

in accordance with paragraph (c) of this section, unless that person:

(i) Is already authorized to hold interlocking positions of the type governed by this section;

(ii) Is exempt from filing an informational report pursuant to § 45.4; or

(iii) Will hold a temporary interlocking position pursuant to § 45.1(c).

(2) The Commission will consider failures to timely file the informational report on a case-by-case basis.

* * * * *

PART 46—PUBLIC UTILITY FILING REQUIREMENTS AND FILING REQUIREMENTS FOR PERSONS HOLDING INTERLOCKING POSITIONS

■ 9. The authority citation for part 46 continues to read as follows:

Authority: 16 U.S.C. 792–828c; 16 U.S.C. 2601–2645; 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR 142.

■ 10. Amend § 46.2 by revising paragraph (a), removing and reserving paragraph (b), and revising paragraphs (c) and (e) to read as follows:

§ 46.2 Definitions.

* * * * *

(a) *Public utility* has the same meaning as in section 201(e) of the Federal Power Act. Such term does not include any rural electric cooperative which is regulated by the Rural Utilities Service of the Department of Agriculture or any other entities covered in section

201(f) of the Federal Power Act.

* * * * *

(c) *Purchaser* means any individual or corporation within the meaning of section 3 of the Federal Power Act who purchases electric energy from a public utility. Such term does not include the United States or any agency or instrumentality of the United States or any rural electric cooperative which is regulated by the Rural Utilities Service of the Department of Agriculture.

* * * * *

(e) *Entity* means any firm, company, or organization including any corporation, joint-stock company, partnership, association, business trust, organized group of persons, whether incorporated or not, or a receiver or receivers, trustee or trustees of any of the foregoing. Such term does not include *municipality* as defined in section 3 of the Federal Power Act and does not include any Federal, State, or local government agencies or any rural electric cooperative which is regulated

by the Rural Utilities Service of the Department of Agriculture.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9850]

RIN 1545–BM28

Utility Allowance Submetering

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations that amend the utility allowance regulations concerning the low-income housing credit under section 42 of the Internal Revenue Code (Code). These final regulations extend the principles of the current submetering rules. The current rules address situations in which a building owner purchases a utility from a utility company and then separately charges the tenants for the utility. In those situations, if the utility costs paid by a tenant are based on actual consumption in the tenant’s submetered, rent-restricted unit and if certain other requirements are satisfied, then the charges for the utility are treated as paid by the tenant directly to the utility

company, even though the payment passes through the building owner. The final regulations extend these principles and apply to situations in which a building owner sells to tenants energy that is produced from a renewable source and that the owner did not purchase from or through a local utility company. The final regulations affect owners of low-income housing projects that claim the credit, the tenants in those low-income housing projects, and the State and local housing credit agencies that administer the credit.

DATES:

Effective date: These final regulations are effective on March 4, 2019.

Applicability date: For dates of applicability, see § 1.42–12(a)(5).

FOR FURTHER INFORMATION CONTACT: Dillon Taylor, (202) 317–4137 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On March 3, 2016, the Department of the Treasury (Treasury Department) and

the IRS published in the **Federal Register** (81 FR 11104) final and temporary regulations (TD 9755) that amended § 1.42–10 of the Income Tax Regulations. The final regulations in TD 9755 clarified the circumstances in which utility costs paid by a tenant based on actual consumption in a submetered, rent-restricted unit are treated as paid by the tenant directly to the utility company and not to the building owner. In such a case, for purposes of section 42, the tenant’s payments to the owner for the utilities are not treated as payments of gross rent, and the rent that the owner might otherwise have collected for the unit is reduced by an amount that is called a “utility allowance.” The temporary regulations extended the principles of those final regulations to situations in which a building owner sold to tenants energy that was produced from a renewable source and that the owner had not purchased from or through a local utility company.

In the same issue of the **Federal Register** (81 FR 11160), the Treasury Department and the IRS published a notice of proposed rulemaking (REG–123867–14) (the proposed regulations). The text of the proposed regulations incorporated by cross-reference the text of the temporary regulations. The Treasury Department and the IRS received written and electronic comments responding to the proposed regulations. No requests for a public hearing were made, and no public hearing was held.

After consideration of all the comments, the proposed regulations are adopted as amended by this Treasury Decision.

Summary of Comments and Explanation of Provisions

The temporary regulations in TD 9755 applied the submetering principles to energy that the building owner sold to tenants if the energy was “produced from a renewable source” and if the owner had acquired it from the renewable source without the intervention of a local utility company. Qualification for this submetering treatment, however, depended on the charges to the tenants for this energy being comparable to local utility rates. That is, under the temporary regulations, to the extent that tenants consumed this energy, the rate charged by the building owner could not exceed the rate at which the local utility company would have charged the tenants if they had instead acquired the energy from that company.

A commenter requested that the final regulations clarify how a building

owner may demonstrate that the rate that the owner charges tenants for renewable energy satisfies this requirement (the evidentiary issue). In addition, if there are multiple local utility rates that the tenants might have been charged (possibly from multiple utility companies), the commenter asked for clarification as to which rate or rates should be taken into account in determining whether the owner's charges to the tenants qualify (the reference-rate issue).

The final regulations resolve both of these issues. Addressing the reference-rate issue, the final regulations require that the rate that the owner charges must not exceed the highest rate at which the tenants might have obtained energy from a local utility company. This criterion has several advantages over alternatives. For example, it is easily administrable (as compared, for example, with a requirement that the owner's rate not exceed the "most typical rate" in the community). Also, the criterion protects an owner's qualifying rate from being disqualified by the introduction of new rates in the community (as might be the case, for example, if the reference for the criterion were the average or median of local rates).

Regarding the evidentiary issue, in determining the acceptability of the rate that a building owner charges tenants, the owner may rely on the rates published by local utility companies.

The temporary regulations in TD 9755 provide that, for purposes of qualifying for submetering treatment, energy is "produced from a renewable source" if it is energy that is produced from energy property described in section 48; energy that is produced from a facility described in section 45(d)(1), (2), (3), (4), (6), (9), or (11); or energy that is described in guidance published for this purpose in the Internal Revenue Bulletin. Sections 45 and 48 of the Code determine whether a taxpayer is entitled to certain energy-related credits. A commenter requested that the final regulations clarify the extent to which these cross-references to "energy property" and "facility" incorporate the various requirements for earning those credits.

The final regulations clarify that the building owner need not own the source from which the utility is produced and need not qualify for, or receive, any credit under section 45 or 48 associated with the source. Indeed, energy may qualify as "produced from a renewable resource" even if potential entitlement to credits under these Code sections has expired. Thus, the final regulations clarify that they refer to "energy

property" and "facility" as a means of describing certain types of production of renewable energy but that they do not also incorporate any other criteria from those Code sections.

Under section 42(g)(1) and (2), a residential unit may qualify as a low-income unit only if it is "rent-restricted." The amount that qualifies as restricted rent is determined based on the assumption that most utilities are generally covered by that rent. *See* H.R. Conf. Rep. 99-841, at II-94 (1986). For that reason, if the tenant pays for a utility directly, the rent that the owner may require from the tenant is reduced. The amount of this reduction is called a "utility allowance." *See* section 42(g)(2)(B)(ii) and § 1.42-10(a). Language in the preamble of TD 9755 states that utility costs paid by a tenant based on actual consumption in a submetered, rent-restricted unit are treated as paid by the tenant directly to the utility and thus do not count against the maximum rent that the building owner can charge. Referencing this language, one commenter requested that the final regulations clarify whether a building owner of a submetered building is required to reduce its maximum gross rents by the amount of a utility allowance. Because § 1.42-10(e) treats a tenant in a submetered, rent-restricted unit as having paid for a utility directly and not by or through the owner of the building, the proper treatment of the tenant's submetered utility payments is the same as if the tenant had made those payments directly to the utility company—(1) Although the payments pass through the building owner, they are not treated for purposes of the rent restriction as if they were payments of rent; and (2) The amount of rent that the owner might otherwise have demanded from the tenant is reduced by the amount of an applicable utility allowance.

Special Analyses

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Department of the Treasury and the Office of Management and Budget regarding review of tax regulations. Therefore, a regulatory impact assessment is not required. It has also been determined that the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply because the regulations do not impose a collection of information on small entities. Pursuant to section 7805(f) of the Internal Revenue Code, this proposed rule preceding these final regulations was submitted to the Chief Counsel for

Advocacy of the Small Business Administration for comment on its impact on small business and no comments were received.

Drafting Information

The principal author of this regulation is James W. Rider, formerly of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department and the IRS participated in its development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by removing the entry for § 1.42-10T to read in part as follows:

Authority: 26 U.S.C. 7805 * * *
Sections 1.42-6, 1.42-8, 1.42-9, 1.42-10, 1.42-11, and 1.42-12, also issued under 26 U.S.C. 42(n).

§ 1.42-0T [Amended]

■ **Par. 2.** Section 1.42-0T is amended by removing the entries for § 1.42-10T.

■ **Par. 3.** Section 1.42-10 is amended by:

- 1. Revising paragraph (e)(1)(i) introductory text.
- 2. Revising paragraph (e)(1)(i)(B).
- 3. Adding paragraphs (e)(1)(i)(C) and (D).
- 4. Revising paragraph (e)(1)(iv)(B).

The revisions and additions read as follows:

§ 1.42-10 Utility allowances.

* * * * *

(e) * * *

(1) * * *

(i) The utility consumed in the unit is described in paragraph (e)(1)(i)(A) or (e)(1)(i)(B) of this section;

* * * * *

(B) The utility is not purchased from or through a local utility company and is produced from a renewable source (within the meaning of paragraph (e)(1)(i)(C) of this section).

(C) For purposes of paragraph (e)(1)(i)(B) of this section, a utility is produced from a renewable source if—

- (1) It is energy that is produced from energy property described in section 48;
- (2) It is energy that is produced from a facility described in section 45(d)(1), (2), (3), (4), (6), (9), or (11); or

(3) It is a utility that is described in guidance published for this purpose in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii) of this chapter).

(D) Determinations under paragraphs (e)(1)(i)(C)(1) and (2) of this section take into account only the manner in which the energy is produced and not who owns the energy property or the facility or whether the applicability of relevant portions of sections 45 and 48 has expired.

* * * * *

(iv) * * *

(B) To the extent that the utility consumed is described in paragraph (e)(1)(i)(B) of this section, the utility rate charged to the tenants of the unit does not exceed the highest rate that the tenants would have paid if they had obtained the utility from a local utility company. In determining whether a rate satisfies the preceding sentence, a building owner may rely on the rates published by local utility companies.

* * * * *

§ 1.42–10T [Removed]

- **Par. 5.** Section 1.42–10T is removed.
- **Par. 6.** Section 1.42–12 is amended by:
 1. Revising paragraph (a)(5)(i)(E).
 2. Revising paragraph (a)(5)(ii).
 3. Adding paragraph (a)(5)(iii).

The revisions and addition read as follows:

§ 1.42–12 Effective dates and transitional rules.

- (a) * * *
(5) * * *
(i) * * *

(E) Section 1.42–10(e), except as provided in paragraph (a)(5)(iii) of this section.

(ii) Except as provided in paragraph (a)(5)(iii) of this section, a building owner may apply the provisions described in paragraphs (a)(5)(i)(A) through (E) of this section to the building owner's taxable years beginning before March 3, 2016. Otherwise, the utility allowance provisions that apply to those taxable years are contained in § 1.42–10, as contained in 26 CFR part 1, revised as of April 1, 2015.

(iii) The provisions in § 1.42–10(e)(1)(i) introductory text, (e)(1)(i)(B) through (D), and (e)(1)(iv)(B) apply to a building owner's taxable years beginning on or after March 4, 2019. A building owner, however, may apply these provisions to earlier taxable years. Otherwise, the submetering provisions that apply to taxable years beginning after March 3, 2016, and before March 4, 2019, are contained in § 1.42–10 and

§ 1.42–10T as contained in 26 CFR part 1 revised as of April 1, 2016. In addition, a building owner may apply those submetering provisions to taxable years beginning before March 3, 2016.

* * * * *

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

Approved: February 26, 2019.

David J. Kautter,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2019–03827 Filed 2–27–19; 4:15 pm]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100 and 165 [Docket No. USCG–2018–0231]

RIN 1625–AA00, 1625–AA08, 1625–AA11,
1625–AA87

Removal of Regulated Navigation Areas, Safety Zones, Security Zones, and Special Local Regulations Within District 7

AGENCY: Coast Guard, DHS.
ACTION: Final rule.

SUMMARY: The Coast Guard is updating District 7 regulations to reflect the current status of identified regulated navigation areas, special local regulations, safety zones, and security zones within the District. This rule removes safety zones and special local regulations for rules where the enforcement period has expired or where the event is no longer held. This rule also removes special local regulations where the event no longer meets the criteria for a permitted event and is not suitable for coverage under a special local regulation in accordance with Coast Guard regulations.

DATES: This rule is effective April 3, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2018–0231 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: For information about this document, call or email Paul Lehmann, District Seven Prevention Division, U.S. Coast Guard; telephone 301–415–6796, email Paul.D.Lehmann@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CATEX Criteria for Categorical Exclusion
CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
OMB Office of Management and Budget
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

This rulemaking project was identified as part of the Coast Guard's Regulatory Reform Task Force initiative. These District 7 field regulation changes were identified as part of the deregulation identification process required by Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs), Executive Order 13777 (Enforcing the Regulatory Reform Agenda Deregulatory Process), and associated guidance issued in 2017. This rule provides updates and clarifications to existing regulatory text in title 33 of the Code of Federal Regulations (CFR) parts 100 and 165.

This rule removes safety zones and special local regulations for regulations where the enforcement period has expired or where the event is no longer held. This rule also removes special local regulations where the event no longer meets the criteria for a permitted event and is not suitable for coverage under a special local regulation in accordance with 33 CFR 100.35. District 7 has determined that normal navigation rules cover the safety of participants and spectators at these events adequately. If a change in circumstance indicates that additional safety measures are necessary, the Coast Guard might choose to promulgate new regulations for safety zones at these events at that time.

The changes to 33 CFR part 100 are specifically authorized under 33 U.S.C. 1233, which vests the Commandant of the Coast Guard with authority to issue regulations to promote the safety of life on navigable waters during regattas or marine parades. The changes to 33 CFR part 165 are authorized under the general authority of 22 U.S.C. 1231, which grants the Secretary of the Department of Homeland Security broad authority to issue, amend, or repeal regulations necessary to implement 33 U.S.C. chapter 25, Ports and Waterways Safety Program. The Secretary has delegated rulemaking authority under 33 U.S.C. 1231 to the Commandant via Department of Homeland Security Delegation No. 0170.1.

The Coast Guard is issuing this rule without prior notice and opportunity to