and the Terms and Conditions. Treasury makes payment to the applicant no later than five days from the date of the notice. Payment will be made by Electronic Funds Transfer based upon the banking information in the SAM.

In cases where an applicant has not submitted sufficient information upon which a determination can be based, the applicant will be so notified and given 21 days from the date of the notice to submit additional information. If additional information is not received within the 21 day period, the application will be denied.

When Treasury determines that the application does not qualify for payment, the applicant will be so notified. Such notification will include the reasons for the determination and will be considered the final agency action on the application.

III. Applicant Eligibility

Certain persons are not eligible to receive Section 1603 payments. These include:

- any Federal, state or local government, including any political subdivision, agency or instrumentality thereof
- any organization that is described in section 501(c) of the IRC and is exempt from tax under section 501(a) of the IRC
- any entity referred to in paragraph (4) of section 54(j) of the IRC or
- any partnership or other pass-thru entity, any direct or indirect partner (or other holder of an equity or profits interest) of which is an organization or entity described above unless this person only owns an indirect interest in the applicant through a taxable C corporation.

As long as each direct and indirect partner in the partnership or shareholder or similar interest holder in any other pass-thru entity is eligible to receive Section 1603 payments, the partnership or pass-thru entity is eligible to receive Section 1603 payments. Having as a direct or indirect partner, shareholder, or similar interest holder a taxable C corporation any of whose shareholders are not eligible to receive Section 1603 payments does not affect the eligibility of the partnership or pass-thru entity. Neither a Real Estate Investment Trust, nor a cooperative organization described in section 1381(a) of the IRC is a pass-thru entity for this purpose.

For an applicant to be eligible to receive a Section 1603 payment it must be the owner or lessee of the property and must have originally placed the property in service. Lessees are eligible to apply for Section 1603 payments only if the conditions described in Section VI of this Guidance are met.

A foreign person or entity may be eligible for a Section 1603 payment if the person or entity qualifies for the exception in section 168(h)(2)(B) of the IRC.

Applicant eligibility will be determined as of the time the application is received.

IV. Property and Payment Eligibility

A. Placed in Service

Qualified property must be originally placed in service between January 1, 2009, and December 31, 2011, (regardless of when construction begins) or placed in service after 2011 and before the credit termination date (see below) if construction of the property begins between January 1, 2009, and December 31, 2011. Qualified property includes expansions of an existing property that is qualified property under section 45 or 48 of the IRC.

Placed in service means that the property is ready and available for its specific use.

B. Credit Termination Date and Applicable Payment Percentage

The following chart lists the Credit Termination Date and the applicable percentage of eligible cost basis used in computing the payment for each specified energy property.

Specified Energy Property	Credit Termination Date	Applicable Percentage of Eligible Cost Basis
Large Wind	Jan 1, 2013	30%
Closed-Loop Biomass Facility	Jan 1, 2014	30%
Open-loop Biomass Facility	Jan 1, 2014	30%
Geothermal under IRC sec. 45	Jan 1, 2014	30%
Landfill Gas Facility	Jan 1, 2014	30%
Trash Facility	Jan 1, 2014	30%
Qualified Hydropower Facility	Jan 1, 2014	30%
Marine & Hydrokinetic	Jan 1, 2014	30%
Solar	Jan 1, 2017	30%
Geothermal under IRC sec. 48	Jan 1, 2017	10%*
Fuel Cells	Jan 1, 2017	30%**
Microturbines	Jan 1, 2017	10%***
Combined Heat & Power	Jan 1, 2017	10%
Small Wind	Jan 1, 2017	30%
Geothermal Heat Pumps	Jan 1, 2017	10%

*Geothermal Property that meets the definitions of qualified property in both § 45 and § 48 is allowed either the 30% credit or the 10% credit but not both.

** For fuel cell property the maximum amount of the payment may not exceed an amount equal to \$1,500 for each 0.5 kilowatt of capacity.

*** For microturbine property the maximum amount of the payment may not exceed an amount equal to \$200 for each kilowatt of capacity.

C. Beginning of Construction

Construction begins when physical work of a significant nature begins. Work performed by the applicant and by other persons under a written binding contract is taken into account in determining whether construction has begun. An applicant may elect the safe harbor described below to determine when construction begins.

Physical work of a significant nature. Both on-site and off-site work may be taken into account for purposes of demonstrating that physical work of a significant nature has begun. For example, in the case of a facility for the production of electricity from a wind turbine, on-site physical work of a significant nature begins with the beginning of the excavation for the foundation, the setting of anchor bolts into the ground, or the pouring of the concrete pads of the foundation. If the facility's wind turbines and tower units are to be assembled on site from components manufactured off site and delivered to the site, physical work of a significant nature begins when the manufacture of the components begins at the off-site location. If a manufacturer produces components for multiple facilities, reasonable methods must be used to associate individual components with particular facilities. Physical work of a significant nature does not include preliminary activities such as planning or designing, securing financing, exploring, researching, clearing a site, test drilling of a geothermal deposit, test drilling to determine soil condition, or excavation to change the contour of the land (as distinguished from excavation for footings and foundations).

Self construction. If an applicant manufactures, constructs, or produces property for use by the applicant in the applicant's trade or business (or for the applicant's production of income), the work performed by the applicant is taken into account in determining when physical work of a significant nature begins.

Construction by contract. For property that is manufactured, constructed, or produced for the applicant by another person under a written binding contract (as described below) that is entered into prior to the manufacture, construction, or production of the property for use by the applicant in the applicant's trade or business (or for the applicant's production of income) the work performed under the contract is taken into account in determining when physical work of a significant nature begins. A contract is binding only if it is enforceable under State law against the applicant or a predecessor, and does not limit damages to a specified amount (for example, by use of a liquidated damages provision). For this purpose, a contractual provision that limits damages to an amount equal to at least 5 percent of the total contract price will not be treated as limiting damages to a specified amount. If a contract provides for a full refund of the purchase

price in lieu of any damages allowable by law in the event of breach or cancellation, the contract is not considered binding. A contract is binding even if the contract is subject to a condition, as long as the condition is not within the control of either party or a predecessor. A contract will continue to be binding if the parties make insubstantial changes in its terms and conditions or any term is yet to be determined by a standard beyond the control of either party. For example, minor modifications to the design specifications of property to be produced under a contract, such as a cold weather package for wind turbines, do not affect the binding nature of the contract. A contract that imposes significant obligations on the applicant or a predecessor will be treated as binding notwithstanding the fact that certain terms remain to be negotiated by the parties to the contract. An option to either acquire or sell property is not a binding contract. A binding contract does not include a supply, or similar, agreement if the amount and design specifications of the property to be purchased have not been specified.

Safe Harbor. An applicant may treat physical work of a significant nature as beginning when more than 5 percent of the total cost of the property has been paid or incurred and may treat physical work of a significant nature as not having begun until more than 5 percent of the total cost of the property has been paid or incurred. In the case of property constructed by the applicant, costs of the property are treated as paid or incurred when paid or incurred by the applicant. In the case of property manufactured, constructed, or produced for the applicant by another person under a binding written contract that is entered into prior to the manufacture, construction, or production of the property (i) the cost of the property under the contract is treated as paid or incurred when the property is provided to the applicant, and (ii) for periods before the property is provided to the applicant, costs paid or incurred with respect to the property by such other person are treated as costs of the property that are paid or incurred when paid or incurred by such other person. If the property includes both self-constructed components and components constructed under a contract, the costs relating to the self-constructed components and the costs relating to the components constructed under a contract are combined in determining if the 5 percent of total costs has been exceeded. All costs included in the eligible basis (as described in section V) of the specified energy property and only such costs are taken into account in determining if 5 percent of total costs has been exceeded. If the applicant is a lessee of property for which the lessor has elected to pass-through the payment to the lessee, this safe harbor must be met by the lessor (unless the applicant sold and leased back the property). An applicant may elect to use this safe harbor by stating in section 2F of the application that the applicant is electing this safe harbor and describing the costs that satisfy the requirements for this election. See also section 6B of the application regarding supporting documentation.

Reliance on prior Guidance. An applicant may determine when construction begins under the Program Guidance in effect before March 15, 2010. This Guidance can be found at <http://www.treasury.gov/initiatives/recovery/Documents/SUMMARY%20OF%20PROPOSED%20CHANGES%20TO%20SECTION%201603%20PROGRAM%20GUIDANCE.doc>

D. Units of Property

For purposes of determining the beginning of construction of property or the date property is placed in service, all the components of a larger property are a single unit of property if the components are functionally interdependent. Components of property that are produced by, or for, the applicant are functionally interdependent if the placing in service of each of the components is dependent on the placing in service of each of the other component. For example, on a wind farm for the production of electricity from wind energy, the electricity generating wind turbine, its tower, and its supporting pad are the single unit of property. Each wind turbine on the wind farm can be separately operated and metered and can begin producing electricity individually. A control system on a wind farm that optimizes the operation of the farm is a unit of property that is separate from the wind turbines.

The owner of multiple units of property that are located at the same site and that will be operated as a larger unit may elect to treat the units (and any property, such as a computer control system, that serves some or all such units) as a single unit of property for purposes of determining the beginning of construction and the date the property is placed in service. In such a case, the entire cost of such larger unit of property is taken into account in applying the safe harbor. The owner may not include within this larger unit any property that was placed in service before January 1, 2009. For example, the owner of a wind farm may treat as a single unit a wind farm that will consist of fifty turbines, their associated towers, their supporting pads, a computer system that monitors and controls the turbines, and associated power condition equipment. In cases where the applicant treats multiple units of property as a single unit, failure to complete the entire planned unit will not preclude receipt of a Section 1603 payment. For example, in the example noted above if only 40 of the planned 50 turbines were placed in service by the credit termination date, an otherwise eligible applicant would be eligible for a payment based on the 40 turbines placed in service.

E. Specified Energy Property Installed on Other Property

Only the portion of a facility that is described in section 48 of the IRC is taken into account in computing the Section 1603 payment. For example, in the case of a building with solar property on its roof, only the cost of the solar property (including the cost of mounting the solar property on the roof) qualifies for a Section 1603 payment; the cost of the building does not qualify. In the case of a truck on which solar energy property is mounted, the cost of the solar energy property and the cost of mounting the property may be eligible for a Section 1603 payment. However, the truck on which the property is mounted is not specified energy property. Likewise, in the case of a forklift powered by a fuel cell power plant, the fuel cell power plant may be eligible for a Section 1603 payment. However, the forklift in which it is used is not specified energy property.

F. Location of Property

Property which is used predominantly outside the United States does not qualify for a payment under section 1603. The determination of whether property is used predominantly outside the United States is made by comparing the period of time during which the property is physically located outside the United States with the period of time

during which the property is physically located within the United States in a given year. If the property is located outside the United States during more than 50% of the year, such property is considered to be used predominantly outside the United States during that year. This limitation does not apply to property described in section 168(g)(4) of the IRC.

G. Original Use

The original use of the property must begin with the applicant. If the cost of the used parts contained within the property is not more than 20 percent of the total cost of the property (whether acquired or self-constructed), an applicant will not fail to be considered the original user of property because it contains used parts.

If new property is originally placed in service by a person and is sold to an applicant and leased back to the person by the applicant within three months after the date the property was originally placed in service by the person, unless the lessor and lessee elect otherwise, the applicant-lessor is considered the original user of the property and the property is considered to be placed in service not earlier than when it is used under the lease back.

H. Required Documentation

Applicants must submit supporting documentation demonstrating that the property is eligible property and that it has been placed in service, and if placed in service after December 31, 2011, that construction began in 2009, 2010 or 2011 (See section V below for documentation required to support costs). The following documents are required as indicated below:

Eligible Property – the following documentation must be provided, as applicable, to demonstrate that the property is eligible (for further details on property eligibility, see sections 45 or 48 of the IRC):

Design plans (required of all applicants). Final engineering design documents, stamped by a licensed professional engineer.

Documentation demonstrating that the property is designed to have a nameplate capacity that meets required minimums or maximums (see Section 4A of the Application for properties with minimum or maximum nameplate capacity requirements) : [open-loop biomass facility (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 only]. This documentation can be included within the required design plans or commissioning report, or with the original equipment manufacturer (OEM)/equipment vendor specification sheets.

Documentation demonstrating that the property is designed to meet the electricity-only generation efficiency requirements described in Section 4A of the Application (fuel cell property and microturbine property only). The system efficiency is typically calculated as a ratio of the electrical energy output from the device to the amount of fuel consumed to produce the electricity divided by the lower heating value (LHV) of the fuel (if

alternating current, be sure to include conversion losses). OEM/equipment vendor specification sheets that specify the above values can be used as supporting documentation for nameplate capacity and system efficiency. This documentation can also be included within the required design plans or commissioning report, as long as it specifies the above values.

For combined heat and power system property only, documentation demonstrating that the system is designed to meet the requirements described in Section 4A of the Application. See IRC section 48(c)(3)(C) for calculation of the system energy efficiency percentage. This documentation can be included within the required design plans or commissioning report, or with OEM/equipment vendor specification sheets.

For a closed-loop biomass facility modified to use closed-loop biomass to co-fire with coal, other biomass, or both, documentation demonstrating approval under the Biomass Power for Rural Development Program or documentation demonstrating that the facility is part of a pilot project of the Commodity Credit Corporation.

FERC certification (applicable to incremental hydropower production projects only). Certification provided by the Federal Energy Regulatory Commission that certifies the baseline and incremental increase in energy production for incremental hydropower production.

FERC license (applicable to hydropower facility installed on a qualifying nonhydroelectric dam only).

Placed in Service - the following documentation must be provided, as applicable, to demonstrate that the property is placed in service:

Commissioning report (required for all properties placed in service). A report provided by the project engineer, or the equipment vendor, or an independent third party that certifies that the equipment has been installed, tested, and is ready and capable of being used for its intended purpose.

Interconnection agreement (required only for properties placed in service that are interconnected with a utility). A formal document between the applicant and the local utility that establishes the terms and conditions under which the utility agrees to interconnect with the applicant's system. Applicants must also submit any subsequent documentation to demonstrate that the interconnection agreement has been placed in effect.

Under Construction but not yet Placed in Service - the following documentation must be provided, as applicable, to demonstrate that construction has begun on the property: Paid invoices and/or other financial documents demonstrating that physical work of a significant nature has begun on the property as described in Section IV.C. If beginning of construction is based on the safe harbor, these documents must demonstrate that more than 5 percent of the total cost of the property) has been incurred or paid by the applicant.

Binding contract (required for property not yet placed in service that is being manufactured, constructed or produced for the applicant by another person). The binding contract for the manufacture, construction or production of the property as described in section IV.C above.

Leased Property - the following documentation must be provided where the applicant is the lessee of the property to demonstrate that the lessor and lessee have entered into the agreement required by section VI of this Guidance.
The written agreement with the lessor described in Section VI of this Guidance.

I. Types of Property

Property eligible to receive Section 1603 payments is “specified energy property.” Specified energy property includes only tangible property (not including a building) that is an integral part of the facility. The tangible property is tangible personal property and other tangible property as defined in sections 1.48-1(c) and (d) of the Income Tax Regulations. Specified energy property is property for which depreciation (or amortization in lieu of depreciation) is allowable.

Qualified property must be placed in service in 2009, 2010 or 2011 or, in the case of property placed in service after 2011 for which construction begins in 2009, 2010 or 2011, before the credit termination date. Property that satisfies this placed-in-service requirement may be qualified property even if it is an addition to or expansion of a qualified facility placed in service before 2009.

Qualified property includes only tangible property that is an integral part of the qualified facility. Qualified property does not include a building but may include structural components of a building. Property is an integral part of a qualified facility if the property is used directly in the qualified facility and is essential to the completeness of the activity performed in that facility. Roadways and paved parking areas located at the qualified facility and used for transport of material to be processed at the facility or equipment to be used in maintaining and operating the facility are integral to the activity performed there, but roadways or paved parking lots that provide solely for employee and visitor vehicle traffic are not an integral part a qualified facility. Property is considered used as an integral part of a qualified facility if so used either by the owner of the property or by the lessee of the property.

In the case of an open-loop biomass, closed-loop biomass, or municipal solid waste facility, an integral part of the qualified facility may include property used for unloading, transfer, storage, reclaiming from storage, or preparation (shredding, chopping, pulverizing, or screening) of the material to be processed at the plant. If the facility uses a gas or liquid derived from open-loop biomass, closed-loop biomass, or municipal solid waste to produce electricity, equipment used to produce and process such gas or liquid may also be an integral part of the facility. However, equipment used to cultivate closed-loop biomass, equipment used to collect open-loop biomass, closed-loop biomass, or municipal solid waste, and trucks, railroad cars, barges and pipelines that transport open-loop biomass, closed-loop biomass, or municipal solid waste (or a gas or liquid

produced from any of the foregoing) to a qualified facility or between noncontiguous parts of a qualified facility are not an integral part of the facility. Property that is integral to a geothermal facility includes equipment that transports geothermal steam or hot water from a geothermal deposit to the site of ultimate use. This includes components of a heating system, such as pipes and ductwork that distribute within a building the energy derived from the geothermal deposit and, if geothermal energy is used to generate electricity, includes equipment that transports hot water from the geothermal deposit to a power plant.

For qualified property that generates electricity, qualified property includes storage devices, power conditioning equipment, transfer equipment, and parts related to the functioning of those items but does not include any electrical transmission equipment, such as transmission lines and towers, or any equipment beyond the electrical transmission stage, such as transformers and distribution lines.

Specified energy property, within the meaning of Section 1603, consists of two broad categories of property - certain property that is part of a facility described in IRC section 45 (Qualified Facility Property) and certain other property described in IRC section 48. The following types of property are specified energy property within the meaning of Section 1603¹:

Qualified Facility Property:

Qualified Facility Property is property that is an integral part of a qualified facility described in IRC section 45(d)(1), (2), (3), (4), (6), (7), (9), or (11). Although this Guidance does not address the placed-in-service requirements of IRC section 45, Qualified Facility Property must be part of a facility that meets those requirements. Qualified Facility Property may, however, be a post-2008 addition to or modification of a facility placed in service before 2009 so long as the facility meets the placed-in-service requirements of section 45. In the case of a post-2008 addition to or modification of a qualified facility described in section 45(d)(1), (2), (3), (4), (6), (7), (9), or (11) and placed in service before 2009, no credit is allowed with respect to such facility under section 45, or with respect to such property under section 48, in the taxable year a Section 1603 payment is made or in any subsequent year.

Wind facility: A wind facility is a facility using wind to produce electricity (wind turbines 100kW or less may also qualify as qualified small wind energy property, but only one payment is allowed with respect to the property).

Closed-loop biomass facility: A closed-loop biomass facility uses closed-loop biomass to produce electricity. Closed-loop biomass is any organic material from a plant that is planted exclusively for purposes of being used at a qualified facility to produce electricity. A closed loop biomass facility includes the modifications to

¹ The property descriptions included in this Guidance are intended to assist applicants in determining if a property qualifies for funding. They are not intended to change the meaning of the terms as they are used in sections 45 or 48 of the IRC.

a facility that was originally placed in service and modified to use closed-loop biomass to co-fire with coal, with other biomass, or with both, but only if the modification is approved under the Biomass Power for Rural Development Programs or is part of a pilot project of the Commodity Credit Corporation as described in 65 Fed. Reg. 63052.

Open-loop biomass facilities: An open-loop biomass facility uses open-loop biomass to produce electricity. Open-loop biomass is any agriculture livestock waste nutrients or any solid, nonhazardous, cellulosic waste material or any lignin material that is derived from qualified sources.

- Agricultural livestock waste nutrients are agricultural livestock manure and litter, including wood shavings, straw, rice hulls, and other bedding material for the disposition of manure. Agricultural livestock includes bovine, swine, poultry, and sheep.
- The qualified sources from which solid, nonhazardous, cellulosic waste material or any lignin material must be derived are:
 1. Any of the following forest-related resources: mill and harvesting residues, precommercial thinnings, slash, and brush;
 2. Solid wood waste materials, including waste pallets, crates, dunnage, manufacturing and construction wood wastes (other than pressure-treated, chemically-treated, or painted wood wastes), landscape or right-of-way tree trimmings, but not including municipal solid waste, gas derived from the biodegradation of solid waste, or paper that is commonly recycled; and
 3. Agriculture sources, including orchard tree crops, vineyard, grain, legumes, sugar, and other crop by-products or residues.

An open-loop biomass facility does not include:

- A facility that burns fossil fuel (co-firing) beyond such fossil fuel required for startup and flame stabilization; or
- A facility using agricultural livestock waste nutrients that has a nameplate capacity rating of less than 150 kilowatts.

Geothermal facility: A geothermal facility uses geothermal energy to produce electricity. Geothermal energy is energy derived from a geothermal deposit. A geothermal deposit is a geothermal reservoir consisting of natural heat that is stored in rocks or in an aqueous liquid or vapor (whether or not under pressure).

Landfill gas facilities: A landfill gas facility is a facility producing electricity from gas derived from the biodegradation of municipal solid waste.

Trash facilities: A trash facility is a facility, other than a landfill gas facility, that uses municipal solid waste to produce electricity. In the case of a new unit placed in service in connection with a trash facility placed in service before October 23, 2004, only property related to the new unit can qualify as specified energy property that is eligible for a Section 1603 payment.

Qualified hydropower facility:

Incremental hydropower: A facility that produces incremental hydropower production described in IRC section 45(c)(8)(B). The percentage of incremental hydropower and baseline must be certified by the Federal Energy Regulatory Commission. The determination of incremental hydropower production shall not be based on any operational changes at such facility not directly associated with the efficiency improvements or additions of capacity. Only property related to the efficiency improvements and additions to capacity to which the incremental hydropower production is attributable can qualify as specified energy property that is eligible for a Section 1603 payment.

Nonhydroelectric dam: Qualified hydropower facilities also include any hydropower producing facility described in IRC section 45(c)(8)(C) (relating to hydroelectric projects installed on a nonhydroelectric dams that were placed in service before August 8, 2004, and did not produce hydroelectric power on August 8, 2004). The hydroelectric project must be licensed by the Federal Energy Regulatory Commission and must meet all other applicable environmental, licensing, and regulatory requirements. The hydroelectric project must be operated so that the water surface elevation at any given location and time that would have occurred in the absence of the hydroelectric project is maintained, subject to any license requirements imposed under applicable law that change the water surface elevation for the purpose of improving environmental quality of the affected waterway. The Secretary of the Treasury, in consultation with the Federal Energy Regulatory Commission, shall certify that the hydroelectric project licensed at a nonhydroelectric dam meets these criteria. Only property related to the turbines or other generating devices added to the facility to produce hydroelectric power can qualify as specified energy property that is eligible for a Section 1603 payment.

Marine and hydrokinetic renewable energy facilities: A marine or hydrokinetic renewable energy facility is a facility that produces electricity from marine and hydrokinetic renewable energy and has a nameplate capacity rating of at least 150 kilowatts. Marine and hydrokinetic renewable energy is energy derived from:

- Waves, tides, and currents in oceans, estuaries, and tidal areas, free flowing water in rivers, lakes, and streams;
- Free flowing water in an irrigation system, canal, or other man-made channel, including projects that utilize nonmechanical structures to accelerate the flow of water for electric power production purposes; or
- Differentials in ocean temperature (ocean thermal energy conversion).

Marine and hydrokinetic renewable energy does not include any energy that is derived from any source that utilizes a dam, diversionary structure (except as provided above for man-made projects), or impoundment for electric power production purposes.

Energy property described under IRC section 48:

Specified energy property for purposes of Section 1603 includes, in addition to qualified property that is part of a qualified facility, any other energy property described under IRC section 48. Such energy property must meet performance and quality standards that are prescribed either in IRC section 48 or in associated Treasury Regulations and that are in effect at the time of the acquisition of the property.

Solar property: Equipment that uses solar energy to generate electricity, to heat or cool (or provide hot water for use in) a structure, or to provide solar process heat, excepting property used to generate energy for the purposes of heating a swimming pool; equipment that uses solar energy to illuminate the inside of a structure using fiber-optic distributed sunlight.

Geothermal property: Equipment used to produce, distribute, or use energy derived from a geothermal deposit, but only, in the case of electricity generated by geothermal power, up to (but not including) the electrical transmission stage. A geothermal deposit is a geothermal reservoir consisting of natural heat that is stored in rocks or in an aqueous liquid or vapor (whether or not under pressure).

Qualified fuel cell property: Qualified fuel cell property is a fuel cell power plant that has a nameplate capacity of at least 0.5 kilowatt of electricity using an electrochemical process and has an electricity-only generation efficiency greater than 30%. A fuel cell power plant is an integrated system comprised of a fuel cell stack assembly and associated balance of plant components that converts a fuel into electricity using electrochemical means. Payments for qualified fuel cell property cannot exceed an amount equal to \$1,500 for each 0.5 kilowatt of capacity of such property.

Qualified microturbine property: Qualified microturbine property is a stationary microturbine power plant that has a nameplate capacity of less than 2,000 kilowatts and has an electricity-only generation efficiency of not less than 26% at International Standard Organization conditions. A stationary microturbine power plant is an integrated system comprised of a gas turbine engine, a combustor, a recuperator or regenerator, a generator or alternator, and associated balance of plant components which converts a fuel into electricity and thermal energy. The microturbine power plant also includes all secondary components located between the existing infrastructure for fuel delivery and the existing infrastructure for power distribution, including equipment and controls for meeting relevant power standards, such as voltage, frequency, and power factors. Payments for qualified microturbine property cannot exceed an amount equal to \$200 for each kilowatt of capacity of such property.

Combined heat and power (CHP) system property: Combined heat and power system property is property comprising a system that meets the following requirements:

- The system uses the same energy source for the simultaneous or sequential generation of electrical power, mechanical shaft power, or both in

combination with the generation of steam or other forms of useful thermal energy (including heating and cooling applications).

- The system--
 - Produces at least 20% of its total useful energy in the form of thermal energy that is not used to produce electrical or mechanical power (or combination thereof); and
 - Produces at least 20% of its total useful energy in the form of electrical or mechanical power (or combination thereof); and
 - Has a system energy efficiency percentage in excess of 60%. This requirement does not apply to a facility designed to use biomass [within the meaning of IRC section 45(c)(2) and (3) without regard to the last sentence of paragraph (3)(A)] for at least 90% of the energy source. (See IRC section 48(c)(3)(C) for calculation of the system energy efficiency percentage and IRC section 48(c)(3)(D) for the reduction in payment for biomass systems with an energy efficiency of less than 60%.)
 - Does not have a capacity in excess of 50 megawatts or a mechanical energy capacity in excess of 67,000 horsepower or an equivalent combination of electrical and mechanical energy capacities.

CHP system property does not include property used to transport the energy source to the facility or to distribute energy produced by the facility.

Qualified small wind energy property: Qualified small wind energy property is property that uses a qualifying small wind turbine to generate electricity. A qualifying small wind turbine is a wind turbine that has a nameplate capacity of not more than 100 kilowatts.

Geothermal Heat Pump Property: Equipment that uses the ground or ground water as a thermal energy source to heat a structure or as a thermal energy sink to cool a structure.

V. Eligible Basis

The basis of property is determined in accordance with the general rules for determining the basis of property for federal income tax purposes. Thus, 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. If property is acquired in exchange for cash and other property in a transaction described in IRC section 1031, in which no gain or loss is recognized, the basis of the newly acquired property is equal to the adjusted basis of the other property plus the cash paid.

Costs that will be deducted for federal income tax purposes in the year in which they are paid or incurred are not includible in the basis on which the payment is determined. For example, if the applicant will take the IRC section 179 deduction for all or part of the cost

of the property, then no payment is allowed for the portion of the cost of the property for which the IRC section 179 deduction will be taken. For geothermal property, if intangible drilling and development expenses will be deducted by the applicant, no payment will be allowed on the costs that will be deducted as intangible drilling and development expenses. If the applicant will capitalize intangible drilling and development expenses, only those costs that may be recovered through depreciation are includible in the basis on which the payment is allowed. However, if the applicant will elect under IRC § 59(e) to deduct intangible drilling and development costs over 60 months, the payment is based on the amount for which the election under § 59(e) applies because the effect of § 59(e) is to treat these costs as amortizable.

Only the cost basis of property placed in service after 2008 is eligible for a Section 1603 payment. Thus, if property is placed in service in 2009 at a qualified facility that was placed in service in an earlier year, only the basis of the property placed in service in 2009 is eligible for a Section 1603 payment.

Limitation on eligible basis. The eligible basis of a qualified facility does not include the portion of the cost of the facility that is attributable to a non qualifying activity. For example, for a biomass facility that burns fuel other than open-loop biomass or closed-loop biomass, the eligible cost basis is the percentage of total eligible costs that is equal to the percentage of the electricity produced at the facility that is attributable to the open-loop biomass and closed-loop biomass. In the case of costs that relate to both a nonqualifying activity and a qualifying activity, the costs must be reasonably allocated between the nonqualifying and qualifying activities. For example, if combustion equipment burns both qualifying biomass and other fuel, the equipment's eligible cost basis is limited to the percentage of its otherwise eligible cost corresponding to the percentage of the equipment's electricity production that is attributable to the qualifying biomass. Similarly, the eligible basis of a qualified hydropower facility producing incremental hydropower includes the entire costs of the modification even though only a portion of the power produced from the modification is attributable to the modification.

Applicants must submit with their application for a Section 1603 payment documentation to support the cost basis claimed for the property. Supporting documentation includes a detailed breakdown of all costs included in the basis. Other supporting documentation, such as contracts, copies of invoices, and proof of payment must be retained by the applicant and made available to Treasury upon request. For properties that have a cost basis in excess of \$500,000 applicants must submit an independent accountant's certification attesting to the accuracy of all costs claimed as part of the basis of the property.

VI. Leased Property

A lessor who is eligible to receive a Section 1603 payment with respect to a property may elect to pass-through the Section 1603 payment to a lessee. The election may only be made with respect to property that would be eligible for the Section 1603 payment if owned by the lessee. Such an election will treat the lessee as having acquired the property for an amount equal to the independently assessed fair market value of the

property on the date the property is transferred to the lessee and will generally follow the rules in the IRC and Treasury regulations governing elections to allow lessees to receive energy tax credits.

The lessor and lessee must agree that the lessor waives all right to a Section 1603 payment or a production or investment tax credit with respect to the eligible property, before the lessee may apply for a Section 1603 payment with respect to such property. The lessee must agree to include ratably in gross income over the five year recapture period an amount equal to 50 % of the amount of the Section 1603 payment.

In order to make this election, both the lessor and the lessee must be persons eligible to receive a payment under Section 1603. Additionally, this election may not be made by a lessor that is a mutual savings bank or similar financial organization, a regulated investment company or a real estate investment trust.

The election of a lessor to allow the lessee to receive a Section 1603 payment may be made with respect to each property leased by the lessor to the lessee. The lessee's written consent is required. The lessor's election is made by a written agreement with the lessee that contains the following information:

- A waiver of the lessor's right to receive any payment under Section 1603 with respect to the property, as well as a waiver of the lessor's right to claim a production or investment tax credit under sections 45 and 48 of the IRC with respect to the same property for the taxable year of the payment or subsequent years;
- All information necessary to determine the amount of lessee's Section 1603 payment;
- The name, address, and employer identification number of the lessor and the lessee;
- A description of each property with respect to which the election is being made;
- The date on which possession of the property is transferred to the lessee; and
- The lessee's consent to the election.

A copy of this agreement must be included in the lessee's application for the Section 1603 payment. This election is irrevocable.

Special Rule for Sale-leaseback Transaction

In a sale-leaseback transaction, the lessee, who is not the owner of the property, may claim the Section 1603 payment, if three conditions are satisfied:

- First, the lessee must be the person who originally placed the property in service.
- Second, the property must be sold and leased back by the lessee, or must be leased to the lessee, within three months after the date the property was originally placed in service.
- Third, the lessee and lessor must not make an election to preclude application of the sale-leaseback rules.

VII. Recapture

If the applicant disposes of the property to a disqualified person or the property ceases to qualify as a specified energy property within five years from the date the property is placed in service (hereinafter "disqualifying event"), the Section 1603 payment must be repaid to the Treasury as follows: 100% of the payment must be repaid if the disqualifying event takes place within one year from the date placed in service; 80% of the payment must be repaid if the disqualifying event takes place after one year but before two years from the date placed in service; 60% of the payment must be repaid if the disqualifying event takes place after two years but before three years from the date placed in service; 40% of the payment must be repaid if the disqualifying event takes place after three years but before four years from the date placed in service; and 20% of the payment must be repaid if the disqualifying event takes place after four years but before five years from the date placed in service.

Property is considered to have been disposed of to a disqualified person if any interest in the property or in the applicant or in any partnership or pass-thru entity that is a direct or indirect owner of an interest in the applicant is sold to: any Federal, state or local government, including any political subdivision, agency or instrumentality thereof; any organization that is described in section 501(c) of the IRC and is exempt from tax under section 501(a) of the IRC; any entity referred to in paragraph (4) of section 54(j) of the IRC; or any partnership or other pass-thru entity any partner (or other holder of an equity or profits interest) of which is a Federal, state or local government, including any political subdivision, agency or instrumentality thereof; an organization that is described in section 501(c) of the IRC and is exempt from tax under section 501(a) of the IRC; or an entity referred to in paragraph (4) of section 54(j) of the IRC. A taxable corporation some or all of whose shareholders are disqualified persons is not a disqualified person and such a corporation's ownership of an interest in a partnership or other pass-thru entity will not cause the partnership or other entity to be treated as a disqualified person.

Property ceases to qualify as a specified energy property if the use of the property changes so that it no longer qualifies as specified energy property. For example, use of property predominantly outside the United States in a year will result in recapture. Temporary cessation of energy production will not result in recapture provided the owner of the property intends to resume production at the time production ceases. Permanent cessation of production will result in recapture. Permanent cessation of production due to natural disaster will not result in recapture unless the property is replaced with property for which a Section 1603 payment is allowed. Replacement would be treated as occurring if the applicant uses IRC section 1033 to avoid gain recognition.

For a hydropower property where incremental hydropower production has been licensed by FERC, recapture will not take place if actual incremental increases in energy production do not occur that year due to environmental and/or regulatory factors. Recapture for a hydropower facility installed on a nonhydroelectric dam will occur if the Federal Energy Regulatory Commission license is surrendered or repealed based on significant changes in water surface elevation caused by operation of the facility.

If the amount of the Section 1603 payment depends on the percentage of electricity produced from biomass (in the case of closed-loop and open-loop biomass facilities) or the energy efficiency percentage (in the case of combined heat and power system property using biomass) and the percentage is reduced, a proportionate percentage of the property ceases to qualify as specified energy property. The applicable percentages will be determined on an annual basis for the year beginning on the date the property is placed in service and for each succeeding year within the recapture period. No additional grant will be allowed in a subsequent year in which the percentage increases.

Selling or otherwise disposing of the property to an entity other than a disqualified person does not result in recapture provided the property continues to qualify as a specified energy property and provided the purchaser of the property agrees to be jointly liable with the applicant for any recapture. Recapture would occur in the event the property is resold to a disqualified person or ceases to qualify as a specified energy property. The applicant remains jointly liable to the Treasury for the recapture amount even if the applicant no longer has control over the property.

Where a lessor elects to pass through the Section 1603 payment to a lessee, if the lessor sells the property to a disqualified person, the lessee is liable to the Treasury for the recapture amount even if the lessee maintains control over the property. If the lease is terminated and possession of the property is transferred by the lessee to the lessor or any other person, the lessee is liable to the Treasury for the recapture amount if the use of the property changes during the recapture period so that it no longer qualifies as specified energy property.

Applicants are not required to post a bond as a condition of receiving payment under the section 1603 program and receipt of payment does not create a lien on the property in favor of the United States. However, funds that must be repaid to the Treasury under these rules are considered debts owed to the United States and if not paid when due, will be collected by all available means against any assets of the applicant, including enforcement by the United States Department of Justice. Debts arising under these rules are not considered tax liabilities.

VIII. Miscellaneous Provisions

A. Assignment of Payment

Applicants may submit, along with their request for payment, a Notice of Assignment, assigning the payment to a third party provided the requirements of the Federal Assignment of Claims Act (31 U.S.C. 3727) are met. The Notice of Assignment will include the DUNS number for the third party. The third party will be required to register in SAM.

B. National Environmental Protection Act (NEPA)

A Section 1603 payment with respect to specified energy property does not make the property subject to the requirements of NEPA and similar laws.

C. Davis- Bacon

A 1603 payment with respect to specified energy property does not make the property subject to the requirements of the Davis-Bacon Act.

D. Treatment of Payments as Taxable Income

Except as described in Section IV of this Guidance with respect to leased property, a Section 1603 payment with respect to specified energy property is not includible in the gross income of the applicant. The basis of the property is reduced by an amount equal to 50% of the payment.

E. Real Estate Investment Trusts

A Real Estate Investment Trust (REIT) will be eligible to receive Section 1603 payments only to the extent allowed by section 50 of the IRC. IRC section 50(d)(1) specifies that rules similar to the rules of former IRC section 46(e) will apply. IRC section 46(e)(1)(B) provides that, in general, in the case of a REIT, qualified investment is limited to the REIT's ratable share of such qualified investment. The ratable share is a ratio, the numerator of which is its taxable income and the denominator of which is its taxable income computed without regard to the deduction for dividends paid (provided by IRC section 857(b)(2)(B)). For this purpose, the REIT's taxable income is determined without regard to any deduction for capital gains dividends and by excluding any net capital gain.

F. Applicability of Normalization Rules

Payments received under the Section 1603 program must be normalized. See former IRC Section 46(f).

G. Reporting

Applicants will be required to provide reports, as required by Treasury, including an annual performance report as set forth in the Terms and Conditions.

**Payments for Specified Energy Property In Lieu of Tax Credits
under the
AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009**

TERMS AND CONDITIONS

1. Authority

Section 1603 of the American Recovery and Reinvestment Tax Act of 2009 (Section 1603) authorizes the United States Department of the Treasury (Treasury) to make payments to persons who place in service specified energy property provided certain conditions are met.

2. Eligibility

a. The applicant is the owner or lessee of specified energy property that qualifies for funds under Section 1603 and is the original user of the property.

b. Where the applicant is the lessee of the specified energy property, the owner of the specified energy property has agreed, in writing, to the lessee being the recipient of the Section 1603 payment and has waived, in writing, its right to receive any payment under Section 1603 as well as its right to claim a tax credit under section 45 and 48 of the Internal Revenue Code (IRC) with respect to the property.

c. The applicant is not a federal, state or local government, or any political subdivision, agency or instrumentality thereof; an organization that is described in section 501(c) of the IRC and is exempt from tax under section 501(a) of the IRC; or an entity referred to in section 54(j)(4) of the IRC.

d. The applicant is not a partnership or pass-thru entity that has a person described in section 2.c above as a direct or indirect partner (or other holder of an equity or profits interest) unless this person only owns an indirect interest in the applicant through a taxable C corporation.

e. The applicant is not a foreign person or entity unless it is a foreign person or entity that qualifies for the exception in section 168(h)(2)(B) of the IRC.

3. Ongoing Representations and Obligations

a. The applicant understands that Treasury is relying on the accuracy of the information contained in the application in making determinations with respect to the applicant's eligibility for a Section 1603 payment. If the applicant determines that any information included on or with the application was materially inaccurate or incorrect, the applicant must immediately inform Treasury. If Treasury determines, as a result of this information, that the applicant does not qualify for funds or that the applicant received funds in excess of the amount to which the applicant was entitled, the applicant must immediately return the funds to Treasury.

b. The applicant understands that none of the applicant's obligations herein terminate upon the sale or other disposition of the property to an eligible entity.

4. Production and Investment Tax Credit

a. The applicant will not claim a tax credit under section 45 or section 48 of the IRC with respect to the property described in the application.

5. Reporting

a. The applicant shall provide periodic reports as required by Treasury. A project performance report is required on an annual basis for a period of five years after the property was placed in service. Annual performance reports are due no later than 21 days following the end of the reporting period. The first reporting period begins on the date the property is placed in service.

b. On an annual basis, the applicant must provide a project performance report including the following elements:

- Name of applicant
- Current owner of property
- Treasury application number
- Name of project
- Location of project: city/county, State, zip code
- Number of jobs retained
- Annual production (in kilowatt hours, MMBTUs, or horsepower as applicable)
- Installed nameplate capacity (in kilowatts, MMBTUs, or horsepower as applicable)

c. The applicant shall submit any other reports that Treasury deems necessary to comply with American Recovery and Reinvestment Act guidance.

6. Recapture

a. The applicant shall certify to Treasury on an annual basis for a period of five years from the date the property was placed in service that the property has not been disposed of to a disqualified person and that the property continues to qualify as specified energy property (as that term is used in Section 1603). Annual certifications shall be submitted at the same time as the performance report described in Section 5 above.

b. If the property is disposed of to a disqualified person and/or ceases to qualify as a specified energy property (hereinafter “disqualifying event”) within five years from the date the property is placed in service the applicant must repay funds to the Treasury as follows: 100% of the funds must be repaid if the disqualifying event takes place within one year from the date the property is placed in service; 80% of the funds must be repaid if the disqualifying event takes place after one year but before two years from the date the property is placed in service; 60% of the funds must be repaid if the disqualifying event takes place after two years but before three years from the date the property is placed in service; 40% of the funds must be repaid if the disqualifying event takes place after three years but before four years from the date the property is placed in service; and 20% of the funds must be repaid if the disqualifying event takes place after four years but before five years from the date the property is placed in service.

c. Any amount subject to recapture becomes a debt owed to the United States payable to the General Fund of the Treasury and enforceable by all available means including enforcement by the United States Department of Justice against any assets of the applicant entity. Debts arising under these rules are not considered tax liabilities.

7. Maintenance of and Access to Records

a. The applicant must maintain project, financial, and accounting records sufficient to demonstrate that Section 1603 funds were properly obtained in accordance with the Section 1603 program and these Terms and Conditions. The Treasury, as the awarding office, the cognizant Treasury inspector general, and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of physical access to the applicant’s facilities and

to any pertinent books, documents, papers, or other records (electronic and otherwise) of the applicant and each partnership and pass-thru entity that directly or indirectly owns an interest in the applicant which are pertinent to the Section 1603 payment, in order to conduct audits, examinations, and evaluations.

8. Disallowance

- a. If the applicant materially fails to comply with any term of the award, whether stated in a Federal statute or regulation, program guidance, these Terms and Conditions, or a notice of award, Treasury may take any remedial action that is legally available including disallowing all or a part of the Section 1603 payment. Any payment that is disallowed must be returned to the Treasury.
- b. In taking an enforcement action, Treasury will provide the applicant with the opportunity for a hearing, appeal, or other administrative proceeding to which the applicant is entitled under any statute or regulation applicable to the action involved.
- c. The applicant must immediately report any indication of fraud, waste, abuse, or potentially criminal activity pertaining to Section 1603 funds to Treasury and the cognizant Treasury inspector general.

9. Information Sharing

- a. The applicant agrees that any information provided to the Treasury in the application, attachments, supporting documents, reports or otherwise in connection with its application under Section 1603 may be shared with other federal agencies, including the Internal Revenue Service, as needed by those agencies to conduct official agency business. Notwithstanding the foregoing, bank account information and proprietary information will not be shared unless required by law.
- b. The applicant acknowledges that Treasury may publicly release the name of the applicant; the type, location, and description of the property that is the subject of the application; and the amount of funding provided.

Signature

Under penalties of perjury, I declare that I have examined these Terms and Conditions, agree to them, and will ensure that they will be followed. I declare that I am an authorized official of the applicant entity and am authorized to bind the applicant to these Terms and Conditions.

Name		Title	
Phone		Email	
Signature		Date signed	

**Application for Section 1603:
Payments for Specified Renewable Energy Property in Lieu of Tax Credits
(Property that has already been placed in service)**

Applicants who place a qualified property in service during 2009-2011 must submit this application form and the Terms and Conditions before October 1, 2012. Applicants who have begun construction of a qualified property during 2009-2011 but did not place the property in service by the end of 2011 must use this form to update a Begun Construction application that was submitted before October 1, 2012. This updated application form along with the Terms and Conditions must be submitted within 90 days after the property is placed in service.

While there are directions in this application, they are not a substitute for reading and understanding the Program Guidance, Terms and Conditions, Section 1603 of the American Recovery and Reinvestment Tax Act of 2009, and Sections 45 and 48 of the Internal Revenue Code.

*All fields are required unless otherwise noted. Fill out the form in order, as lower sections are affected by upper section choices. Allowed values are *marked in italics*, items in square brackets [] are optional.

The numbering of questions in this application form is not sequential. Some numbers are skipped intentionally.

[View checklist for properties already placed in service](#)

Section 1: Applicant Eligibility

1A. Type of Applicant — indicate which choice best describes the applicant. Governments, 501(c) organizations, 54(j)(4) entities, partnership or pass-thru entities with any government /501(c)/54(j)(4) entity as a partner (or other holder of an equity or profits interest), and in some cases foreign persons and entities are not eligible for Section 1603 payments.

- Federal, State, or local government or any political subdivision, agency, or instrumentality thereof - **do not continue with application**
- Organization described in section 501(c) of the Internal Revenue Code and exempt from tax under section 501(a) of such Code - **do not continue with application**
- Entity referred to in paragraph (4) of section 54(j) of the Internal Revenue Code - **do not continue with application**
- Partnership or pass-thru entity with a government or any political subdivision, agency, or instrumentality thereof, 501(c) organization, or 54(j)(4) entity as a direct or indirect partner (or other direct or indirect holder of an equity or profits interest) - **do not continue with application** (Note: If such entity only owns an indirect interest in the applicant through a taxable C corporation, do not choose this selection.)
- Foreign person or entity *not* qualifying for the exception in section 168(h)(2)(B) of the Internal Revenue Code with respect to the property - **do not continue with application**
- Foreign person or entity qualifying for the exception in section 168(h)(2)(B) of the Internal Revenue Code with respect to the property
- Sole proprietorship
- Joint venture
- Partnership
- Domestic C corporation
- Domestic S corporation
- Cooperative organization described in section 1381 of the Internal Revenue Code
- Real Estate Investment Trust (REIT)
- Other (specify here): _____

1B. Applicant's Interest in the Property — indicate the applicant's interest in the property.

- Applicant is owner of the property.
- Applicant is lessee of the property (include waiver from owner, as described in the Program Guidance and in Section 6 of

this Application).

- Applicant is not the owner or lessee of the property - **do not continue with application**

Section 2: Property Information

2A. Depreciation and Use of Property — indicate which choice best describes the property.

- Property is **not** depreciable or amortization is not allowed - **do not continue with application**
- Property is depreciable or amortization is allowed in lieu of depreciation.
- Property is **both** depreciable or amortization is allowed in lieu of depreciation and is a public utility property within the meaning of section 168(i)(10) of the Internal Revenue Code.

2B. Property Identification — enter information about the location of the property. *City or County required.

- Property is located outside the United States during more than 50% of the year - **do not continue with application.** (Note: If such property meets the requirements described in section 168(g)(4) of the IRC, do not choose this selection.)
- Property is located predominately within the United States.

Name:		Street Address 1:	
*City:		Street Address 2 (optional):	
*County:		State:	...
Zip Code:	0000] 00000[-		

2C. Property Placed in Service — enter the date on which the property was placed in service. See Program Guidance for a definition of placed in service date. If applying for multiple units of property that the applicant is treating as a single, larger unit of property and the units have different placed in service dates, enter the date the first and last units were placed in service.

Date (for multiple units, first property):		mm/dd/yyyy
Date (optional - for multiple units, last property):		mm/dd/yyyy

Section 3: Applicant Information

3A. Applicant — enter information about the entity that placed the property in service.

Business name:		Street address 1:	
Phone:	000 000 0000 [()-.]	Street address 2 (optional):	
Employer Identification Number (EIN): <i>Do not enter a Social Security number</i>	000000000	City:	

DUNS Number:	<input type="text" value="00000000"/>	State:	<input type="text" value="..."/>
Website address (optional):	<input type="text"/>	Zip code:	<input type="text" value="00000[-0000]"/>

3B. Contact Person — enter information for the person to be contacted about this application.

First name:	<input type="text"/>	Last name:	<input type="text"/>
Organizational affiliation:	<input type="text"/>	E-mail address:	<input type="text"/>
Phone:	<input type="text" value="000 000 0000 [()-.]"/>	Fax:	<input type="text" value="000 000 0000 [()-.]"/>

3C. Previous Applications — indicate whether an application has previously been submitted for Section 1603 payments for this property or property at this same location. (This does not include an application previously submitted for this property to show that construction began in 2009-2011.)

- No applications submitted previously for Section 1603 payments for this property.
- Application(s) have been submitted previously for this property or property at this same location.

Section 4: Property Description

4A. Specified Energy Property — indicate which choice best describes the type of specified energy property. See Program Guidance for a further explanation of each type.

Specified properties eligible under section 45 of Internal Revenue Code

- Wind facility — uses wind to produce electricity (wind turbines with capacity of 100kW or less may also qualify below as small wind energy property but only one payment is allowed with respect to the property).
- Closed-loop biomass facility (other than a facility described in the choice below) — uses organic material from a plant grown exclusively for purposes of being used to generate electricity. If a portion of fuel is not closed-loop biomass, give the percentage of fuel, on an annual basis, that is closed-loop biomass: %.
- Facility modified to use closed-loop biomass to co-fire with coal, other biomass, or both. Modification must be approved under the Biomass Power for Rural Development Program **or** be part of a pilot project of the Commodity Credit Corporation. Give the percentage of fuel, on an annual basis, that is closed-loop biomass: %.
- Open-loop biomass facility (cellulosic waste material) — uses solid, non-hazardous, cellulosic waste material or any lignin material derived from qualified sources described in section 45(c)(3)(ii) of the Internal Revenue Code to produce electricity. If a portion of fuel is not open-loop biomass of this type, give the percentage of fuel, on an annual basis, that is open-loop biomass of this type: %.
- Open-loop biomass facility (livestock waste nutrients) — uses agricultural livestock waste nutrients to produce electricity and has a nameplate capacity rating of not less than 150 kW. If a portion of fuel is not agricultural livestock waste nutrients, give the percentage of fuel, on an annual basis, that is agricultural livestock waste nutrients: %.
- Geothermal facility — uses geothermal energy to produce electricity.
- Landfill gas facility — uses gas derived from the biodegradation of municipal solid waste to produce electricity.
- Trash facility — uses municipal solid waste to produce electricity and is not a landfill gas facility.
- Hydropower facility (incremental hydropower) — produces incremental hydropower production as a result of efficiency improvements and additions to capacity to which the incremental hydropower production is attributable. The baseline and incremental increase in energy production must be certified by FERC.
- Hydropower facility — hydropower producing facility installed on a qualifying nonhydroelectric dam. The property must be licensed by FERC and meet all other applicable environmental, licensing, and regulatory requirements.
- Marine and hydrokinetic renewable energy facility — uses marine and hydrokinetic renewable energy to produce

electricity and has a nameplate capacity rating of at least 150 kW.

Specified properties eligible under section 48 of Internal Revenue Code

- Solar electricity property — uses solar energy to generate electricity.
- Solar thermal property — uses solar energy to heat or cool (or provide hot water for use in) a structure, or to provide solar process heat (property used to generate energy for heating a swimming pool ineligible).
- Solar lighting property — uses solar energy to illuminate the inside of a structure using fiber optic distributed sunlight.
- Geothermal property — equipment used to produce, distribute, or use energy derived from a geothermal deposit.
- Fuel cell property — fuel cell power plant that has a nameplate capacity of at least 0.5 kW of electricity using an electrochemical process **and** an electricity-only generation efficiency greater than 30%.
- Microturbine property — stationary microturbine power plant that has a nameplate capacity of less than 2,000 kW **and** an electricity-only generation efficiency of not less than 26% at International Standard Organization conditions.
- Combined heat and power system property — system that uses the same energy source for the simultaneous or sequential generation of electrical power, mechanical shaft power, or both, in combination with the generation of steam or other form of useful thermal energy and that meets all of the following requirements:
 1. System produces at least 20% of total useful energy in the form of thermal energy which is not used for electrical or mechanical power (report thermal production in Section 4D of this application).
 2. System produces at least 20% of total useful energy in the form of electrical or mechanical power (or combination) (report electrical and/or mechanical production in Section 4D of this application).
 3. System energy efficiency percentage exceeds 60% [unless system uses open- or closed-loop biomass (see Guidance) for at least 90% of the energy source]. Specify energy efficiency percentage: _____ % and, if applicable, percentage of energy source from open- or closed-loop biomass: _____ %.
 4. System does not exceed 50 MW or a mechanical energy capacity in excess of 67,000 horsepower or an equivalent combination of electrical and mechanical energy capacities (report system capacity in Section 4D of this application).
- Small wind energy property — uses a turbine with nameplate capacity of not more than 100 kW to generate electricity.
- Geothermal heat pump property — uses the ground or ground water as a thermal energy source to heat a structure or as a thermal energy sink to cool a structure.

4B. Narrative Description of Property - give a summary description of the property that is suitable for publication. Limit the summary to 2500 characters. If applying for multiple units of property that are being treated as a single, larger property, so indicate in the narrative.

4C. Use of Energy — enter information in one of the two boxes to describe how the energy produced is being/will be used

- Energy produced has been/will be sold. Enter the name and address of the buyer.
- Energy produced has not been/will not be sold. Describe how it is/will be used.

4D. Energy Generated by the Property — fill in the appropriate column depending on whether the property generates electrical, mechanical, or thermal energy (or combination) for the capacity and production of the property. This section is not applicable to solar illumination properties and geothermal heat pump properties. Enter the estimated production. kW=kilowatt(s), kWh=kilowatt hour(s), MMBTU=one-million British Thermal Units, hp=horsepower.

	Electrical	Mechanical			Thermal
Installed nameplate capacity:	<input type="text"/> kW	<input type="text"/> <input type="radio"/> MMBTU/hr <input type="radio"/> kW <input type="radio"/> hp	<input type="text"/> kW	<input type="text"/> hp	<input type="text"/> MMBTU/hr
Estimated annual production:	<input type="text"/> kWh	<input type="text"/> <input type="radio"/> MMBTU <input type="radio"/> kWh <input type="radio"/> hp	<input type="text"/> kW	<input type="text"/> hp	<input type="text"/> MMBTU

4E. Jobs Created/Retained by the Property — enter the estimated number of direct jobs created/retained by the

property. Direct jobs are those created/retained in the project, not by suppliers who make the materials used in the project.

	Construction Stage	Operational Stage
Full-time jobs (at least 35 hours per week):	<input type="text"/>	<input type="text"/>
Part-time jobs (less than 35 hours per week):	<input type="text"/>	<input type="text"/>

Section 5. Cost Basis and Request for Payment

5A. Cost Basis and Applicable Percentage — enter the qualified cost basis of the property and the applicable percentage to calculate the request for payment. The applicable percentage is either 10% or 30% depending on the type of energy property. See Program Guidance to determine the applicable percentage. Fuel cell property formula — if the applicable percentage times the qualified cost basis exceeds an amount equal to \$1,500 for each 0.5 kW of capacity, maximum request for payment amount cannot exceed \$1,500 times each 0.5 kW of capacity. Microturbine property formula — if the applicable percentage times the qualified cost basis exceeds an amount equal to \$200 for each kW of capacity, maximum request for payment cannot exceed \$200 times the number of kW of capacity.

Qualified cost basis (as shown in supporting documentation): \$.00

Applicable percentage: 10% 30%

For fuel cell property: If property has less than kW of capacity, enter capacity here:

For microturbine property: If property has less than kW of capacity, enter capacity here:

5B. Request for Payment — from the calculation in 5A, the amount of request for payment.

Amount of request for payment: \$ (Based on calculations in 5A.)

5C. Assignment — Indicate if the 1603 payment has been assigned to a financial institution in accordance with Federal Assignment of Claims Act (31 U.S.C. 3727)

- The 1603 payment has not been assigned to a financial institution.
- The 1603 payment has been assigned to a financial institution.

Section 6. Documentation

6A. Documentation for Properties Placed In Service — for properties placed in service attach documentation: to establish that the property has been placed in service as claimed in Section 2C of this application; to demonstrate that the property has met the requirements shown in Section 4 of this application; and to support costs claimed in Section 5 of this application. See Program Guidance for information on acceptable documentation to establish a property is placed in service and meets the eligibility requirements and to support costs. If the applicant is a lessee (as indicated in Section 1B), attach a waiver, as described in the Program Guidance, from the owner. For properties not yet placed in service. NOTE: You may add additional documents or replace these as needed using the "Add/modify supporting documentation" option in the main menu for up to 3 days after submitting this application.

ACCEPTED FILE TYPES: Office (doc, docx, xls,xlsx), postscript (pdf), and plain text (txt) formats. Limit total size of all files to 100 MB or less.

Section 7. Signature of Applicant

7A. Under penalties of perjury, I declare that I have examined this application, which includes any application submitted using the same Treasury Identification Number for the purpose of demonstrating that construction began on the property in 2009-2011, and to the best of my knowledge and belief, it is true, correct, and complete. I declare that I am the applicant or an authorized official for the applicant. Further, I agree the information in this application can be disclosed to the Internal Revenue Service.

First Name:	<input type="text"/>	Last Name:	<input type="text"/>
Title:	<input type="text"/>	Phone:	<input type="text"/> 000 0000 000 0000 [()-.]
Email:	<input type="text"/>	Signature (enter your password):	<input type="password"/>

Entering your password has the same legal effect as your handwritten signature.

**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

Evaluating Cost Basis for Solar Photovoltaic Properties¹

The review of applications for payment under the Section 1603 program includes a determination as to whether the applicant has properly represented and calculated its cost basis. Each application is evaluated to determine whether the cost basis includes only eligible items and that it represents the applicant's actual costs or, in certain cases, fair market value for the eligible property. This document, intended to assist with preparing Section 1603 applications, outlines the process used by the Section 1603 team to evaluate basis and the principles that guide this process. These principles are consistent with tax concepts used to determine basis for federal tax purposes.²

Basis

As described in various Internal Revenue Service (IRS) publications, basis is the amount of a business' investment in property for tax purposes. Basis is generally the cost of the property³ and may also include the capitalized portion of certain other costs related to buying or producing the property (e.g. permitting, engineering, and interest during construction).⁴ However, as described in *Bryant v. Commissioner of Internal Revenue* (790 F.2d 1463), "the courts have determined that in certain circumstances, a taxpayer's stated cost for an asset does not reflect the true economic cost of that asset to the taxpayer and will be ignored for purposes of determining the basis of the asset." For example, a stated cost may be inconsistent with the eligible property's true basis "where a transaction is not conducted at arm's-length by two economically self-interested parties or where a transaction is based upon 'peculiar circumstances' which influence the purchaser to agree to a price in excess of the property's fair market value."⁵

In order to ensure that a Section 1603 applicant's claimed cost basis reflects the eligible property's fair market value, basis is more closely scrutinized in cases involving related parties, related transactions, or other unusual circumstances. Similar to the authority of the IRS in the context of investment tax credits, in making cash payments under Section 1603, the Treasury Department has authority to decide that "an applicant has miscalculated or misrepresented the basis of its property."⁶

The first step the review team takes to evaluate the claimed basis for solar photovoltaic (PV) properties is to compare the claimed basis to certain benchmarks. The benchmarks used by the review team for solar PV cost basis are predicated on an open-market, arm's-length transaction

¹ Although this paper addresses only solar PV properties the methods used to evaluate cost basis described herein apply to all types of properties

² This document has been developed by the Office of the Fiscal Assistant Secretary in consultation with the Office of Tax Policy

³ 26 U.S.C. 1012

⁴ 26 CFR 1.263A-1

⁵ *Lemmen v. Comr.*, 77 T.C. 1326, 1348 (1981).

⁶ *ARRA Energy Company I et al. v. U.S.*, 97 Fed.Cl. 12 (2011).

between two entirely unrelated parties with adverse economic interests, specifically with respect to setting the eligible property's price.

Benchmarks considered by the 1603 review team are continuously updated (as warranted) drawing on relevant publicly available information and analyses by various experts, data from existing 1603 applications and other confidential sources, and the 1603 review team's experience with solar PV properties.⁷ As of the first quarter of 2011, benchmark solar PV market expectations are as follows:

	Residential	Residential/ Small Commercial	Commercial	Large Commercial/ Utility
Size Range	< 10 kW	10 - 100 kW	100 – 1000 kW	> 1 MW
Typical Size	5 kW	25 kW	250 kW	2 MW
Turnkey Price per W	+/- \$7	+/- \$6	+/- \$5	+/- \$4

These prices reflect a high quality of equipment (modules, inverters, racking) installed by reputable companies across the United States and include profit.

The review team understands that each system is different. Technology choice affects cost, as do regional market differences and differences in size within the above categories. A property may have specific characteristics that increase (or decrease) eligible costs. Such factors are considered in evaluating how a given application's basis compares with benchmark prices.

If claimed basis is deemed consistent with benchmark prices, the review team typically focuses the remainder of its cost review on examining line items provided in the detailed cost breakdown to ensure that only eligible items have been included and that no costs have been inappropriately attributed to the property. If there are no ineligible items, the basis reflects only items appropriately attributable to the eligible property, and there is adequate documentation to support that the costs reflect actual costs, the cost basis is accepted.

The review team may ask the applicant to provide additional detail if a cost breakdown line item is defined too generally. If ineligible items are identified, they are removed, and the payment is based on the corrected amount. For example, although a project may necessitate a fence for security or a building for operations and maintenance, such costs are not eligible.

Applications with a claimed basis that is materially higher than benchmarks will receive closer scrutiny. In addition to ensuring that only eligible costs are included, the review team looks at whether there are related party considerations, or other unusual circumstances, such as where the transaction determining basis may be influenced by other related transactions. One example of related transactions would be a case in which the benefits of a power purchase agreement are acquired at the same time the Section 1603 eligible property is acquired.

⁷ For example, some sources include: the U.S. Department of Energy's \$1 per Watt Study, the California Solar Initiative, Tracking the Sun report, and confidential interviews with nationally-recognized solar industry officials.

Common examples of related party or other unusual circumstances include:

1. Owner/applicant is related to the developer, installer, or supplier (collectively referred to as the “developer”). The developer may be a separate, legally-organized business, but there is common ownership/control.
2. Owner/applicant is a party to one or more related transactions with the developer such that economic interests in the specific transaction determining basis may not be adverse. For example, the owner/applicant purchased the energy property from the developer and leased the property back to the developer.

Where such circumstances are present, the review team evaluates whether the claimed basis is consistent with the property’s fair market value.⁸ As one aspect of this evaluation, where related transactions or other unusual circumstances are present, the review team will consider the applicant’s allocation of the cost to the eligible property, relative to other ineligible assets, rights, or contracts that may have been explicitly or implicitly conveyed in the transaction(s). In this context, the owner/applicant may be asked to submit a more detailed cost breakdown. Specifically, original manufacturer’s invoices/costs to the developer should be provided for major equipment, subsequent markups by the developer should be enumerated, and any markups by the owner identified. The owner may also submit a detailed and credible third-party appraisal (discussed below) demonstrating that the claimed basis is consistent with a market transaction between unrelated parties with adverse economic interests.

Ultimately, the review team determines whether or not the claimed basis was properly calculated and/or properly represented fair market value, taking into account market expectations, the specifics of the application in question, and supporting documentation provided by the applicant. If the review team determines that the basis was not properly calculated or represented, the review team may adjust the basis on which a 1603 payment is made to a level consistent with the review team’s view of the property’s true cost, as informed by documentation provided by the applicant and other relevant information and analysis. This is no different than what might take place upon examination by the IRS if the applicant elected the Section 48 tax credit rather than the Section 1603 payment.

Fair Market Value

The IRS generally defines fair market value (FMV) as “the price at which property would change hands between a buyer and a seller, neither having to buy or sell, and both having reasonable knowledge of all necessary facts.”

⁸ An evaluation of the property’s fair market value is also relevant in the context of applications by lessees of leased property, where the applicant has chosen fair market value as the basis.

The review team does not prepare appraisals for energy property. Rather, the review team evaluates appraisals provided by applicants and prepared by independent, certified appraisers with expertise in solar PV properties. There are three broad and interrelated methods that are used in valuation efforts: the cost approach, market approach, and income approach.

Cost Approach

Based on the actual cost to build the property. This approach should clearly show the cost buildup, including hard costs, soft costs, and profit. Because the 1603 program only applies to energy property placed in service after December 2008, properties are new, and the actual costs should be readily available. Because cost data for PV systems is increasingly timely and available, this approach tends to be the most concrete and supportable analysis and is favored by the review team.

The Section 1603 review team will accept a cost approach that includes only eligible property and a markup that is consistent with industry standards and with the scope of work for which the markup is received. While appropriate markups are case-specific and can depend on the ultimate transaction price, the 1603 review team has found that appropriate markups typically fall in the range of 10 to 20 percent. A cost approach that includes a markup should explicitly address the appropriateness of the selected markup in light of the activity, capital investment, and risk for which that markup is compensating.

Market Approach

Based on sales of comparable properties. Thousands of solar PV properties have been installed in the last two years, and market data are readily available. However, consideration must be given to ensuring that the prices of chosen comparables reflect only the value of eligible property.

Income Approach

Based on the discounted value of future cash flows generated by and appropriately allocable to the eligible property. Numerous assumptions must be made, including forecasts of all relevant project revenue and cost streams, cost of capital (debt and equity), rates of inflation and taxes, number of periods of income, and residual value. The review team has found this to be the least reliable method of valuation given the number of variables that are subject to speculation and open to debate.

Importantly, an income approach also often requires careful consideration of the appropriate allocation of value to the eligible energy property. In cases where the income approach yields a value that exceeds the cost to build the property by a significant margin, this raises a question of whether a portion of the claimed value should, in fact, be allocated to other ineligible assets, rights, or contracts associated with the production of income from the eligible property, such as a power purchase agreement. In such instances, applicants can accelerate reviews of their applications by ensuring that appraisals adequately address the issue of appropriate allocation of basis to the eligible property. For example, appraisals should address the FMV of the eligible property specifically, and not the “project” in which that property is being used.

For purposes of Section 1603, a credible income approach to valuation will consist of a detailed spreadsheet model showing annual revenue and expenses over the term of the contract with a reasonable residual value at contract termination.

Key Assumptions include:

- Inflation rates should be supported by credible sources.
- Discount rates should reflect an appropriate risk premium above the risk-free rate.
- Speculative revenue (i.e., revenue that is not specifically contracted and guaranteed by a credit-worthy customer) will be closely scrutinized and must be well-supported and documented. Projected revenue beyond contracted periods should be based on conservative, publicly-available data.
- All expenses must be included, both annual ordinary operating expenses and major maintenance (e.g., inverter replacement).
- All depreciation, taxes, and other considerations should be incorporated into the model.

These and all other assumptions should be well-reasoned and sufficiently documented, and should reflect market expectations. Moreover, the income approach should explicitly address the allocation of the estimated discounted cash flows to the eligible property.

Questions related to cost basis may be directed to 1603questions@treasury.gov.

