subject bank or any subsidiary of the subject bank;

(2) A purchase, sale or transfer of a material amount of assets by the subject bank or any subsidiary of the subject bank;

(3) A tender offer for or other acquisition of securities by or of the subject bank; or

(4) Any material change in the present capitalization or dividend policy of the subject bank.

Instruction: If no agreement in principle had yet been reached, the possible terms of any transaction or the parties thereto need not be disclosed if in the opinion of the Board of Directors of the subject bank disclosure would jeopardize continuation of the negotiations. In that event, disclosure that negotiations are being undertaken or are underway and are in a preliminary stage will be sufficient.

(b) Describe any transaction, board resolution, agreement in principle, or a signed contract in response to the tender offer, other than one described in Item 3(b) of this statement, which relates to or would result in one or more of the matters listed in Item 7(a) (1), (2), (3) or (4).

Item 8—Additional Information to be Furnished.

Furnish any additional information necessary to make the required statements, in light of the circumstances under which they are made, materially misleading.

Item 9—Material to be Filed as Exhibits.

Furnish a copy of:

(a) Any written solicitation or recommendation which is published or sent or given to security holders in connection with the solicitation or recommendation referred to in Item 4.

(b) Any written instruction, or other material which is furnished to persons making any actual oral solicitation or recommendation for their use, directly or indirectly, in connection with the solicitation or recommendation.

(c) Any contract, agreement, arrangement or understanding described in Item 3(b) or the pertinent portion(s) of any proxy statement, report or other communication referred to in Item 3(b).

Signature

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

(Date)

(Signature)

(Name and Title)

Instruction. The original statement shall be signed by each person on whose behalf the statement is filed or his authorized representative. If the statement is signed on behalf of a person by his authorized representative (other than an executive officer of a corporation or a general partner of a partnership), evidence of the representative's authority to sign on behalf of that person shall be filed with the statement. The name and any title of each person who signs the statement shall be typed or printed beneath his signature.

16. In § 335.54, the cover page, General Instructions B and C, and Item 6 of Form F–13 would be revised as follows:

§ 335.54 Tender offer statement to be filed under Section 14(d)(1) of the Securities Exchange Act of 1934 (Form F–13).

Federal Deposit Insurance Corporation

Washington, D.C. 20429

Form F–13

Tender Offer Statement Under Section 14(d)(1) of the Securities Exchange Act of 1934

(Amendment No. ————)

* * * * *

General Instructions

* * * * *

B. Information in exhibits to the statement may be incorporated by reference in answer or partial answer to any item or sub-item of the statement unless it would render an answer misleading, incomplete, unclear or confusing. Material incorporated by reference shall be clearly identified in the reference by page, paragraph, caption or otherwise. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the statement where the information is required. A copy of any information or a copy of the pertinent pages of a document containing information which is incorporated by reference shall be submitted with this statement as an exhibit and shall be considered filed with the FDIC for purposes of the Act.

C. If the statement is filed by a partnership, limited partnership, syndicate or other group, the information called for by Items 2–7, inclusive, shall be given with respect to: (i) Each partner of a partnership; (ii) each partner who is named a general partner or who functions as a general partner of a limited partnership; (iii) each member of a syndicate or group; and (iv) each person controlling a partner or member. If the statement is filed by a corporation, or if a person referred to in (i), (ii), (iii), or (iv) of this instruction is a corporation, the information called for by the above mentioned items shall be given with respect to: (a) each executive officer and director of a corporation; (b) each person controlling a corporation; and (c) each executive officer and director of any corporation ultimately in control of a corporation. A response to an item in the statement is required with respect to the bidder and to all other persons referred to in this instruction unless the item specifies to the contrary.

* * * * *

Item 6—Interest in Securities of the Subject Bank.

* * * * *

Instructions.

2. If the information required by Item 6(b) of this Form F–13 is available to the bidder at the time this statement is initially filed with the FDIC under § 335.8–3(a)(1), the information should be included in the initial filing. However, if the information is not available to the bidder at the time of the initial filing, it shall be filed with the FDIC promptly but in no event later than two business days after the date of filing and, if material, shall be disclosed in a manner reasonably designed to inform security holders. The procedure specified by this instruction is provided for the purpose of maintaining the confidentiality of the tender offer in order to avoid possible misuse of inside information.

* * * * *

[FR Doc. 80–29065 Filed 9–18–80; 8:45 am]

BILLING CODE 6714–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR–165–77]

Investment Credit for Energy Property

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to business investment credit for energy property. Changes in the applicable tax law were made by the Energy Tax Act of 1978. These regulations will provide the public with the guidance needed to comply with the law.

DATES: Written comments and requests for a public hearing must be delivered or mailed by November 18, 1980. The amendments are proposed to be effective, in general, for the period beginning on October 1, 1978, and ending December 31, 1982.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–165–77) Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Richard L. Mull of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Sevice, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention: CC:LR:T (202–566–3458, not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 48 of the Internal Revenue Code of 1954. These amendments are proposed to conform the regulations to certain changes made by section 301(b) of the Energy Tax Act of 1978 (Pub. L. 95–618, 92 Stat. 3174). The proposed regulations are to be issued under the authority contained in Code sections —

are many items of boiler equipment which are the same regardless of the fuel source. If the policy is to subsidize the costs inherent in using an alternate substance instead of an oil or gas substance, there is little reason to subsidize those costs which would be incurred regardless of the substance used as a fuel. However, based on the legislative history and the words of the statute, this restriction was not added. *See.* House Report at 107. The conclusion was that Congress intended to subsidize the entire cost of the boiler if an alternate substance is used as the fuel, even though only certain parts of the boiler are needed solely because the alternate substance is being used.

There was a suggestion to change the primary fuel rule in paragraph (c)(3)(iii) simply to "principal" fuel, *i.e.*, the fuel used more than any other fuel. However, the statute requires a "primary" rule and the House Report states that a 50 percent test is intended. *See,* House Report at 107.

"Primary fuel" also requires a time period for testing whether the fuel is primary. The shorter the time period, the more restrictive the test. If the percentage test is not met during the relevant time period, there is recapture, and the credit cannot be restored subsequently. The conclusion was that applying the test on a yearly basis, rather than on a daily, weekly, or monthly basis is a reasonable interpretation of the legislative intent.

Synthetic Fuel Equipment

Some equipment, such as alcohol distillation equipment, may be used just as readily to produce a fuel as to produce something else (*e.g.*, whiskey). Three possible rules are: (1) if the equipment produces a fuel, it is completely eligible regardless of other uses of the products; (2) if the equipment is not used solely to produce a fuel, the equipment is completely ineligible; or (3) if the equipment is used to some extent to produce a fuel, the equipment is eligible only to the extent of its cost allocable to production of a fuel. The third rule, which requires an allocation, was chosen. The test expressed in the proposed regulation is on an annual basis. If the proportion changes in a later year, recapture may be required.

Modification Equipment

To be eligible under paragraph (c)(6)(i) of the proposed regulation, a modification must result in a substitution of certain substances for an oil or gas substance. The "substitution" rule is restrictive to the extent that, if a modification results simply in use of a qualifying substance in addition to the existing fuel or feedstock, the modification will not qualify for the subsidy. If a modification results in an increase in the equipment's capacity, an incremental cost rule will apply. Replacements of boilers or burners do not qualify under this provision because, otherwise, the "primary fuel" rule under section 48(l)(3)(A) (i) and (ii) could be avoided.

Pollution Control Equipment

Since the statute and the legislative history are silent regarding the definition of pollution control equipment, the proposed regulation uses the definition of pollution control facilities in the regulations under section 103(b)(4)(F) (relating to industrial development bonds for pollution control facilities). The term "facility" used in section 103(b)(4)(F) is, in effect, the same as "equipment" used in section 48(l)(3)(A)(vi).

Paragraph (c)(8) (ii) and (iii) explains the meaning of "required by Federal, State, or local government regulation". One issue is whether regulations referred to in section 48(l)(3)(A)(vi) are limited to pollution control regulations. For purposes of the energy credit, the regulations referred to are not limited to pollution control regulations, but pollution control equipment is defined to ensure the presence of the pollution control function. Indeed, the law may be nuisance law developed under court cases. Typically, however, the law relied upon for qualification under this provision actually will be labeled a pollution control control law and will be statutory in origin.

The determination of what is required by regulation produces countervailing effects. For purposes of section 48(l)(3)(A)(vi), the proposed regulation broadens the categories of equipment that may be eligible for the credit by giving the word "required" a very broad meaning. However, section 48(l)(3)(D) uses the word "required" to exclude certain pollution control equipment used in connection with coal facilities. Here, broadening the term "required" narrows the scope of coal equipment qualifying for the subsidy.

Paragraph (c)(8)(iv) includes a rule for pollution control equipment that performs a pollution control function other than for alternative energy property. In this situation, there are three choices: no credit, full credit, or partial credit. Denying the credit entirely would discourage alternative energy property investments as well as pollution control investments. On the other hand, property that merely incidentally serves a pollution control function for qualifying alternative energy property should not receive the full energy credit. As a result, the regulation contains an incremental cost rule.

Geothermal Equipment

Under the statute, equipment is eligible if used to "produce, distribute, or use" geothermal energy.

Paragraph (c)(10)(iv) describes equipment that "uses" energy derived from a geothermal deposit. Somewhat more restrictive language was need in the proposed regulation because it would be impossible to trace equipment that "uses energy derived from a geothermal deposit." The conclusion was that Congress did not intend a subsidy for equipment that is absolutely indistinguishable from equipment that does not use geothermal energy or energy derived from geothermal energy. Consequently, the proposed regulation includes a "specially adapted" rule and a "dual-function" rule.

The term "geothermal deposit" is defined the same as in the proposed residential energy credit regulation.

Solar Energy Property

It is important first to compare section 48 (l)(4) with the residential energy credit under section 44C(c)(5) for solar energy property:

Business energy credit	Residential energy credit
Applies to "equipment"	Applies to "property."
"Solar energy"	[same.]
Heat, cool, or provide hot water.	[same.]
Electric generating equipment included.	Electric generating equipment excluded.
Passive solar excluded	Passive solar partially included.

Paragraph (d)(1) is intentionally similar in many respects to § 1.44C–2) (f) of the residential solar credit regulations as proposed on May 23, 1979 (44 FR 29923). However, paragraph (d)(1) substitutes "buildings or structures" for "dwelling" and omits the term "transmit" since it appears in section 44C but not in section 48 (l)(4). Other differences between the two credits were sufficient to make a direct cross reference undesirable. If relevant revisions are make in a Treasury decision for the residential credit, corresponding changes may be necessary in this paragraph.

Paragraph (d)(2) follows the Committee Report by excluding passive solar property in its entirety. *See,* Conference Report at 64.

whether capitalizable expenditures have been incurred in connection with modifying the process. Under this rule, most insignificant modifications would not result in a new process. The purpose of paragraph (e)(2) is to provide a readily administrable and understandable rule that bears a sufficient, if not perfect, relationship to the common understanding of a change of process.

Standards of Quality and Performance

Paragraph (m) describes the statutory provision for standards of quality and performance. The proposed regulation indicates that standards will not affect property for which there is a binding contract prior to the issuance of the standards. At the time of publication of the proposed regulation, no standards were in effect.

Public Utility Property

Paragraph (n)(2) points out that public utility property is excluded from the cagetory of specially defined energy property. This exclusion is not based on section 48 (l)(3)(B), but rather on the requirement in section 46 (l)(5) that specially defined energy property is, by its terms, limited to industrial (including agricultural) and commercial facilities. Moreover, the limitation in the Senate bill included utility use as one of the qualifying uses. However, that reference was dropped in the Conference. *Compare* section 44F(b)(2) as would have been added to the Internal Revenue Code by H.R. 5263, 95th Cong. 1st Sess. § 1031(a) (1977) (as passed by the Senate) *with* IRC section 48(l)(5).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

Drafting Information

The principal author of these proposed regulations is Richard L. Mull of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 1 are as follows:

Paragraph 1. Section 1.47-1 is amended as follows:

1. Paragraph (a)(1)(i) is amended by adding at the end thereof "For rules applicable to energy property, see paragraph (h) of this section."

2. A new paragraph (H) is added to read as set forth below:

§ 1.47-1 Recomputation of credit allowed by section 38.

* * * * *

(h) *Special rules for energy property*—(1) *In general.* A recapture determination is required for the investment credit attributable to the energy percentage (energy credit) if property is (i) disposed of or (ii) otherwise ceases to be energy property (as defined in section 48(l)) with regard to the taxpayer before the end of its estimated useful life.

(2) *Dispositions.* The term "disposition" is described in § 1.47-2(a)(1). A transfer of enery property that is a "disposition" requiring a recapture determination for the investment credit attributable to the regular percentage (regular credit) and the ESOP percentage (ESOP credit) will also be a "disposition" requiring a recapture determination for the energy credit.

(3) *Cessation.* The term "cessation" is described in § 1.47-2(a)(2). For energy property, a cessation occurs during a taxable year if, by reason of a change in use or otherwise, the property would not have qualified for an energy credit if placed in service during that year. A change in use will not require a recapture determination for the regular or ESOP credit unless, by reason of the change, the property would not have qualified for the regular or ESOP credit if placed in service during that year.

(4) *Recordkeeping requirement.* For recordkeeping requirements with respect to dispositions or cessations, the rules of paragraph (e)(1) of this section apply. For example, the taxpayer must maintain records for each recycling facility indicating the percentage of virgin materials used each year. See, § 1.48-9(g)(5)(ii).

(5) *Examples.* The following examples illustrate this paragraph (h).

Example (1). (a) In 1980, corporation X, a calendar year taxpayer, acquires and places in service a computer that will perform solely energy conserving functions in connection with an existing industrial process. Assume the computer has a 7-year useful life and qualifies for both the regular and energy credits. In 1981, a change is made in the industrial process (within the meaning of § 1.48-9(l)(2)). However, for 1981 the computer continues to perform solely energy conserving functions. In 1982, the computer ceases to perform energy conserving functions and begins to perform a production related function.

(b) For 1981, a recapture determination is not required. For 1982, the entire energy credit must be recaptured, although none of the regular credit is recaptured.

Example (2). Assume the same facts and conclusion as in example (1). Assume further that X sells the computer in 1985. A recapture determination is required for the regular credit.

Example (3). In 1981, corporation Y, a calendar year taxpayer, acquires and places in service recycling equipment. Assume the equipment has a 7-year useful life and qualifies for both the regular credit and energy credit. During the course of 1982, more than 10 percent of the material recycled is virgin material. The energy credit is recaptured in its entirety, although none of the regular credit is recaptured. See § 1.48-9(g)(5)(B)(ii).

Example (4). In 1980, corporation Z, a calendar year taxpayer, acquires and places in service a boiler the primary fuel for which is an alternate substance. The boiler has a 7-year useful life. Assume the boiler is a structural component of a building within the meaning of § 1.48-1(e)(2). Assume further that the boiler is not a part of a qualified rehabilitated building (as defined in section 48(g)(1)) or a single purpose agricultural or horticultural structure (as defined in section 48(p)). Z is allowed only an energy credit since the boiler is a structural component of a building. In 1984, Z modifies the boiler to use oil as the primary fuel. A recapture determination is required for the energy credit. See § 1.48-9(c)(3).

Par. 2. A new § 1.48-9 is added to read as set forth below:

§ 1.48-9 Definition of energy property.

(a) *General rule*—(1) *In general.* Under section 48(l)(2), energy property means property that is described in at least one of 6 categories of energy property and that meets the other requirements of this section. If property is described in more than one of these categories, or is described more than once in a single category, only a single energy investment credit is allowed. In that case, the energy investment credit will be allowed under the category the taxpayer chooses by indicating the chosen category on Form 3468, Schedule B. The 6 categories of energy property are:

(i) alternative energy property,
(ii) solar or wind energy property,
(iii) specially defined energy property,
(iv) recycling equipment,
(v) shale oil equipment, and
(vi) equipment for producing natural gas from geopressured brine.

been produced. Equipment is eligible only to the extent of the equipment's cost or basis allocable to the annual production of substances used as a fuel or used in the production of a fuel. For example, assume for the taxable year that 50 percent of the output of equipment is used to produce alcohol for production of whiskey and 50 percent is used to produce alcohol for use in a fuel mixture, such as gasohol. The alcohol production equipment qualifies as synthetic fuel equipment but only to the extent of one-half of its cost or basis. If, in a later taxable year, the equipment is used exclusively to produce whiskey, all of the equipment ceases to be synthetic fuel equipment.

(ii) A fuel is a material that produces usable heat upon combustion. To be "synthetic", the fuel must differ significantly in chemical composition, as opposed to physical composition, from the alternate substance used to produce it. Examples of synthetic fuels include alcohol derived from coal, peat, and vegetative matter, such as wood and corn, and methane from landfills.

(iii) Synthetic fuel equipment includes coal gasification equipment, coal liquefaction equipment, and equipment that converts biomass to a synthetic fuel.

(iv) Synthetic fuel equipment does not include equipment that merely mixes an alternate substance with another substance. For example, synthetic fuel equipment includes neither equipment that mixes coal and water to produce a slurry nor equipment that mixes alcohol and gasoline to produce gasohol. Equipment used to produce coke or coke gas, such as coke ovens, is also ineligible.

(6) *Modification equipment.* (i) Alternative energy property includes equipment (modification equipment) designed to modify existing equipment. For the definition of "existing," see paragraph (l)(1)(i) of this section. To be eligible, the modification must result in a substitution for the entire taxable year of the items in paragraph (c)(6)(ii) (A) or (B) of this section for all or a portion of the oil or gas substance used as a fuel or feedstock. As a result of the modification, the substituted alternate substance must comprise at least 25 percent of the fuel or feedstock (determined on the basis of Btu equivalency). If the modification also increases the capacity of the equipment, only the incremental cost (as defined in paragraph (k) of this section) of the equipment qualifies.

(ii) The substitutes for an oil or gas substance are—

(A) An alternate substance or

(B) A mixture of oil and an alternate substance.

(iii) Modification equipment does not include replacements of a boiler or burner. If the boiler or burner is replaced, the items must be described in paragraph (c)(3) or (4) of this section to qualify as alternative energy property Modification may include, however, replacements of components of a boiler or burner, such as a heat exchanger.

(iv) The following examples illustrate this paragraph (c)(6).

Example (1). On January 1, 1980, corporation X is using oil to fuel its boiler. On June 1, 1980, X modifies the boiler to permit substitution of a coal and oil mixture for 40 percent of X's oil fuel needs. The mixture consists 75 percent of oil and 25 percent of coal. The equipment modifying the boiler does not qualify as modification equipment because the alternate substance comprises only 10 percent of the fuel.

Example (2). Assume the same facts as in example (1) except 75 percent of the mixture is coal. The equipment modifying the boiler qualifies.

Example (3). Assume the same facts as in example (2) except, instead of substituting an oil and coal mixture for 40 percent of X's oil fuel needs, X uses the modification to expand the boiler's fuel capacity by 40 percent using the mixture as additional fuel. The additional fuel mixture comprises only 28 percent of X's total fuel needs. Thus, even though 75 percent of the additional fuel mixture is an alternate substance, the boiler does not qualify as modification equipment because the alternate substance comprises only 21 percent of the total fuel.

(7) *Equipment using coal as feedstock.* Equipment that uses coal (including lignite) to produce a feedstock for the manufacture of chemicals, such as petrochemicals, or other products is alternative energy property. Equipment is not eligible if it is not directly involved in the treatment of coal or a coal product, but produces a substance that is, like coal, a basic feedstock or catalyst used in the coal conversion process. Equipment is not eligible if it is used beyond the point at which the first product usable as a feedstock has been produced. Equipment used to produce coke or coke gas, such as coke ovens, is ineligible.

(8) *Pollution control equipment.* (i) Pollution control equipment is alternative energy property. Eligible equipment is limited to property or equipment described in § 1.103–8(g)(2)(ii). If control of pollution is not the only significant purpose (within the meaning of § 1.103–8(g)(2) (iii) and (v)), only the incremental cost (as defined in paragraph (k) of this section) of the equipment qualifies. References in this subdivision (i) to § 1.103–g(2) are those appearing in 26 CFR § 1.103–8(g)(2) (Rev. as of April 1, 1979). However, if a Treasury decision changes § 1.103–8(g)(2) and, thus, the rules reflected in this subdivision (i), the rules as changed will apply as of the effective date of the Treasury decision.

(ii) To be eligible, the equipment must be required by a Federal, State, or local government regulation to be installed on, or used in connection with, eligible alternative energy property (as defined in paragraph (c)(8)(v) of this section).

(iii) Under section 48 (l)(3)(D), equipment is not eligible if required by a Federal, State, or local government regulation in effect on October 1, 1978, to be installed on, or in connection with, property using coal (including lignite) as of October 1, 1978.

(iv) Under this subparagraph (8), pollution control equipment is required by regulation if it would be necessary to install the equipment to satisfy the requirements of any applicable law, including nuisance law. The pollution control equipment need not be specifically identified in the applicable law. If several different types of equipment may be used to comply with the applicable law, each type of equipment is considered necessary to satisfy the requirements of the law. An order permitting a taxpayer to delay compliance with any applicable law is disregarded.

(v) Under this subparagraph (8), "eligible alternative energy property" is energy property (as defined in section 48 (*l*)(2)) described in paragraph (c)(3) through (7) of this seciton. If equipment otherwise qualifying as pollution control equipment is installed on, or used in connection with, both eligible alternative energy property and property other than eligible alternative energy property, only the incremental cost (as defined in paragraph (k) of this section) of the equipment qualifies.

(vi) *Examples.* The following examples illustrate this subparagraph (8). Assume that the property or equipment in the examples are described in § 1.103–8(g)(2)(ii) and that their only purpose is control of pollution.

Example (1). On October 1, 1978, corporation X acquires and places in service in State A a paper mill. The facility includes a boiler the primary fuel for which is wood chips. The facility includes equipment necessary to comply with pollution control standards in effect on October 1, 1978, in State A. This equipment qualifies as pollution control equipment.

Example (2). On October 1, 1978, corporation Y was bring coal at its facility in State B. The emissions from the facility exceeded State air pollution control requirements in effect on October 1, 1978. On January 1, 1979, X installed cyclone separators to comply with the State pollution

component, pumps, pipes, fan-coil units, and valves. Assume the fan-coil units could be used with energy derived from an oil or gas substance without significant modification. All items are depreciable and have a useful life of three years or more. The use of the equipment to heat the building is the first use to which the equipment has been put.

(c) Water is pumped from the basement through pipes to the roof solar collector. Heated water returns through pipes to a heat exchanger which transfers heat to the water in the hot water tank.

(d) The hot water tank and the oil-fired water heater utilize the same distribution pipe. Pumps and valves at the points of connection between the hot water tank, the oil-fired water heater, and the distribution pipe regulate the auxiliary energy supply use. They also prevent the oil-fired water heater from heating water in the hot water tank.

(e) An integrated control component determines whether hot water from the hot water tank or from the oil-fired water heater is distributed to fan-coil units located throughout the building.

(f) The roof solar collector is solar energy property. The pump that moves hot water to the roof collector and the pipes between the roof collector and the hot water tank qualify because they are solely related to transporting solar heated water. The hot water tank qualifies because it stores water heated solely by solar radiation. The heat exchanger also qualifies.

(g) The oil-fired water heater does not qualify as solar energy property because it *is* auxiliary equipment.

(h) The distribution pipe, the control component, and the pumps and valves do not qualify because they serve the oil-fired water heater as well as the solar energy equipment. All of these items would qualify if used solely in connection with solar energy equipment. The fan-coil units do not qualify because they are not specially adapted to used energy derived from solar energy.

(e) *Wind energy property*—(1) *In general.* Energy property includes wind energy property. Wind energy property is equipment (and parts solely related to the functioning of that equipment) that performs a function described in paragraph (e)(2) of this section. In general, wind energy property consists of a windmill, wind-driven generator, storage devices, power conditioning equipment, and parts solely related to the functioning of those items. Wind energy property does not include items similar to the ones set forth in the last sentence of paragraph (d)(3) of this section and in paragraph (d)(5) and (6) of this section.

(2) *Eligible functions.* Wind energy property is limited to equipment (and parts related solely to the functioning of that equipment) that—

(i) Uses wind energy to heat or cool, or provide hot water for use in, a building or structure, or

(ii) Uses wind energy to generate electricity (but not mechanical forms of energy).

(f) *Specially defined energy property*— (1) *In general.* Specially defined energy property means only those items described in paragraph (f)(4) through (14) of this section that meet the requirements of paragraph (f)(2) of this section.

(2) *General requirements.* To be eligible, each item described in paragraph (f)(4) through (14) of this section must be installed in connection with an existing industrial or commercial facility. In addition, the principal purpose of each of those items must be reduction of energy consumed or heat wasted in any existing industrial or commercial process. See section 48(l)(10) and paragraph (l) of this section. If an item performs more than one function, only the incremental cost (as defined in paragraph (k) of this section) of the equipment qualifies.

(3) *Industrial or commercial process.* (i) A process is a means or method of producing a desired result by chemical, physical, or mechanical action. For example, equipment installed in connection with retail sales, general office use, and residential use are not used in a process within the meaning of this paragraph (f)(3).

(ii) An industrial process includes agricultural processes and thermal processes relating to production or manufacture, such as those involving boilers and furnaces.

(iii) A commercial process includes laundering and food preparation.

(iv) The following example illustrates this paragraph (f)(3).

Example. Corporation X, an advertising agency, acquires an automatic energy control system designed to reduce energy consumed by heating and cooling its office building. Although the use of an office for X's business is a commercial activity, general office use is not a process. The automatic energy control system does not qualify because it does not reduce energy consumed in an industrial or commercial process.

(4) *Recuperators.* Recuperators recover energy, usually in the form of waste heat from combustion exhaust gases, that is used to heat incoming combustion air. Recuperators are configurations of equipment consisting in part of fixed heat transfer surfaces between two gas flows, and include related baffles, dividers, entrance flanges, transition sections, and shells or cases enclosing the other components of the recuperator. In general, a fixed heat transfer surface absorbs heat from a gas or liquid flow or dissipates heat to the gas or liquid flow.

(5) *Heat wheels.* Heat wheels recover energy, usually in the form of waste heat, from exhaust gases to preheat incoming gases. Heat wheels are items of equipment consisting in part of regenerators (which rotate between two gas flows) and related drive components, wiper seals, entrance flanges, and transition sections.

(6) *Regenerators.* Regenerators are devices, such as clinker columns, that recover energy by efficiently storing heat while exposed to high temperature gases and releasing heat while exposed to low temperature gases.

(7) *Heat exchangers.* Heat exchangers recover energy, usually in the form of waste heat, from high temperature fluids for transfer to low temperature fluids. Heat exchangers consist in part of fixed heat transfer surfaces (described in paragraph (f)(4) of this section) separating two fluids.

(8) *Waste heat boilers.* Waste heat boilers use waste heat, usually in the form of combustion exhaust gases, as the primary source of energy. A primary source of energy is one that comprises more than 50 percent of the energy requirement.

(9) *Heat pipes.* Heat pipes recover energy, usually in the form of waste heat, from high temperature fluids to heat low temperature fluids. A heat pipe consists in part of sealed heat transfer chambers and a capillary structure. In general, the heat transfer chambers alternatively vaporize and condense a working fluid as it passes from one end of the chamber to the other.

(10) *Automatic energy control systems.* Automatic energy control systems automatically reduce energy consumed in an industrial or commercial process for such purposes as environmental space conditioning (*i.e.*, lighting, heating, cooling or ventilating, etc.). Automatic energy control systems include, for example, automatic equipment settings controls, load shedding devices, and relay devices used as part of such system. Property such as computer hardware installed as a part of the energy control system also qualifies, but only to the extent of its incremental cost (as defined in paragraph (k) of this section).

(11) *Turbulators.* Turbulators increase the rate of transfer of heat from combustion gases to the surfaces of a boiler firetube. A turbulator is a baffle placed in the upper passes of the firetubes of a boiler to reduce the rate of heat transfer from combustion exhaust gases to the firetube surface.

(12) *Preheaters.* Preheaters recover energy, usually in the form of waste heat from either combustion exhaust gases or steam, to preheat incoming combustion

(iii) Crushing and screening plant equipment, such as hoppers, feeders, vibrating screens, and conveyors.

(iv) Briquetting plant equipment, such as hammer mills and vibratory pan feeders, and

(v) Retort equipment.

(i) [Reserved]

(j) *Natural gas from geopressured brine.* Equipment used exclusively to extract natural gas from geopressured brine described in section 613A(b)(3)(C)(i) is energy property. Eligible equipment includes equipment used to separate the gas from saline water and remove other impurities from the gas. Equipment is eligible only up to the point the gas may be introduced into a pipeline.

(k) *Incremental cost.* The term "incremental cost" means the excess of the total cost of equipment over the amount that would have been expended for the equipment if the equipment were not used for a qualifying purpose. For example, assume equipment costing $100 performs a pollution control function and another function. Assuming it would cost $60 solely to perform the nonqualifying function, the incremental cost would be $40.

(l) *Existing*—(1) *In general.* For purposes of section 48(l), the term "existing" means—

(i) When used in connection with a facility or equipment, 50 percent of more of the basis of that facility or equipment is attributable to construction, reconstruction, or erection before October 1, 1978, or

(ii) When used in connection with an industrial or commercial process, that process was carried on in the facility as of October 1, 1978.

(2) *Industrial or commercial process.* (i) A process will be considered the same as the process carried on in the facility as of October 1, 1978, unless and until capitalizable expenditures are paid or incurred for modification of the process. The expenditures need not be capitalized in fact; it is sufficient if the taxpayer has an option or may elect to capitalize. In general, the date of change will be the date the expenditures are properly chargeable to capital account. If the taxpayer properly elects to expense a capitalizable expenditure, the date of change will be the date the expenditure could have been properly chargeable to capital account if the expenditure had been capitalized. Recapture will not occur by reason of a change in a process unless the process change also changes the use of the equipment. See example (1) of § 1.47–1(h)(5).

(m) *Quality and performance standards*—(1) *In general.* Energy property must meet quality and performance standards, if any, that have been prescribed by the Secretary (after consultation with the Secretary of Energy) and are in effect at the time of acquisition.

(2) *Time of acquisition.* Under this paragraph (m) the time of acquisition is—

(i) The date the taxpayer enters into a binding contract to acquire the property or

(ii) For property constructed, reconstructed, or erected by the taxpayer, (A) the earlier of the date it begins construction, reconstruction, or erection of the property, or (B) the date the taxpayer and another person enter into a binding contract requiring each to construct, reconstruct, or erect property and place the property in service for an agreed upon use. See example under paragraph (m) (4) of this section.

(3) *Binding contract.* Under this paragraph (m), a binding contract to construct, reconstruct, or erect property, or to acquire property, is a contract that is binding at all times on the taxpayer under applicable State or local law. A binding contract to construct, reconstruct, or erect property or to acquire property, does not include a contract for preparation of architect's sketches, blueprints, or performance of any other activity not involving the beginning of physical work.

(4) *Example.* The following example illustrates this paragraph (m).

Example. Corporation X owns a junk yard. Corporation Y manufactures recycling equipment and operates several recycling facilities. On January 1, 1979, X and Y enter into a written contract that is binding on both parties on that date and at all times thereafter. Under the contract's terms X will supply scrap metal to Y and Y agrees in return to build a recycling facility on land adjacent to the junk yard. Y will own and operate the facility using the scrap metal supplied by X. Y may treat the agreement as a binding contract under paragraph (m) (2) and (3) of this section.

(n) *Public utility property*—(1) *Inclusions.* Public utility property is included in both of the following categories of energy property:

(i) Shale oil equipment and

(ii) Equipment for producing natural gas from geopressured brine.

(2) *Exclusions.* Public utility property is excluded from each of the following categories of energy property:

(i) Alternative energy property,

(ii) Specially defined energy property,

(iii) Solar or wind energy property, and

(iv) Recycling equipment.

(3) *Public utility property.* The term "public utility property" has the meaning given in section 46(f)(5).

Jerome Kurtz,

Commissioner of Internal Revenue.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 1609-3]

Federal Assistance Limitations: State of Kentucky

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to limit certain Federal funding assistance for specific areas in the Commonwealth of Kentucky. These limitations apply to funds provided under the Clean Air Act, 42 U.S.C. 7401 *et seq.*, the Clean Water Act, 33 U.S.C. 1251 *et seq.*, and the Surface Transportation Assistance Act, 23 U.S.C. 101 *et seq.* This action is being taken pursuant to Sections 176(a) and 316(b) of the Clean Air Act, 42 U.S.C. 7506(a) and 7616(a), because the Commonwealth of Kentucky has failed to submit or make a reasonable effort to submit a Part D state implementation plan revision that considers each of the elements in Section 172 of the Clean Air Act, 42 U.S.C. 7502.

EPA invites public comment on this action.

DATES: Comments may be submitted up to November 3, 1980.

(The normal 60 day comment period provided under the Section 176(a) procedures has been extended to 45 days because of the controversial nature of this proposed action.)

ADDRESSES: Written comments may be sent to Mr. Tom Lyttle, Air Programs Branch, Environmental Protection Agency, Region IV, 345 Courtland Street, Atlanta, Georgia 30365.

EPA has established a rulemaking Docket, containing all the information for the proposed rulemaking, which is available for public inspection during normal business hours at EPA Region IV Office at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Lyttle, Air Programs Branch, EPA Region IV, 345 Courtland Street NE, Atlanta, Georgia 30365, 404/881-2864 or FTS 257-2864.