We will also place on public display, at the Dockets Management Staff and at *https://www.regulations.gov,* any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on our review, we find that an environmental impact statement is not required, and this petition results in a regulation, we will publish the notice of availability of our finding of no significant impact and the evidence supporting that finding with the regulation in the **Federal Register** in accordance with 21 CFR 25.51(b).

Dated: June 14, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–13120 Filed 6–20–23; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–105595–23]

RIN 1545–BQ75

Elective Payment of Advanced Manufacturing Investment Credit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations concerning the elective payment election of the advanced manufacturing investment credit under the Creating Helpful Incentives to Produce Semiconductors (CHIPS) Act of 2022. The proposed regulations describe rules for the elective payment election, including special rules applicable to partnerships and S corporations, repayment of excessive payments, and basis reduction and recapture. In addition, the proposed regulations provide rules related to an IRS pre-filing registration process that taxpayers wanting to make the elective payment election would be required to follow. These proposed regulations affect taxpayers eligible to make the elective payment election of the advanced manufacturing investment tax credit in a taxable year. This document also provides notice of a public hearing on the proposed regulations.

DATES: Written or electronic comments must be received by August 14, 2023. The public hearing on these proposed regulations is scheduled to be held on August 24, 2023, at 10 a.m. ET. Requests to speak and outlines of topics to be discussed at the public hearing must be received by August 14, 2023. If no outlines are received by August 14, 2023, the public hearing will be cancelled. Requests to attend the public hearing must be received by 5 p.m. ET on August 22, 2023. The public hearing will be made accessible to people with disabilities. Requests for special assistance during the hearing must be received by August 21, 2023.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG–105595–23) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comments submitted electronically and comments submitted on paper to its public docket. Send hard copy submissions to: CC:PA:LPD:PR (REG–105595–23), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning this proposed regulation, Lani M. Sinfield at (202) 317–5871 (not a toll-free number); concerning submissions of comments and or the public hearing, Vivian Hayes at (202) 317–6901 (not a toll-free number) or by email to *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Background

Section 48D was added to the Internal Revenue Code (Code) on August 9, 2022, by section 107(a) of the CHIPS Act of 2022 (CHIPS Act), which was enacted as Division A of the CHIPS and Science Act of 2022, Public Law 117–167, 136 Stat. 1366, 1393. Section 48D established the advanced manufacturing investment credit (section 48D credit) and section 48D(d) allows taxpayers (other than partnerships and S corporations) to elect to treat the amount of the section 48D credit determined under section 48D(a) as a payment against their Federal income tax liabilities. Section 48D(d) also provides special rules relating to elective payments to partnerships and S corporations and directs the Secretary of the Treasury or her delegate (Secretary) to provide rules for making elections under section 48D and to require information or registration necessary for purposes of preventing duplication, fraud, improper payments, or excessive payments under section 48D. Section 48D applies to qualified property placed in service after December 31, 2022, and, for any property the construction of which began prior to January 1, 2023, only to the extent of the basis thereof attributable to the construction, reconstruction, or erection of such qualified property after August 9, 2022 (the date of enactment of the CHIPS Act). See section 107(f)(1) of the CHIPS Act.

On March 23, 2023, the Treasury Department and the IRS published in the **Federal Register** (88 FR 17451) a notice of proposed rulemaking (REG–120653–22), which contains proposed regulations to implement the general provisions relating to the section 48D credit (March 2023 proposed regulations). The March 2023 proposed regulations included proposed definitions of various statutory terms, including ''eligible taxpayer,'' ''qualified property,'' ''advanced manufacturing facility,'' and ''semiconductor.'' The March 2023 proposed regulations also proposed rules under section 48D regarding the beginning of construction requirement; proposed rules requiring pre-filing registration with the IRS in advance of filing an elective payment election; and proposed rules implementing the ''applicable transaction'' credit recapture rules under section 50(a)(3) of the Code. In addition, the March 2023 proposed regulations requested comments on potential issues with respect to the elective payment election provisions under section 48D(d) that may require guidance. This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) to implement the statutory provisions of section 48D(d) and revise the rules in proposed § 1.48D–6 of the March 2023 proposed regulations.

In the Rules and Regulations section of this issue of the **Federal Register**, the Treasury Department and the IRS are issuing temporary regulations under § 1.48D–6T that implement the pre-filing registration process described in proposed § 1.48D–6 of the proposed regulations. The temporary regulations require taxpayers that want to elect the elective payment of the section 48D credit to register with the IRS through an IRS electronic portal in advance of the taxpayer filing the return on which the election under section 48D is made.

I. Overview of Elective Payment Election Under Section 48D

Section 48D(d)(1) allows a taxpayer to elect to treat the section 48D credit determined for the taxpayer for a taxable year as a payment against the tax imposed by subtitle A of the Code (that is, treated as a payment of Federal income tax) equal to the amount of the credit rather than a credit against the taxpayer's Federal income tax liability for that taxable year (elective payment election).

II. Section 48D Rules for Partnerships and S Corporations

Section 48D(d)(2)(A) provides special rules for partnerships (as defined in section 761(a)) and for S corporations (as defined in section 1361(a)(1) of the Code). Section 48D(d)(2)(A)(i) provides that, in the case of any credit determined with respect to any property held directly by a partnership or S corporation, any election under section 48D(d)(1) is to be made by such partnership or S corporation and must be made in such manner as the Secretary may provide. If such partnership or S corporation makes an election under section 48D(d)(1), (1) the Secretary will make a payment to such partnership or S corporation equal to the amount of such credit, (2) section 48D(d)(3) is applied with respect to the credit before determining any partner's distributive share, or S corporation shareholder's pro rata share, of such credit, (3) any credit amount with respect to which the election in section 48D(d)(1) is made is treated as tax exempt income for purposes of sections 705 and 1366 of the Code, and (4) a partner's distributive share of such tax exempt income is based on such partner's distributive share of the otherwise applicable credit for each taxable year.

III. Special Rules

Section 48D(d)(2)(B) requires the elective payment election to be made no later than the due date (including extensions of time) of the tax return for the taxable year for which the election is made. The elective payment election is irrevocable once made and applies with respect to any credit for the taxable year for which the election is made.

Section 48D(d)(2)(E) provides that, as a condition of, and prior to, any amount between treated as a payment by or to the taxpayer, the Secretary may require such information or registration as the Secretary deems necessary or appropriate for purposes of preventing duplication, fraud, improper payments, or excessive payments.

Section 48D(d)(2)(F) provides rules relating to excessive payments. In the case of any amount treated as a payment which is made by the taxpayer under section 48D(d)(1), or the amount of the payment made pursuant to section 48D(d)(2)(A), that the Secretary determines constitutes an excessive payment, the tax imposed on such taxpayer by chapter 1 of the Code, for the taxable year in which such determination is made must be increased by an amount equal to the sum of (1) the amount of any payment treated as made by or to the taxpayer which the Secretary determines constitutes an excessive payment, (2) plus 20 percent of such excessive payment. The increase equal to 20 percent of the excessive payment does not apply if the taxpayer demonstrates to the satisfaction of the Secretary that the excessive payment resulted from reasonable cause.

Section 48D(d)(2)(F)(iii) defines ''excessive payment'' as, with respect to property for which an elective payment election is made for any taxable year, an amount equal to the excess of (I) the amount treated as a payment made by the taxpayer under section 48D(d)(1) or the amount of the payment made pursuant to section 48D(d)(2)(A)(i) over (II) the amount of the credit which, without application of section 48D(d), would be otherwise allowable under section 48D(a) (determined without regard to section 38(c)) with respect to such property for such taxable year.

Section 48D(d)(3) provides a denial of double benefit rule. It states that, in the case of a taxpayer making an elective payment election with respect to the credit determined under section 48D(a), such credit is reduced to zero and is deemed to have been allowed to the taxpayer for such taxable year for any other purposes under the Code.

Section 48D(d)(5) provides basis reduction and recapture rules. It states that rules similar to the rules of section 50(a) and (c) of the Code apply with respect to amounts treated as a payment made by a taxpayer under section 48D(d)(1) and any payment made pursuant to section 48D(d)(2)(A).

Section 48D(d)(6) authorizes the Secretary to issue regulations or other guidance determined to be necessary or appropriate to carry out the elective payment election provisions of section 48D(d), including (A) regulations or other guidance providing rules for determining a partner's distributive share of the tax exempt income described in section 48D(d)(2)(A)(i) and (B) guidance to ensure that the amount treated as a payment under section 48D(d)(1) or payment made under section 48D(d)(2)(A)(i) is commensurate with the amount of the section 48D credit that generally would be otherwise allowable (determined without regard to section 38(c) of the Code).

Explanation of Provisions

I. Rules for Making Elective Payment Elections

A. In General

These proposed regulations revise § 1.48D–6(a)(1) and (2) of the March 2023 proposed regulations to clarify that an elective payment election may only be made on an original return of tax filed not later than the due date (including extensions of time) for the return for the taxable year for which the section 48D credit is determined and in the manner as provided in guidance, and must include any required completed source credit form(s) with respect to the qualified property, a completed Form 3800, *General Business Credit,* and any additional information, including supporting calculations, required in instructions to the relevant forms. An original return would include a superseding return filed on or before the due date (including extensions). No elective payment election would be permitted to be made or revised on an amended return or by filing an administrative adjustment request under section 6227 of the Code. There also would be no relief available under §§ 301.9100–1 through 301.9100–3 of the Procedure and Administration Regulations (26 CFR part 301) for an elective payment election that is not timely filed.

These proposed regulations would further provide that a taxpayer makes the elective payment election with respect to any section 48D credit determined with respect to such taxpayer in accordance with section 48D(d)(1), and the taxpayer must include a statement with the election attesting under penalties of perjury that the taxpayer claiming to be an eligible taxpayer is not a foreign entity of concern and has not made an applicable transaction during the taxable year that the qualified property is placed in service, and will not claim a double benefit (within the meaning of section 48D(d)(3) and § 1.48–6(d)(2)(ii)(B), (C), and (e)) with respect to any elective payment election made by the taxpayer.

II. Denial of Double Benefit

These proposed regulations revise § 1.48D–6(a)(4) of the March 2023 proposed regulations by explaining the application of the section 48D(d)(3) denial of a double benefit rule and addressing the methodology for

determining the amount of an elective payment, reducing the section 48D credit amount to zero, and treating the section 48D credit as a credit allowed for the taxable year for all other purposes of the Code with respect to taxpayers other than partnerships or S corporations. The proposed application of the denial of a double benefit rule is redesignated as proposed § 1.48D–6(e). The methodology with respect to a payment made to a partnership or S corporation is provided in proposed § 1.48D–6(d)(2)(ii)(B), as described in part III of this Explanation of Provisions.

A taxpayer (other than a partnership or S corporation) making an elective payment election applies section 48D(d)(3) by taking the following steps. First, the taxpayer would compute the amount of the tax liability (if any) for the taxable year, without regard to general business credits (GBCs), that is payable on the due date of the tax return (without regard to extensions), and the amount of the Federal income tax liability that may be offset by GBCs pursuant to the limitation based on the amount of tax under section 38 (Step 1). Second, the taxpayer would compute the allowed amount of the GBCs carryforwards carried to the taxable year plus the amount of current year GBCs (including the section 48D credit) allowed for the taxable year under section 38 (that is, in accordance with all the rules in section 38, including the ordering rules provided in section 38(d)). Since the election would be required to be made on an original return filed before the due date (including extensions of time) for the taxable year for which the section 48D credit is determined, any GBC carryback would not be considered when determining the elective payment amount for the taxable year (Step 2). Third, the taxpayer would apply the GBCs allowed for the taxable year as computed in Step 2, including those attributable to the section 48D credit as GBCs, against the tax liability computed in Step 1. Fourth, the taxpayer would identify the amount of any excess or unused current year GBC, as defined under section 39, attributable to current year section 48D credit(s) for which the taxpayer is making an elective payment election. The amount of such unused section 48D credits would be treated as a payment against the tax imposed by subtitle A for the taxable year with respect to which such credits are determined (rather than having them available for carryback or carryover) (net elective payment amount) (Step 4). Fifth, the taxpayer would reduce the section 48D credit(s) for which an elective payment election is made by the amount (if any) allowed as a general business credit under section 38 for the taxable year, as provided in Step 3, and by the net elective payment amount (if any) that is treated as a payment against tax, as provided in Step 4, which results in the section 48D credit(s) being reduced to zero.

The proposed regulations would provide, consistent with section 48D(d)(3), that the full amount of the section 48D credits for which an elective payment election is made is deemed to have been allowed for all other purposes of the Code, including, but not limited to, the basis reduction and recapture rules imposed by section 50 and the calculation of any underpayment of estimated taxes under sections 6654 and 6655 of the Code.

The Treasury Department and the IRS request comments on whether future guidance should expand or clarify the methodology that a taxpayer follows to compute the amount of its elective payment. Comments are also requested on additional Code sections under which it may be necessary to consider the section 48D credit to have been deemed to have been allowed for the taxable year in which an elective payment election is made.

III. Partnership and S Corporations

A. Overview

Section 48D(d)(2)(A)(i) provides that, in the case of any credit determined with respect to any property held directly by a partnership or S corporation, any election under section 48D(d)(1) is to be made by such partnership or S corporation and must be made in such manner as the Secretary may provide. If such partnership or S corporation makes an election under section 48D(d)(1), the special rules of section 48D(d)(2)(A)(i)(I) through (IV) apply. In that regard, proposed § 1.48D–6(d)(2)(ii) would provide that (1) the IRS will make a payment to such partnership or S corporation equal to the amount of such credit; (2) before determining any partner's distributive share, or shareholder's pro rata share, of such credit, such credit is reduced to zero and is, for any other purposes under the Code, deemed to have been allowed solely to such entity (and not allocated by such entity, or otherwise allowed, to any partner or shareholder) for such taxable year; (3) any amount with respect to which the election under section 48D(d)(1) is made is treated as tax exempt income for purposes of sections 705 and 1366; and (4) a partner's distributive share of such tax exempt income is equal to such partner's distributive share of its otherwise allocable basis in the qualified property as determined under § 1.48D–2(h)(2)(i) for such year. The tax exempt income is taken into account by the partnership or S corporation at the same time as the underlying credit would have been taken into account by the partnership or S corporation absent an elective payment election. Such tax exempt income resulting from such election is treated as received or accrued, including for purposes of sections 705 and 1366 of the Code, as of the date the qualified property is placed in service with respect to the partnership or S corporation. The proposed regulations provide an example illustrating this rule. Because it is the section 48D credits, and not the tax exempt income, that arise from the conduct of the trade or business, the proposed regulations would treat the tax exempt income resulting from an elective payment election by a partnership or an S corporation as arising from an investment activity and not from the conduct of a trade or business within the meaning of section 469(c)(1)(A). As such, the tax exempt income would not be treated as passive income to any partners or shareholders who do not materially participate within the meaning of section 469(c)(1)(B).

In response to stakeholder comments, the Treasury Department and the IRS clarify here that there are no restrictions imposed under section 48D or the section 48D regulations on how a partnership or S corporation that receives a payment from the IRS pursuant to an elective payment election may use the cash payment in its operations (including when it makes distributions to its distributions to its partners or shareholders).

Section 48D(d)(6)(B) requires that the Secretary issue regulations or other guidance to ensure that the amount of a payment under section 48(D)(2)(A)(i)(I) to a partnership or S corporation is commensurate with the amount of the credit that would otherwise be allowable (without regard to section 38(c)). Therefore, proposed § 1.48D–6(d)(6) would provide that, in determining the section 48D credit amount that will result in a payment to a partnership or S corporation, the partnership or S corporation must compute the amount of the section 48D credit allowable (without regard to section 38(c)) as if an elective payment election were not made. Because a partnership or S corporation is not subject to section 469 (that is, section 469 applies at the partner or shareholder

level), the amount of the credit determined with respect to any qualified property owned by a partnership or S corporation is not subject to limitation by section 469.

However, section 49 generally impacts the amount of a credit determined with respect to a qualified property. Proposed § 1.48D–6(d)(6)(ii) provides rules for the application of section 49 to a partnership or S corporation. The proposed regulations would provide that any amount of section 48D credit determined with respect to the qualified property held directly by a partnership or S corporation must be determined by the partnership or S corporation taking into account the section 49 at-risk rules at the partner or shareholder level as of the close of the taxable year in which the qualified property is placed in service. Thus, if the credit base of the qualified property is limited to a partner or shareholder by section 49, then the amount of the section 48D credit determined by the partnership or S corporation is also limited. The proposed regulations would provide that a partnership or S corporation that makes an elective payment election must request from each of its partners or shareholders, respectively, that is subject to section 49, the amount of such partner's or shareholder's nonqualified nonrecourse financing with respect to the qualified property as of the close of the taxable year in which the property is placed in service. Additionally, the partnership or S corporation would attach to its tax return for the taxable year in which the property is placed in service, the amount of each partner's or shareholder's section 49 limitation with respect to the qualified property. The Treasury Department and the IRS request comments as to whether (1) any information or reporting requirements are needed for partnerships and S corporations to apply these rules when determining the amount of the section 48D credit for which an elective payment election can be made by a partnership or S corporation or (2) any additional clarifications are needed regarding how the at-risk rules apply to the determination of the section 48D credit by a taxpayer.

B. BBA Partnership

Many partnerships are subject to the centralized partnership audit regime found in subchapter C of chapter 63 of the Code as amended by the Bipartisan Budget Act of 2015 (BBA).[1] In connection with the implementation of section 48D, the Treasury Department and the IRS identified several areas of the BBA regulations that require updates to administer section 48D in the case of a partnership subject to the BBA (BBA partnership). Section 6221 of the Code provides that any adjustment to a partnership-related item with respect to a BBA partnership, and any tax attributable thereto, is assessed and collected at the partnership-level except to the extent provided under the BBA. The BBA outlines centralized audit procedures which generally must be followed before the IRS can adjust a partnership-related item (as defined in § 301.6241–1). Accordingly, the notice of proposed rulemaking (REG–101607–23) found in the Proposed Rules of this issue of the **Federal Register**, which primarily relates to proposed rules under section 6417, would add a new paragraph (j) to § 301.6241–7 to provide that an election by a BBA partnership under section 48D(d) can be adjusted outside of the BBA audit rules. Proposed § 1.48D–6(d)(7) would cross-reference to proposed § 301.6241–7(j) for rules applicable to payments made to BBA partnerships.

IV. Pre-Filing Registration Requirements and Additional Information

Proposed § 1.48D–6(b)(1) would provide the mandatory pre-filing registration process that, except as provided in guidance, a taxpayer must complete as a condition of, and prior to, any amount being treated as a payment against the tax imposed under § 1.48D–6(a)(1), or an amount paid to a partnership or S corporation pursuant to § 1.48D–6(d)(2)(ii)(A). A taxpayer would be required to use the pre-filing registration process to register each qualified investment in an advanced manufacturing facility. A taxpayer that does not obtain a registration number or report the registration number on its annual tax return with respect to an advanced manufacturing facility would be ineligible to receive any elective payment amount with respect to the amount of any section 48D credit determined with respect to that advanced manufacturing facility. However, completion of the pre-filing registration requirements and receipt of a registration number would not, by itself, mean that the taxpayer would be eligible to receive a payment with respect to the section 48D credits determined with respect to the advanced manufacturing facility.

The pre-filing registration requirements are proposed to be that a taxpayer:

(1) must complete the registration process electronically through the IRS electronic portal and in accordance with the instructions provided therein, unless otherwise provided in guidance;

(2) must satisfy the registration requirements and receive a registration number prior to making a section 48D(d)(1) elective payment election on the taxpayer's tax return for the taxable year at issue;

(3) is required to obtain a registration number for each qualified investment in an advanced manufacturing facility with respect to which a section 48D credit will be determined and for which the taxpayer wishes to make a section 48D(d)(1) elective payment election; and

(4) provide the specific information required to be provided as part of the pre-filing registration process. The provision of such information, which includes information about the taxpayer and about the qualified investment in an advanced manufacturing facility that would allow the IRS to prevent duplication, fraud, improper payments, or excessive payments under section 48D. For example, verifying information about the taxpayer would allow the IRS to mitigate the risk of fraud or improper payments to entities that are not eligible taxpayers. Information about the taxpayer's taxable year would allow the IRS to ensure that an elective payment election is timely made on the entity's annual tax return. Information about the advanced manufacturing facility, including its address and coordinates (longitude and latitude), supporting documentation, beginning of construction date, and placed in service date would allow the IRS to mitigate the risk of duplication, fraud, and improper payments for properties that are not advanced manufacturing facilities.

Proposed § 1.48D–6(b)(7)(i) provides that, after a taxpayer completes pre-filing registration with respect to each qualified investment in an advanced manufacturing facility with respect to which the taxpayer intends to elect a section 48D(d) elective payment election for the taxable year, the IRS will review the information provided and will issue a separate registration number for each qualified investment for which the taxpayer provided sufficient verifiable information.

Proposed § 1.48D–6(b)(7)(ii) would provide that a registration number is valid only for the taxable year for which it is obtained. Proposed § 1.48D–6(c)(7)(iii) would provide that, if an

[1] See section 1101 of the BBA, Public Law 114–74, 129 Stat. 584, 625–638 (2015), as amended by section 411 of the Protecting Americans from Tax Hikes Act of 2015, Public Law 114–113, 129 Stat. 2242, 3121 (2015), and sections 201 through 207 of the Tax Technical Corrections Act of 2018, Public Law 115–141, 132 Stat. 348, 1171–1183 (2018).

elective payment election will be made with respect to qualified investment in an advanced manufacturing facility for a taxable year for which a registration number under this section has been obtained for a prior taxable year, the taxpayer must renew the registration each subsequent year in accordance with applicable guidance, including attesting that all the facts previously provided are still correct or updating any facts that are relevant in calculating the amount of the section 48D credit. Proposed § 1.48D–6(b)(7)(iv) would provide that, if facts change with respect to the qualified investment in an advanced manufacturing facility for which a registration number has been previously obtained, the taxpayer must amend the registration to reflect these new facts. The regulations would provide, for example, that if the facility previously registered for an elective payment election undergoes a change of ownership (incident to a corporate reorganization or an asset sale) such that the new owner has a different employer identification number (EIN) than the owner who obtained the original registration, the original owner would be required to amend the original registration to disassociate its EIN from the advanced manufacturing facility and the new owner must submit an original registration (or if the new owner previously registered other advanced manufacturing facilities, must amend its original registration) to associate the new owner's EIN with the previously registered advanced manufacturing facility.

Lastly, proposed § 1.48D–6(b)(7)(v) would provide that the taxpayer would be required to include the registration number of the advanced manufacturing facility on the taxpayer's annual return for the taxable year for an election under proposed § 1.48D–6(a)(1). The IRS will treat an elective payment election as ineffective with respect to any section 48D credit determined with respect to the advanced manufacturing facility for which the taxpayer does not include a valid registration number on the annual tax return.

The corresponding temporary regulations under § 1.48D–6T(b) published in the Rules and Regulations section of this edition of the **Federal Register**, which are identical to those that would apply under proposed § 1.48D–6(b), apply to taxable years ending on or after June 21, 2023 and expire on June 12, 2026.

V. Special Rules

These proposed regulations amend the proposed rules relating to excessive payment and basis reduction and recapture under REG–120653–22 by adding examples of excessive payment, clarifying the basis reduction and recapture notice requirement and renumbering the affected paragraphs as § 1.48D–6(f) and (g), respectively.

A. Excessive Payment

Proposed § 1.48D–6(f)(4) provides an example of excessive payment, including the year in which the tax is imposed and the calculation of the additional 20 percent tax. The Treasury Department and the IRS request comments on whether additional guidance on excessive payments is needed.

B. Basis Reduction and Recapture

Proposed § 1.48D–6(g)(1) would provide that rules similar to the rules of section 50(a) and (c) apply for purposes of section 48D. Proposed § 1.48D–6(g)(2)(i) provides that the adjusted basis of property generally must be reduced by the amount of the section 48D credit determined with respect to property for which the taxpayer has made an election under section 48D(d)(1). Proposed § 1.48D–6(g)(2)(ii) would provide a similar basis reduction rule for partnerships or S corporations making an election under section 48D(d)(1). Proposed § 1.48D–6(g)(2)(iii) would clarify the application of the basis adjustment rule under section 50(c)(5) to take into account adjustments made under proposed § 1.48D–6(e)(2)(ii) for partners and S corporation shareholders of such partnerships or S corporations.

Proposed § 1.48D–6(g)(3) would clarify that any reporting of recapture is made on the taxpayer's annual return in the manner prescribed by the IRS in any guidance. In addition, the excessive payment rules operate separately from the recapture rules. The excessive payment rules apply where the credit amount reported on the original credit source form by the taxpayer was excessive. Recapture of a tax credit occurs when the original tax credit reported would have been correct without the occurrence of a subsequent recapture event. Thus, recapture events under section 50(a) do not result in an excessive payment.

Proposed Applicability Dates

Proposed § 1.48D–6 is proposed to apply to taxable years ending on or after the date the Treasury decision adopting these regulations as final regulations is published in the **Federal Register**. Taxpayers may rely on these proposed regulations for elective payments of section 48D credit amounts after December 31, 2022, in taxable years ending before the date the Treasury decision adopting these regulations as final regulations is published in the **Federal Register**, provided the taxpayers follow the proposed regulations in their entirety and in a consistent manner with respect to all elections made under section 48D(d).

Special Analyses

I. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (''PRA'') generally requires that a Federal agency obtain the approval of the Office of Management and Budget (OMB) before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collections of information in these proposed regulations contain reporting and recordkeeping requirements. The recordkeeping requirements mentioned within these proposed regulations are considered general tax records under § 1.6001–1(e). These records are required for the IRS to validate that taxpayers have met the regulatory requirements and are entitled to make an elective payment election. For PRA purposes, general tax records are already approved by OMB under 1545–0074 for individuals and 1545–0123 for business entities.

These proposed regulations also mention reporting requirements related to making elections as detailed in § 1.48D–6. These elections will be made by eligible taxpayers as part of filing a return (such as the appropriate Form 1040, Form 1120, Form 1120–S, or Form 1065), including filling out the relevant source credit form and completing the Form 3800. These forms are approved under 1545–0074 for individuals and 1545–0123 for business entities.

These proposed regulations also describe recapture procedures as detailed in proposed § 1.48D–6 that are required by section 48D(d)(5). The reporting of a recapture event will still be required to be reported using Form 4255, Recapture of Investment Credit. This form is approved under 1545–0074 for individuals and 1545–0123 for business entities. These proposed regulations are not changing or creating new collection requirements for recapture not already approved by OMB.

These proposed regulations mention the reporting requirements to complete

pre-filing registration with the IRS to be able to make an elective payment election in proposed § 1.48D–6. For further information concerning the registration and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the corresponding temporary regulations (T.D. 9975) published in the Rules and Regulations section of this issue of the **Federal Register**. For burden estimates associated with the pre-filing registration requirement as detailed in proposed § 1.48D–6, see the preamble to the corresponding temporary regulations. These proposed regulations are not changing or creating new collection requirements beyond the requirements that are being reviewed and approved by OMB under the temporary regulations.

II. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities. Although these temporary regulations may affect small entities, data are not readily available about the number of small entities affected. The economic impact of these proposed regulations is not likely to be significant. Section 1.48D–6T(b) implements the statutory authority granted by section 48D(d)(2)(E) that authorizes the IRS to require such information or registration as the Secretary deems necessary for purposes of preventing duplication, fraud, improper payments, or excessive payments. These proposed regulations will assist small entities wanting to make the elective payment election under section 48D(d). Notwithstanding this certification, the Treasury Department and the IRS welcome comments on the impact of these temporary regulations on small entities.

III. Section 7805(f)

Pursuant to section 7805(f), these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandate Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars (updated annually for inflation). These proposed regulations do not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

V. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. These proposed regulations do not have federalism implications and do not impose substantial, direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

VII. Regulatory Planning and Review

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

Comments and Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. All comments will be made available at *www.regulations.gov* or upon request. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn.

Announcement 2023–16, 2023–20 I.R.B. 854 (May 15, 2023), provides that public hearings will be conducted in person, although the IRS will continue to provide a telephonic option for individuals who wish to attend or testify at a hearing by telephone. Any telephonic hearing will be made accessible to people with disabilities.

A public hearing has been scheduled for August 24, 2023, beginning at 10 a.m. ET, in the Auditorium at the Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC, unless no outlines are received by August 14, 2023. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to comment by telephone at the hearing must submit written or electronic comments and an outline of the topics to be discussed as well as the time to be devoted to each topic by August 14, 2023, as prescribed in the preamble under the **ADDRESSES** section. If no outline of the topics to be discussed at the hearing is received by August 14, 2023, the public hearing will be cancelled. If the public hearing is cancelled, a notice of cancellation of the public hearing will be published in the **Federal Register**.

A period of ten minutes will be allocated to each person for making comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available: (1) at the hearing, (2) at *https://www.regulations.gov,* search IRS and REG–105595–23, or (3) by emailing a request to *publichearings@irs.gov.* Please put ''REG–105595–23 Agenda Request'' in the subject line of the email.

Individuals who want to testify in person at the public hearing must send an email to *publichearings@irs.gov* to have your name added to the building access list. The subject line of the email must contain the regulation number REG–105595–23 and the language TESTIFY In Person. For example, the subject line may say: Request to TESTIFY In Person at Hearing for REG–105595–23.

Individuals who want to testify by telephone at the public hearing must send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–105595–23 and the language TESTIFY Telephonically. For example, the subject line may say: Request to TESTIFY Telephonically at Hearing for REG–105595–23.

Individuals who want to attend the public hearing in person without testifying must also send an email to *publichearings@irs.gov* to have your name added to the building access list. The subject line of the email must contain the regulation number REG–105595–23 and the language ATTEND

In Person. For example, the subject line may say: Request to ATTEND Hearing In Person for REG–105595–23. Requests to attend the public hearing must be received by 5 p.m. EST on August 22, 2023.

Individuals who want to attend the public hearing by telephone without testifying must also send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–105595–23 and the language ATTEND Hearing Telephonically. For example, the subject line may say: Request to ATTEND Hearing Telephonically for REG–105595–23. Requests to attend the public hearing must be received by 5 p.m. EST on August 22, 2023.

Hearings will be made accessible to people with disabilities. To request special assistance during a hearing please contact the Publications and Regulations Branch of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to *publichearings@irs.gov* (preferred) or by telephone at (202) 317–6901 (not a toll-free number) at least August 21, 2023.

Statement of Availability of IRS Documents

Guidance cited in this preamble is published in the Internal Revenue Bulletin and is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *https://www.irs.gov.*

Drafting Information

The principal author of this proposed regulation is Lani M. Sinfield, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 1 as follows:

PART 1—INCOME TAXES

■ **Paragraph. 1.** The authority citation for part 1 is amended by adding an entry for § 1.48D–6 in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.48D–6 also issued under 26 U.S.C. 48D(d)(6).

* * * * *

■ **Par. 2.** Section 1.48D–6, as proposed to be added by 88 FR 17451, March 23, 2023, is revised to read as follows:

§ 1.48D–6 Elective payment election.

(a) *Elective payment election*—(1) *In general.* A taxpayer, after successfully completing the pre-filing registration requirements under paragraph (b) of this section, may make an elective payment election with respect to any section 48D credit determined with respect to such taxpayer in accordance with section 48D(d)(1) of the Internal Revenue Code (Code) and this section. A taxpayer, other than a partnership or S corporation, that makes an elective payment election in the manner provided in paragraph (c) of this section will be treated as making a payment against the Federal income taxes imposed by subtitle A of the Code (subtitle A) for the taxable year with respect to which a section 48D credit is determined equal to the amount of the section 48D credit with respect to any qualified property otherwise allowable to the taxpayer (determined without regard to section 38(c) of the Code). The payment described in section 48D(d)(1) and this paragraph (a)(1) will be treated as made on the later of the due date (determined without regard to extensions) of the return of tax imposed by subtitle A for the taxable year or the date on which such return is filed.

(2) *Partnerships and S corporations.* See paragraph (d) of this section for special rules regarding elective payment elections under section 48D(d) applicable to partnerships and S corporations.

(3) *Irrevocable.* Any election under section 48D(d)(1) and this section, once made, will be irrevocable and, except as otherwise provided, will apply with respect to any amount of section 48D credit for the taxable year for which the election is made.

(b) *Pre-filing registration required*—(1) *In general.* Pre-filing registration by any taxpayer (including a partnership or an S corporation) in accordance with this paragraph (b) is a condition that must be successfully completed prior to making an elective payment election under section 48D(d)(1) and this section with respect to qualified property placed in service by the taxpayer as part of an advanced manufacturing facility of an eligible taxpayer. An elective payment election will not be effective with respect to the section 48D credit determined with respect to any such qualified property placed in service by any taxpayer unless the taxpayer received a valid registration number for the taxpayer's qualified investment in the advanced manufacturing facility of an eligible taxpayer in accordance with this paragraph (b) and provided the registration number for each qualified investment in each advanced manufacturing facility on its Form 3800, *General Business Credit,* attached to the tax return in accordance with guidance. For purposes of this section, the term *guidance* means guidance published in the **Federal Register** or Internal Revenue Bulletin, as well as administrative guidance such as forms, instructions, publications, or other guidance on the *IRS.gov* website. See §§ 601.601 and 601.602 of this chapter. However, completion of the pre-filing registration requirements and receipt of a registration number does not, by itself, mean the taxpayer is eligible to receive a payment with respect to any section 48D credit determined with respect to the qualified property.

(2) *Manner of registration.* Unless otherwise provided in guidance, a taxpayer must complete the pre-filing registration process electronically through the IRS electronic portal and in accordance with the instructions provided therein.

(3) *Members of a consolidated group.* A member of a consolidated group is required to complete pre-filing registration as a condition of, and prior to, making an elective payment election. See § 1.1502–77 (providing rules regarding the status of the common parent as agent for its members).

(4) *Timing of pre-filing registration.* A taxpayer must satisfy the pre-filing registration requirements of this paragraph (b) and receive a registration number under paragraph (b)(6) of this section prior to making any elective payment election under this section on the taxpayer's tax return for the taxable year at issue.

(5) *Each qualified investment in an advanced manufacturing facility must have its own registration number.* A taxpayer must obtain a registration number for each qualified investment in an advanced manufacturing facility of an eligible taxpayer with respect to which an elective payment election is made.

(6) *Information required to complete the pre-filing registration process.* Unless modified in future guidance, a taxpayer must provide the following information to the IRS to complete the pre-filing registration process:

(i) The taxpayer's general information, including its name, address, taxpayer identification number, and type of legal entity;

(ii) Any additional information required by the IRS electronic portal;

(iii) The taxpayer's taxable year, as determined under section 441 of the Code;

(iv) The type of annual return(s) normally filed by the taxpayer with the IRS;

(v) A list of each qualified investment in an advanced manufacturing facility that the taxpayer intends to use to determine a section 48D credit for which the taxpayer intends to make an elective payment election;

(vi) For each qualified investment in an advanced manufacturing facility listed in paragraph (b)(6)(v) of this section, any further information required by the IRS electronic portal, such as:

(A) The type of qualified investment in the advanced manufacturing facility;

(B) Physical location (that is, address and coordinates (longitude and latitude) of the advanced manufacturing facility);

(C) Any supporting documentation relating to the construction, reconstruction or acquisition of the advanced manufacturing facility (such as, State and local government permits to operate the advanced manufacturing facility, certifications, and evidence of ownership that ties to the land deed, lease, or other documented right to use and access any land upon which the advanced manufacturing facility is constructed or housed);

(D) The beginning of construction date and the placed in service date of any qualified property that is part of the advanced manufacturing facility;

(E) The source of funds the taxpayer used to acquire the qualified property with respect to which the qualified investment was made; and

(F) Any other information that the taxpayer or entity believes will help the IRS evaluate the registration request;

(vii) The name of a contact person for the taxpayer. The contact person is the person whom the IRS may contact if there is an issue with the registration. The contact person must either:

(A) Possess legal authority to bind the taxpayer; or

(B) Must provide a properly executed power of attorney on Form 2848, *Power of Attorney and Declaration of Representative;*

(viii) A penalties of perjury statement, effective for all information submitted as a complete application, and signed by a person with personal knowledge of the relevant facts that is authorized to bind the registrant; and

(ix) Any other information the IRS deems necessary for purposes of preventing duplication, fraud, improper payments, or excessive payments under this section that is provided in guidance.

(7) *Registration number*—(i) *In general.* The IRS will review the information provided and will issue a separate registration number for each qualified investment in an advanced manufacturing facility of an eligible taxpayer for which the taxpayer making the registration provided sufficient verifiable information.

(ii) *Registration number is only valid for one year.* A registration number is valid only with respect to the taxpayer that obtained the registration number under this section and only for the taxable year for which it is obtained.

(iii) *Renewing registration numbers.* If an elective payment election will be made with respect to any section 48D credit determined with respect to a qualified investment in an advanced manufacturing facility for a taxable year after a registration number under this section has been obtained, the taxpayer must renew the registration for that subsequent year in accordance with applicable guidance, including attesting that all the facts previously provided are still correct or updating any facts.

(iv) *Amendment of previously submitted registration information if a change occurs before the registration number is used.* As provided in instructions to the pre-filing registration portal, if specified changes occur with respect to a qualified investment in an advanced manufacturing facility for which a registration number has been previously obtained, a taxpayer must amend the registration (or may need to submit a new registration) to reflect these new facts. For example, if an eligible taxpayer that is the owner of an advanced manufacturing facility previously registered for an elective payment election for a section 48D credit determined with respect to that advanced manufacturing facility and the advanced manufacturing facility undergoes a change of ownership (incident to a corporate reorganization or an asset sale) such that the new owner has a different employer identification number (EIN) than the owner who obtained the original registration, the original owner of the advanced manufacturing facility must amend the original registration to disassociate its EIN from the advanced manufacturing facility and the new owner must submit separately an original registration (or if the new owner previously registered other qualified investments or advanced manufacturing facilities, must amend its original registration) to associate the new owner's EIN with the previously registered advanced manufacturing facility.

(v) *Registration number is required to be reported on the return for the taxable year of the elective payment election.* The taxpayer must include the registration number of the qualified investment in the advanced manufacturing facility on the taxpayer's return as provided in this paragraph (b) for the taxable year. The IRS will treat an elective payment election as ineffective with respect to a section 48D credit determined with respect to a qualified investment in an advanced manufacturing facility for which the taxpayer does not include a valid registration number on the annual return.

(c) *Time and manner of election*—(1) *In general.* Any elective payment election under section 48D(d)(1) and this section with respect to any section 48D credit determined with respect to a taxpayer's qualified investment must—

(i) Be made on the taxpayer's original return of tax (including a superseding return) filed not later than the due date (including extensions of time) for the taxable year for which the section 48D credit is determined and the election is made in the manner prescribed by the IRS in guidance;

(ii) Include any required completed source credit form(s), a completed Form 3800, and any additional information required in instructions, including supporting calculations;

(iii) Provide on the completed Form 3800 a valid registration number for the qualified investment that is placed in service as part of an advanced manufacturing facility of an eligible taxpayer;

(iv) Include a statement attesting under the penalties of perjury that—

(A) The taxpayer claiming to be an eligible taxpayer is not a foreign entity of concern within the meaning of § 1.48D–2(f)(2) and has not made an applicable transaction as defined in § 1.50–2(b)(3) during the taxable year that the qualified property is placed in service; and

(B) The taxpayer will not claim a double benefit (within the meaning of section 48D(d)(3) and paragraphs (d)(2)(ii)(B) and (C) and (e) of this section) with respect to any elective payment election made by the taxpayer; and

(v) Be made not later than the due date (including extensions of time) for the taxable year for which the election is made, but in no event earlier than May 8, 2023.

(2) *Limitations.* No elective payment election may be made or revised on an amended return or by filing an

administrative adjustment request under section 6227 of the Code. There is no relief available under §§ 301.9100–1 through 301.9100–3 of this chapter for an elective payment election that is not timely filed in accordance with paragraph (c)(1) of this section.

(d) *Special rules for partnerships and S corporations*—(1) *In general.* If a partnership or S corporation directly holds any property for which an advanced manufacturing investment credit is determined, any election under this section must be made by the partnership or S corporation. No election under section 48D(d) and this section by any partner or shareholder is allowed.

(2) *Election*—(i) *Time and manner of election.* An elective payment election by a partnership or S corporation is made at the same time and in the same manner, and subject to the pre-filing registration and other requirements for the election to be effective, as provided in paragraphs (b) and (c) of this section.

(ii) *Effect of election.* If a partnership or S corporation makes an elective payment election with respect to a section 48D credit, the following rules will apply:

(A) The Internal Revenue Service will make a payment to such partnership or S corporation equal to the amount of such credit, determined in accordance with paragraph (d)(6) of this section (unless the partnership or S corporation owes a Federal tax liability, in which case the payment may be reduced by such tax liability);

(B) Before determining any partner's distributive share, or S corporation shareholder's pro rata share, of such credit, such credit is reduced to zero and is, for any other purposes under the Code, deemed to have been allowed solely to such entity (and not allocated or otherwise allowed to its partners or shareholders) for such taxable year; and

(C) Any partner's or S corporation shareholder's share of any qualified investment in an advanced manufacturing facility for which an elective payment election has been made for the taxable year, is reduced to zero for such taxable year.

(iii) *Coordination with sections 705 and 1366.* Any amount with respect to which the election is made is treated as tax exempt income for purposes of sections 705 and 1366 of the Code.

(iv) *Partner's distributive share.* A partner's distributive share of such tax exempt income is equal to such partner's distributive share of its otherwise allocable basis in qualified property under § 1.48D–2(h)(2)(i) for such taxable year.

(v) *S corporation shareholder's pro-rata share.* An S corporation shareholder's pro rata share (as determined under section 1377(a) of the Code) of such tax exempt income is taken into account by the S corporation shareholder in the taxable year (as determined under sections 444 and 1378(b) of the Code) in which the section 48D credit is determined and is based on the shareholder's otherwise apportioned basis in qualified property under § 1.48D–2(h)(2)(ii) for the taxable year.

(vi) *Timing of tax exempt income.* Such tax exempt income resulting from such election is treated as received or accrued, including for purposes of sections 705 and 1366 of the Code, as of the date the qualified property is placed in service with respect to the partnership or S corporation.

(3) *Disregarded entity ownership.* In the case of a qualified property held directly by an entity disregarded as separate from a partnership or S corporation for Federal income tax purposes, such qualified property will be treated as held directly by the partnership or S corporation for purposes of making an elective payment election.

(4) *Electing partnerships in tiered structures.* If a partnership (upper-tier partnership) is a direct or indirect partner of a partnership that makes an elective payment election and directly or indirectly receives an allocation of tax exempt income resulting from the elective payment election made by the partnership, the upper-tier partnership must determine its partners' distributive shares of such tax exempt income in proportion to each partner's distributive share of its otherwise allocable basis in qualified property under § 1.48D–2(h)(2)(i) for such taxable year.

(5) *Character of tax exempt income.* Tax exempt income resulting from an elective payment election by an S corporation or a partnership is treated as arising from an investment activity and not from the conduct of a trade or business within the meaning of section 469(c)(1)(A). As such, the tax exempt income is not treated as passive income to any partners or shareholders who do not materially participate within the meaning of section 469(c)(1)(B).

(6) *Determination of amount of the section 48D credit*—(i) *In general.* In determining the amount of the section 48D credit that will result in a payment under paragraph (d)(2)(ii)(A) of this section, the partnership or S corporation must compute the amount of the credit allowable (without regard to section 38(c)) as if an elective payment election were not made. Because a partnership or S corporation is not subject to section 469 (that is, section 469 applies at the partner or shareholder level), the amount of the credit determined by a partnership or S corporation is not subject to limitation by section 469. Because the section 48D credit is an investment credit under section 46, sections 49 and 50 apply to limit the amount of the credit.

(ii) *Application of section 49 at-risk rules to determination of section 48D credit for partnerships and S corporations.* Any amount of section 48D credit determined with respect to qualified property held directly by a partnership or S corporation must be determined by the partnership or S corporation taking into account the section 49 at-risk rules at the partner or shareholder level as of the close of the taxable year in which the qualified property is placed in service. Thus, if the credit base of a qualified property is limited to a partner or S corporation shareholder by section 49, then the amount of the section 48D credit determined by the partnership or S corporation is also limited. A partnership or S corporation that directly holds qualified property must request from each of its partners or shareholders, respectively, that is subject to section 49, the amount of such partner's or shareholder's nonqualified nonrecourse financing with respect to the qualified property as of the close of the taxable year in which the property is placed in service. Additionally, the partnership or S corporation must attach to its tax return for the taxable year in which the qualified property is placed in service, the amount of each partner's or shareholder's section 49 limitation with respect to any qualified property. Changes to at-risk amounts under section 49 for partners or S corporation shareholders after the close of the taxable year in which the qualified property is placed in service do not impact the section 48D credit determined by the partnership or S corporation, but do impact the partner(s) or S corporation shareholder(s) as provided in paragraph (d)(6)(iii) of this section.

(iii) *Changes in at-risk amounts under section 49 at partner or shareholder level.* A partner or shareholder in a partnership or S corporation, respectively, must apply the rules under section 49 at the partner or shareholder level if there is a change in nonqualified nonrecourse financing with respect to the partner or shareholder after the close of the taxable year in which the qualified property is placed in service and the section 48D credit is

determined. If there is an increase in nonqualified nonrecourse financing to a partner, any adjustment under the rules of section 49(b) is calculated based on the partner's share of the basis (or cost) of the qualified property to which the section 48D credit was determined in accordance with § 1.48D–2(h)(2)(i). If there is an increase in nonqualified nonrecourse financing to a shareholder, any adjustment under the rules of section 49(b) is calculated based on the shareholder's pro rata share of the basis (or cost) of the qualified property to which the section 48D was determined in accordance with § 1.48D–2(h)(2)(ii). If there is a decrease in nonqualified nonrecourse financing, any increase in the credit base is taken into account by the partner or shareholder as provided under section 49, and any resulting credit is not eligible for an elective payment election under section 48D(d).

(7) *Partnerships subject to subchapter C of chapter 63 of the Code.* See § 301.6241–7(j) of this chapter for rules applicable to payments made to partnerships subject to subchapter C of chapter 63 of the Code for a partnership taxable year.

(8) *Example.* The following example illustrates the rules of this paragraph (d).

(i) *Example.* P is a calendar-year partnership consisting of partners A and B, each 50% owners. P constructs Facility A, an advanced manufacturing facility, at V. P completes the pre-filing registration with respect to Facility A at V for 2024 in accordance with paragraph (b) of this section. In 2024, P places in service qualified property which is part of Facility A at V. P timely files its 2024 Form 1065 and properly makes the elective payment election in accordance with paragraph (c) of this section. On its Form 1065, P properly determines that the amount of section 48D credit with respect to the qualified property placed in service at Facility A for 2024 is $100,000. The IRS processes P's return and makes a $100,000 payment to P. Before determining A's and B's distributive shares, P reduces the section 48D credit to zero. However, for other purposes of the Code, the $100,000 section 48D credit is deemed to have been allowed to P for 2024. The $100,000 is treated as tax exempt income for purposes of section 705, and A's and B's distributive shares of such tax exempt income is based on each partner's otherwise allocable basis in qualified property under § 1.48D–2(h)(2)(i) for the 2024 taxable year ($50,000 each). A's and B's basis in their partnership interests and capital accounts will be appropriately adjusted to take into account basis adjustments made to the qualified property under section 50(c)(5) and § 1.704–1(b)(2)(iv)(*j*). See paragraph (g)(2) of this section. The tax exempt income received or accrued by P as a result of the elective payment election is treated as received or accrued, including for purposes of section 705, as of date P placed in service the qualified property in 2024.

(ii) [Reserved]

(e) *Denial of double benefit*—(1) *In general.* In the case of a taxpayer making an election under section 48D(d) and this section with respect to any section 48D credit determined under section 48D(a) and § 1.48D–1, such credit is reduced to zero and is, for any other purposes under the Code, deemed to have been allowed to the taxpayer for such taxable year. Paragraphs (e)(2) and (3) of this section explain the application of the section 48D(d)(3) denial of a double benefit rule to a taxpayer (other than a partnership or S corporation). The application of section 48D(d)(3) to a partnership or S corporation is provided in paragraphs (d)(2)(ii)(B) and (C) of this section.

(2) *Application of the denial of double benefit rule.* A taxpayer (other than a partnership or S corporation) making an elective payment election applies section 48D(d)(3) by taking the following steps:

(i) Compute the amount of the Federal income tax liability (if any) for the taxable year, without regard to the general business credit under section 38 (GBC), that is payable on the due date of the tax return (without regard to extensions), and the amount of the Federal income tax liability that may be offset by GBCs pursuant to the limitation based on the amount of tax under section 38.

(ii) Compute the amount of the GBCs carryforwards carried to the taxable year plus the amount of the current year GBCs (including the current section 48D credit) allowed for the taxable year under section 38. Because the election must made on an original return of tax for the taxable year for which the section 48D credit is determined, any business credit carrybacks are not considered when determining the elective payment amount for the taxable year.

(iii) Apply the GBCs allowed for the taxable year as computed under paragraph (e)(2)(ii) of this section, including those attributable to the section 48D credit as GBC, against the tax liability computed in paragraph (e)(2)(i) of this section.

(iv) Identify the amount of any excess or unused current year GBC, as defined under section 39, attributable to current year section 48D credit for which the taxpayer is making an elective payment election. Treat the amount of such unused section 48D credit as a payment against the tax imposed by subtitle A for the taxable year with respect to which such credit is determined (rather than having them available for carryback or carryover) (net elective payment amount).

(v) Reduce the section 48D credit for which an elective payment election is made by the amount (if any) allowed as a general business credit under section 38 for the taxable year, as provided in paragraph (e)(2)(iii) of this section, and by the net elective payment amount (if any) that is treated as a payment against tax, as provided in paragraph (e)(2)(iv) of this section, which results in the section 48D credit being reduced to zero.

(3) *Use of the section 48D credit for other purposes.* The full amount of the section 48D credit for which an elective payment election is made is deemed to have been allowed for all other purposes of the Code, including, but not limited to, the basis reduction and recapture rules imposed by section 50, and the calculation of any underpayment of estimated taxes under sections 6654 and 6655 of the Code.

(4) *Examples.* The following examples illustrate the rules of this paragraph (e).

(i) *Example 1.* Z Corp is a calendar-year C corporation. Z Corp places in service qualified property which is part of an advanced manufacturing facility in June of 2024. Z Corp completes the pre-filing registration in accordance with this section and receives a registration number for the qualified property. Z Corp timely files its 2024 Form 1120 on April 15, 2025, properly making the elective payment election with respect to the section 48D credit in accordance with this section. On its return, Z Corp properly determines that it has $500,000 of tax imposed by subtitle A of the Code (see paragraph (e)(2)(i) of this section). For simplicity, assume the maximum amount of GBCs that can be claimed for the taxable year is $375,000. Z Corp properly determines that the amount of the section 48D credit determined with respect to the qualified property (its GBC for the taxable year) is $100,000 (see paragraph (e)(2)(ii) of this section. Under paragraph (e)(2)(iii) of this section, the section 48D credit reduces Z Corp's tax liability to $400,000. Z Corp pays its $400,000 tax liability on April 15, 2025. Because there is no unused section 48D credit, paragraph (e)(2)(iv) of this section does not apply. Under paragraph (e)(2)(v) of this section, the $100,000 of section 48D credit is reduced by the $100,000 of section 48D

credit claimed as GBCs for the taxable year, which results in the section 48D credit being reduced to zero. However, the $100,000 of section 48D credit is deemed to have been allowed to Z Corp for 2024 for all other purposes of the Code under paragraph (e) of this section.

(ii) *Example 2.* Assume the same facts as in paragraph (e)(4)(i) of this section (*Example 1*), except that Z Corp has $80,000 of tax imposed by subtitle A (paragraph (e)(2)(i) of this section). Z Corp's GBC credit is still $100,000 (paragraph (e)(2)(ii) of this section). For simplicity, assume the maximum amount of GBCs that can be claimed for the taxable year under section 38(c) is $60,000. Z Corp uses $60,000 of its section 48D credit against its tax liability under paragraph (e)(2)(iii) of this section. Z Corp's net elective payment amount is $40,000 determined under paragraph (e)(2)(iv) of this section. Z Corp reduces the elective payment amount by the $60,000 claimed against tax in paragraph (e)(2)(iii) of this section and by the $40,000 net elective payment amount determined in paragraph (e)(2)(iv) of this section, resulting in the applicable credit being reduced to zero (paragraph (e)(2)(v) of this section). When the IRS processes Z Corp's 2024 Form 1120, the net elective payment amount results in a $40,000 refund to Z Corp. However, for other purposes of the Code, the $100,000 section 48D credit is deemed to have been allowed to Z Corp for 2024 (paragraph (e) of this section). Even though Z Corp did not owe tax after applying the net elective payment amount against its net tax liability, Z Corp may be subject to the section 6655 penalty for failure to pay estimated income tax. The net elective payment is not an estimated tax installment, rather it is treated as a payment made at the filing of the return.

(f) *Excessive payment*—(1) *In general.* Except as provided in paragraph (f)(2) of this section, in the case of any amount treated as a payment which is made by the taxpayer under section 48D(d)(1) and paragraph (a) of this section, or any payment made pursuant to section 48D(d)(2)(A)(i)(II) and paragraph (d) of this section, with respect to any property, which amount the Commissioner determines constitutes an excessive payment as defined in paragraph (f)(3) of this section, the tax imposed on such taxpayer by chapter 1 of the Code for the taxable year in which such determination is made is increased by an amount equal to the sum of—

(i) The amount of such excessive payment; plus

(ii) An amount equal to 20 percent of such excessive payment.

(2) *Reasonable cause.* Paragraph (f)(1)(ii) of this section will not apply if the taxpayer demonstrates to the satisfaction of the Commissioner that the excessive payment resulted from reasonable cause.

(3) *Excessive payment defined.* For purposes of section 48D(d) and this paragraph (f), the term *excessive payment* means, with respect to any property for which an election is made under section 48D(d) and this section for any taxable year, an amount equal to the excess of—

(i) The amount treated as a payment which is made by the taxpayer pursuant to section 48D(d)(1) and paragraph (a) of this section, or any payment made by the Commissioner pursuant to section 48D(d)(2)(A)(I)(i) and paragraph (d) of this section, with respect to such property for such taxable year; over

(ii) The amount of the section 48D credit which, without application of section 48D(d) and this section, would be otherwise allowable (determined without regard to section 38(c)) under section 48D(a) and the section 48D regulations with respect to such property for such taxable year.

(4) *Example*s. The following example illustrates the principles of this paragraph (f).

(i) *Example.* A Corp is a calendar-year C corporation. A Corp places in service qualified property which is part of Facility A, an advanced manufacturing facility in 2023. A Corp properly completes the pre-filing registration in accordance with paragraph (b) of this section and receives a registration number for the advanced manufacturing facility. A Corp timely files its 2023 Form 1120, properly providing the registration number for Facility A and otherwise complying with paragraph (c) of this section. On its return, Corp A calculates that the amount of the section 48D credit with respect to the qualified property is $100,000 and that the net elective payment amount is $100,000. Corp A receives a refund in the amount of $100,000. In 2025, the IRS determines that the amount of the section 48D credit properly allowable to Corp A in 2023 with respect to Facility A (as determined pursuant to § 1.48D–1(b) and without regard to the limitation based on tax in section 38(c)) was $60,000. Corp A is not able to show reasonable cause for the difference. The excessive payment amount is $40,000 ($100,000 treated as a payment − $60,000 allowable amount). In 2025, the tax imposed under chapter 1 on Corp A is increased in the amount of $48,000 ($40,000 + (20% * $40,000 = $8,000).

(ii) [Reserved]

(g) *Basis reduction and recapture*—(1) *In general.* The rules in section 50(a) and (c) of the Code apply with respect to elective payments under paragraphs (a) and (d) of this section.

(2) *Basis adjustment*—(i) *In general.* If a section 48D credit is determined with respect to property for which a taxpayer makes an election under section 48D(d)(1), then the adjusted basis of the property shall be reduced by the amount of the section 48D credit determined for which the taxpayer made an election under section 48D(d)(1).

(ii) *Basis adjustment by partnership or S corporation.* If an advanced manufacturing investment credit is determined with respect to property for which a partnership or S corporation makes an election under section 48D(d)(1), then the adjusted basis of the property shall be reduced by the amount of the advanced manufacturing investment credit determined with respect to the property held by the partnership or S corporation, for which the IRS made a payment to the partnership or S corporation pursuant to section 48D(d)(2)(A)(i)(I).

(iii) *Basis adjustment of partners and S corporation shareholders.* The adjusted basis of a partner's interest in a partnership, and stock in an S corporation, shall be appropriately adjusted pursuant to section 50(c)(5) to take into account adjustments made under paragraph (g)(2)(ii) of this section in the basis of property held by the partnership or S corporation, as the case may be.

(3) *Recapture reporting.* Any reporting of recapture is made on the taxpayer's annual return in the manner prescribed by the IRS in any guidance.

(h) *Applicability date.* This section applies to property that is placed in service after December 31, 2022, and during a taxable year ending on or after [DATE OF PUBLICATION OF FINAL RULE].

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

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