Internal Revenue
bulletin

Bulletin No. 2006-11
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HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

T.D. 9250, page 588.
Final regulations under sections 367(a) and (b) of the Code concern transfers pursuant to section 304(a)(1). Rev. Ruls. 91–5 and 92–86 modified.

T.D. 9251, page 590.
Final regulations under section 951(a) of the Code provide special rules to ensure that earnings and profits of a controlled foreign corporation attributable to a section 304 transaction will not be allocated in a manner that results in the avoidance of income tax and to ensure that earnings and profits of a controlled foreign corporation are not allocated to certain preferred stock in a manner inconsistent with the economic interest that such stock represents.

Notice 2006–22, page 593.
Low-income housing tax credit; private activity bonds. Resident populations of the 50 states, the District of Columbia, Puerto Rico, and the insular areas are provided for purposes of determining the 2006 calendar year (1) state housing credit ceiling under section 42(h) of the Code, (2) private activity bond volume cap under section 146, and (3) private activity bond volume limit under section 142(k)(5).

Notice 2006–24, page 595.
This notice establishes the qualifying advanced coal project program under section 48A of the Code.

Notice 2006–25, page 609.
This notice establishes the qualifying gasification project program under section 48B of the Code.

Notice 2006–26, page 622.
This notice provides procedures that manufacturers may follow to certify property as either an Eligible Building Envelope Component or Qualified Energy Property, as well as guidance regarding the conditions under which taxpayers seeking to claim the section 25C nonbusiness energy property credit may rely on a manufacturer's certification.

Notice 2006–27, page 626.
This notice provides a procedure that an eligible contractor may follow to certify that a dwelling unit, other than a manufactured home, is an energy efficient home that satisfies the requirements of sections 45L(c)(1)(A) and (B) of the Code.

Notice 2006–28, page 628.
This notice provides a procedure that an eligible contractor may follow to certify that a manufactured home is an energy efficient home that satisfies the requirements of section 45L(c)(2) or (3) of the Code.

ADMINISTRATIVE

Notice 2006–23, page 594.
Because Patriot's Day falls on Monday, April 17, this notice provides individual taxpayers residing in Maine, Maryland, Massachusetts, New Hampshire, New York, Vermont, and the District of Columbia an additional day to file their federal income tax returns and make their payments (until April 18, 2006). This includes the payment of the first installment of estimated tax for 2007.

Announcement 2006–15, page 632.
This document contains corrections to final and temporary regulations (T.D. 9192, 2005–15 I.R.B. 866) relating to guidance concerning the determination of the tax attributes that are available for reduction and the method for reducing those attributes when a member of a consolidated group excludes discharge of indebtedness income from gross income under section 108 of the Code.

Finding Lists begin on page ii.

Department of the Treasury
Internal Revenue Service

The IRS Mission

Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by applying the tax law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents are compiled semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.
This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.
This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.
To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.
This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

Section 367.—Foreign Corporations

26 CFR 1.367(a)–3: Treatment of transfers of stock or securities to foreign corporations.

T.D. 9250

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Application of Section 367 in Cross Border Section 304 Transactions; Certain Transfers of Stock Involving Foreign Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that address the interaction of section 304 and section 367. These regulations provide that section 367(a) and (b) do not apply to a deemed section 351 exchange resulting from a section 304(a)(1) transaction. These regulations may apply to taxpayers transferring stock to related foreign corporations.

DATES: *Effective Date*: This regulation is effective February 21, 2006.

Applicability Dates: For dates of applicability, see §1.367(a)–3(e)(1)(G) and §1.367(b)–6(a)(1).

FOR FURTHER INFORMATION CONTACT: Tasheaya L. Warren Ellison, (202) 622–3870 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On May 25, 2005, the IRS and Treasury published in the **Federal Register** a notice of proposed rulemaking (REG–127740–04, 2005–24 I.R.B. 1254 [70 FR 30036]) under section 367(a) and (b) of the Internal Revenue Code (proposed regulations) pursuant to the regulatory authority under section 367. The proposed regulations would provide that if, pursuant to section 304(a)(1), a U.S. person is treated as transferring stock of a domestic or foreign corporation to a foreign corporation in exchange for stock of such foreign corporation in a transaction to which section 351(a) applies, such deemed section 351 exchange is not a transfer to a foreign corporation subject to section 367(a). The proposed regulations would further provide that if, pursuant to section 304(a)(1), a foreign corporation is treated as acquiring the stock of another foreign corporation in a transaction to which section 351(a) applies, such deemed section 351 exchange is not an acquisition subject to section 367(b).

A public hearing was not held with respect to the proposed regulations because no requests to speak were received. However, several written comments were received.

After consideration of the comments, the proposed regulations are adopted, as revised by this Treasury decision. The comments received and the revisions are discussed below.

Explanation of Provisions and Summary of Comments

A. *Nonapplication of Section 367(a) and (b) to Deemed Section 351 Exchanges*

Section 304(a)(1) generally provides that, for purposes of sections 302 and 303, if one or more persons are in control of each of two corporations and in return for property one of the corporations (the acquiring corporation) acquires stock in the other corporation (the issuing corporation) from the person (or persons) so in control, then such property shall be treated as a distribution in redemption of the acquiring corporation stock. To the extent the distribution is treated as a distribution to which section 301 applies, the transferor and the acquiring corporation are treated as if (1) the transferor transferred the stock of the issuing corporation to the acquiring corporation in exchange for stock of the acquiring corporation in a transaction to which section 351(a) applies, and (2) the acquiring corporation then redeemed the stock it is treated as having issued. Under section 301(c)(1), the distribution is first treated as a dividend to the extent of certain earnings and profits of the acquiring corporation and the issuing corporation. See sections 316 and 304(b). Then under section 301(c)(2) and (3), the remaining portion of the distribution is applied against and reduces the adjusted basis of the stock, and finally is treated as gain from the sale or exchange of property.

Section 367(a)(1) provides that if, in connection with certain nonrecognition transactions, including section 351, a United States person transfers property to a foreign corporation, such foreign corporation shall not, for purposes of determining the extent to which gain shall be recognized on such transfer, be considered to be a corporation. In addition, certain section 351 exchanges can cause the exchanging shareholder to include in income a deemed dividend under section 367(b). §1.367(b)–4.

Under current law, certain section 304(a)(1) transactions can also be subject to section 367. The result of this overlapping application is considerable complexity, uncertainty, and the risk of multiple income inclusions. In such a transaction, a U.S. person could recognize income (dividend or capital gain) equal to the built-in gain in the stock of the issuing corporation under section 367, and income (dividend or capital gain) pursuant to section 304. The total income recognized could exceed the fair market value of the transferred stock of the issuing corporation.

The proposed regulations would exclude from the application of sections 367(a) and (b) a deemed section 351 exchange that arises by reason of a transaction described in section 304(a)(1). The IRS and the Treasury believe that the interests of the government are protected, and the policies underlying section 367(a) and (b) are preserved, in a section 304(a)(1) transaction without regard to the application of section 367. The IRS and Treasury believe that, in most or all cases, the income recognized in a section 304 transaction will equal or exceed the

transferor's inherent gain in the stock of the issuing corporation transferred to the foreign acquiring corporation. Elimination of the application of section 367(a) and (b) in this context will also serve the interests of sound tax administration by creating greater certainty and simplicity in these transactions, and by avoiding the over-inclusion of income that could result when section 367 and section 304 both apply to such transactions. As a result, this Treasury decision finalizes the proposed regulations and makes section 367(a) and (b) inapplicable to deemed section 351 exchanges pursuant to section 304(a)(1) transactions.

Commentators did note that in certain cases, depending on how the basis and distribution rules are applied, the amount of income recognized under section 304(a) may not equal or exceed the transferor's inherent gain in the stock of the issuing corporation. In the example cited, P, a domestic corporation, owns all the stock of F1 and F2, both of which are foreign corporations. P has an adjusted basis of $0 in its F1 stock and $100x in its F2 stock. P's stock of F1 and F2 each has a fair market value of $100x. Neither F1 nor F2 has current or accumulated earnings and profits. P sells its F1 stock to F2 for its fair market value of $100x in a transaction subject to section 304(a)(1). Under section 304(a)(1), the transaction is treated as if P had transferred its F1 stock to F2 in exchange for F2 stock in a transaction to which section 351(a) applies, and then F2 had redeemed such deemed issued stock.

These commentators *posit* that P in the above example may not recognize income or gain because the adjusted basis of both the F2 stock that is treated as being issued in the deemed section 351 exchange, and the adjusted basis of the F2 stock already held by P prior to the transaction, is available for reduction under section 301(c)(2). On these particular facts (*i.e.*, no earnings and profits in either the acquiring corporation or the issuing corporation), this basis position would mean that income or gain is not recognized as a result of the transaction. The IRS and the Treasury believe, however, that current law does not provide for the recovery of the basis of any shares other than the basis of the F2 stock deemed to be received by P in the section 351(a) exchange (which would take a basis equal to P's basis in the F1 stock). Thus, in the case described, P would recognize $100x of gain under section 301(c)(3) (the built-in gain on the F1 stock), and P would continue to have a $100x basis in its F2 stock that it holds after the transaction. This issue will be addressed as part of a larger project regarding the recovery of basis in all redemptions treated as section 301 distributions. This larger project will be the subject of future guidance. Comments are requested about the appropriate treatment of basis in such redemptions.

B. *Adjustments under Section 304(b)(6)*

Section 304(b)(6) provides that in the case of any acquisition to which section 304(a) applies, where the acquiring or issuing corporation is a foreign corporation, the Secretary shall prescribe regulations, as appropriate, in order to eliminate a multiple inclusion of any item in income and to provide appropriate basis adjustments (including modifications to the application of sections 959 and 961). The preamble to the proposed regulations requested comments on basis adjustments under section 304(b)(6). The preamble also requested comments regarding similar adjustments that could be made outside the context of section 304(b)(6).

Several comments were received in response to this request, and will be considered in a separate guidance project. The IRS and Treasury request additional comments on section 304(b)(6), particularly comments that would take into account the effect of section 362(e), enacted on October 22, 2004, by the American Jobs Creation Act of 2004 (Public Law 108–357).

Comments also were received regarding the application of section 959 to previously taxed amounts in connection with section 304(a)(1) transactions. These comments are being considered in a separate guidance project under section 959, and therefore are not addressed in these final regulations.

C. *Transfer of Issuing Stock in Return for Property and Stock of Acquiring*

The proposed regulations would apply to exclude a section 351 exchange from the application of section 367(a) only to the extent the exchange is treated as such by reason of section 304(a)(1). Thus, section 367(a) would continue to apply to applicable transfers of property subject to section 351 by reason other than the operation of section 304(a)(1).

One commentator notes that the proposed regulations would not address the treatment of stock sales for an amount less than the fair market value of the transferred stock where the acquiring corporation would be deemed to issue stock to the transferor other than as a result of the application of section 304(a)(1). See, for example, section 367(c)(2). The commentator states that in such a case the transfer would be, in part, a section 304(a)(1) transaction and, in part, a section 351(a) exchange (other than by reason of section 304(a)(1)). The commentator requests guidance on such transactions, including, for example, whether such a transaction would be bifurcated and, if so, how the basis in the transferred stock would be allocated between the two parts of the transaction. The same bifurcation and related issues occur in section 304(a)(1) transactions where the acquiring corporation actually issues its own stock in partial consideration for the stock of the issuing corporation.

As was the case with the proposed regulations, these final regulations only apply to the extent of deemed section 351 exchanges resulting from section 304(a)(1) transactions. In addition, these regulations could apply to certain transactions that are, in part, still subject to the stock transfer rules of section 367(a) (*e.g.*, a section 304(a)(1) transaction in which both acquiring stock and property are used as consideration). The issues raised by this commentator are relevant to a wide range of transactions, and are not limited to section 304 transactions that are subject to these regulations. As a result, the IRS and Treasury believe that the resolution of these issues is beyond the scope of this project, and this comment is not addressed in these final regulations.

D. *Effective Dates*

The proposed regulations stated that the rules would apply to section 304(a)(1) transactions occurring on or after the date of publication of the regulations in the **Federal Register**. Several commentators requested that the final regulations be made retroactive at the election of the taxpayer.

These final regulations adopt the general effective date contained in the proposed regulations and therefore apply to section 304(a)(1) transactions occurring on or after February 21, 2006. In response to the comments received, however, the final regulations provide that taxpayers may rely on the final regulations for all (but not less than all) section 304(a)(1) transactions that occurred in all their open tax years; in such cases, any gain recognition agreements filed pursuant to §1.367(a)–8 with respect to such transactions shall terminate and have no further effect.

Effect on other Documents

Rev. Rul. 91–5, 1991–1 C.B. 114, and Rev. Rul. 92–86, 1992–2 C.B. 199, are modified to the extent inconsistent with these regulations.

Special Analyses

The IRS and the Treasury have determined that the adoption of these regulations is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and because these regulations do not impose a collection of information on small entities, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Tasheaya L. Warren Ellison, Office of the Associate Chief Counsel (International). However, other personnel from the IRS and Treasury participated in their development.

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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 continues to read, in part, as follows:

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

Par. 2. Section 1.367(a)–3 is amended as follows:

1. A sentence is added to paragraph (a) immediately following the second sentence.

2. The new fourth sentence of paragraph (a) is amended by removing the language "However" and adding "In addition" in its place.

3. Adding new paragraph (e)(1)(G).

The additions read as follows:

§1.367(a)–3 Treatment of transfers of stock or securities to foreign corporations.

(a) *In general.* * * * However, if, pursuant to section 304(a)(1), a U.S. person is treated as transferring stock of a domestic or foreign corporation to a foreign corporation in exchange for stock of such foreign corporation in a transaction to which section 351(a) applies, such deemed section 351 exchange is not a transfer to a foreign corporation subject to section 367(a). * * *

* * * * *

(e) * **(1) * * *

(G) Except as otherwise provided in this paragraph (e)(1)(G), the third sentence of paragraph (a) of this section shall apply to section 304(a)(1) transactions occurring on or after February 21, 2006. However, taxpayers may rely on the third sentence of paragraph (a) of this section for all section 304(a)(1) transactions occurring in open tax years; in such cases any gain recognition agreements filed pursuant to §1.367(a)–8 with respect to such transactions shall terminate and have no further effect.

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Par. 3. In §1.367(b)–4, a sentence is added to paragraph (a) immediately following the first sentence to read as follows:

§1.367(b)–4 Acquisition of foreign corporate stock or assets by a foreign corporation in certain nonrecognition transactions.

(a) *Scope.* * * * However, if pursuant to section 304(a)(1), a foreign acquiring corporation is treated as acquiring the stock of a foreign acquired corporation in a transaction to which section 351(a) applies, such deemed section 351 exchange is not an acquisition subject to section 367(b). * * *

* * * * *

Par. 4. In §1.367(b)–6, paragraph (a)(1) is amended by adding a sentence to the end to read as follows:

§1.367(b)–6 Effective dates and coordination rule

(a) *Effective date*—(1) *In general.* * * * The second sentence of paragraph (a) in §1.367(b)–4 shall apply to section 304(a)(1) transactions occurring on or after February 21, 2006; however, taxpayers may rely on this sentence for all section 304(a)(1) transactions occurring in open tax years.

* * * * *

Mark E. Matthews,
Deputy Commissioner for Services and Enforcement.

Approved February 8, 2006.

Eric Solomon,
Acting Deputy Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on February 17, 2006, 8:45 a.m., and published in the issue of the Federal Register for February 21, 2006, 71 F.R. 8802)

Section 951.—Amounts Included in Gross Income of United States Shareholders

26 CFR 1.951–1: Amounts included in gross income of United States shareholders.

T.D. 9251

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

Special Rules Regarding Certain Section 951 *Pro Rata* Share Allocations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 951(a) of the Internal Revenue Code (Code) regarding a United States shareholder's *pro rata* share of a controlled foreign corporation's (CFC's) subpart F income, previously excluded subpart F income withdrawn from investment in less developed countries, and previously excluded subpart F income withdrawn from foreign base country shipping operations. These regulations are intended to ensure that a CFC's earnings and profits for a taxable year attributable to a section 304 transaction will not be allocated in a manner that results in the avoidance of Federal income tax. These regulations are also intended to ensure that earnings and profits of a CFC are not allocated to certain preferred stock in a manner inconsistent with the economic interest that such stock represents.

DATES: *Effective Date:* These regulations are effective February 22, 2006.

Applicability Date: For dates of applicability, see §1.951–1(e)(3)(v), (e)(4)(ii) and (e)(7).

FOR FURTHER INFORMATION CONTACT: Jefferson VanderWolk, (202) 622–3810 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On August 6, 2004, the IRS published in the **Federal Register** a notice of proposed rulemaking (REG–129771–04, 2004–2 C.B. 453) under section 951 of the Code. After consideration of comments received, the proposed regulations were modified and adopted as final with the publication of T.D. 9222, 2005–40 I.R.B. 614, on August 25, 2005 (70 FR 49864). In response to comments, the IRS published at the same time in the Federal Register a notice of proposed rulemaking (REG–129782–05, 2005–40 I.R.B. 675 [70 FR 49894]) under section 951 of the Code. No written comments were received in response to that notice of proposed rulemaking. No public hearing was requested or held on the notice of proposed rulemaking. The proposed regulations are adopted as final regulations with the modifications discussed below.

Explanation of Changes

Section 1.951–1(e) defines *pro rata* share for purposes of section 951(a) of the Code. The general rule, set forth in §1.951–1(e)(3)(i), provides for the allocation of current earnings and profits to different classes of stock on the basis of the respective amounts of such earnings and profits that would be distributed with respect to each class if such earnings and profits were distributed on the last day of the CFC's taxable year on which it is a CFC.

Section 1.951–1(e)(3)(v) provides a special rule that modifies the general rule regarding the allocation of a CFC's current earnings and profits to more than one class of stock. The special rule applies where a CFC has earnings and profits and subpart F income for its taxable year attributable to a transaction described in section 304 of the Code and that transaction is part of a plan a principal purpose of which is to avoid Federal income taxation by allocating the subpart F income resulting from the section 304 transaction disproportionately to a tax-indifferent party. Pursuant to the rule, such earnings and profits are allocated to each class of stock of the CFC in accordance with the value of such class relative to all other classes.

Several practitioners noted in oral comments that proposed §1.951–1(e)(6), *Example 9*, which illustrates the application of proposed §1.951–1(e)(3)(v), presented facts whose characterization under other Code sections could be unclear under the circumstances. In response to these comments, the IRS and Treasury Department have revised the example in order to limit the issues presented.

A comment on the rules originally proposed on August 6, 2004, requested guidance to eliminate inappropriate distortions between subpart F inclusions and economic realization that taxpayers may achieve if accumulated but unpaid dividends with respect to preferred stock are not discounted to present value for purposes of determining the hypothetical distribution. As a partial response to that comment, proposed §1.951–1(e)(4)(ii) provided a special rule requiring accumulated but unpaid dividends with respect to mandatorily redeemable cumulative preferred stock be taken into account at present value for purposes of the hypothetical distribution. Comments were requested regarding the treatment of cumulative preferred stock that does not have a mandatory redemption date or that is subject to a shareholder-level agreement, such as a purchase option. In addition, the preamble stated that the IRS and the Treasury Department anticipated that any such rules would be effective for taxable years of a controlled foreign corporation beginning on or after January 1, 2006. No further comments were received beyond the original comment.

The IRS and Treasury Department agree with the commentator that accrued but unpaid dividends generally present possibilities for distortion between subpart F income inclusions and economic income realization. These distortions are similar to those that can arise from stock with discretionary distribution rights. Accordingly, §1.951–1(e)(4)(ii) adds a rule that generally treats cumulative preferred stock with accrued but unpaid dividends in the same manner as stock with discretionary distribution rights (as defined in §1.951–1(e)(3)(ii)). Earnings and profits are allocated to such stock on the basis of the value of such stock relative to the value of other classes of stock outstanding.

There are two exceptions to this general rule. First, to the extent that dividends are paid with respect to such stock during the year, earnings and profits equal to the amount of such dividends are first allocated to that class of stock. Additional earnings and profits are allocated to that class of stock only in the amount (if any) by which the value-based allocation of earnings and profits to that class of stock exceeds the amount of such dividends. Second, the final regulations preserve the special present-value rule (with technical modifications) for certain mandatorily redeemable cumulative preferred stock.

Consistent with the comment received, and as provided in the preamble to the proposed regulations, these rules are effective for taxable years of a controlled foreign corporation beginning on or after January 1, 2006.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory

assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and because these regulations do not impose a collection of information on small entities, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Jeffrey Vinnik of the Office of the Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

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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 continues to read, in part, as follows:

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

Par. 2. Section 1.951–1 is amended by revising paragraphs (e)(3)(v), (e)(4)(ii), and the first sentence of paragraph (e)(7), and adding paragraph (e)(6) *Example 9* .

The revisions and addition read as follows:

§1.951–1 Amounts included in gross income of United States shareholders.

* * * * *

(e) * * *

(3) * * *

(v) *Earnings and profits attributable to certain section 304 transactions*. For taxable years of a controlled foreign corporation beginning on or after January 1, 2006, if a controlled foreign corporation has more than one class of stock outstanding and the corporation has earnings and profits and subpart F income for a taxable year attributable to a transaction described in section 304, and such transaction is part of a plan a principal purpose of which is the avoidance of Federal income taxation, the amount of such earnings and profits allocated to any one class of stock shall be that amount which bears the same ratio to the remainder of such earnings and profits as the value of all shares of such class of stock, determined on the hypothetical distribution date, bears to the total value of all shares of all classes of stock of the corporation, determined on the hypothetical distribution date.

(4) * * * (i) * * *

(ii) *Certain cumulative preferred stock*. For taxable years of a controlled foreign corporation beginning on or after January 1, 2006, if a controlled foreign corporation has one or more classes of preferred stock with cumulative dividend rights, such stock shall be considered for the purposes of this section as stock with discretionary distribution rights. As a result, the provisions of paragraph (e)(3)(ii) of this section shall apply for purposes of allocating earnings and profits to such stock, except that earnings and profits shall first be allocated to the stock under paragraph (e)(3)(i) of this section to the extent of any dividends paid with respect to the stock during the taxable year. Additional earnings and profits will be allocated to the stock only in an amount equal to the excess (if any) of the amount of earnings and profits allocated to the stock under paragraph (e)(3)(ii) of this section over the amount of such dividends. Notwithstanding the foregoing, if a class of redeemable preferred stock with cumulative dividend rights has a mandatory redemption date, and all dividend arrearages with respect to such stock compound at least annually at a rate that is not lower than the applicable Federal rate (as defined in section 1274(d)(1)) (AFR) that applies on the date the stock is issued for the term from such issue date to the mandatory redemption date, based on a comparable compounding assumption, such stock shall not be considered for purposes of this section as stock with discretionary distribution rights.

* * * * *

(6) * * *

Example 9. (i) *Facts*. In 2006, FC10, a controlled foreign corporation within the meaning of section 957(a), has outstanding 100 shares of common stock and 100 shares of 6-percent, voting, preferred stock with a par value of $10x per share. All of the common stock is held by Corp H, a foreign corporation, which invested $1000x in FC10 in exchange for the common stock. All of the preferred stock is held by Corp J, a domestic corporation, which invested $5000x in FC10 in exchange for the preferred stock. Corp H is unrelated to Corp J. In 2006, FC10 borrows $3000x from a bank and invests $5000x in preferred stock issued by FC11, a foreign corporation the common stock of which is owned by Corp J. Corp J's adjusted basis in its FC11 common stock is $5000x. FC11, which has no current or accumulated earnings and profits, distributes the $5000x to Corp J. Subsequently, in 2007, FC10 sells the FC11 preferred stock to FC12, a wholly-owned foreign subsidiary of FC11 that has $5000x of accumulated earnings and profits, for $5000x in a transaction described in section 304. FC10 repays the bank loan in full. For 2007, FC10 has $5000x of earnings and profits, all of which is subpart F income attributable to a section 304 dividend arising from FC10's sale of the FC11 preferred stock to FC12. At all relevant times, the value of the common stock of FC10 is $1000x and the value of the preferred stock of FC10 is $5000x.

(ii) *Analysis*. The acquisition and sale of the FC11 preferred stock by FC10 was part of a plan a principal purpose of which was the avoidance of Federal income tax by depleting the earnings and profits of FC12 and allowing FC11 to make a distribution to Corp J that it characterizes entirely as a return of basis. FC10 has $5000x of earnings and profits for 2007 attributable to a dividend from a section 304 transaction which was part of such plan. Under paragraph (e)(3)(v) of this section, these earnings and profits are allocated to the common and preferred stock of FC10 in accordance with the relative value of each class of stock ($1000x and $5000x, respectively). Thus, for taxable year 2007, $833x (1/6 x $5000x = $833x) of these earnings and profits is allocated to FC10's common stock and $4167x (5/6 x $5000x = $4167x) is allocated to its preferred stock.

(7) *Effective dates*. Except as provided in paragraphs (e)(3)(v) and (e)(4)(ii) of this section, this paragraph (e) applies for taxable years of a controlled foreign corporation beginning on or after January 1, 2005.

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Mark E. Matthews,
Deputy Commissioner for Services and Enforcement.

Approved February 8, 2006.

Eric Solomon,
Acting Deputy Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on February 21, 2006, 8:45 a.m., and published in the issue of the Federal Register for February 22, 2006, 71 F.R. 8943)

Part III. Administrative, Procedural, and Miscellaneous

2006 Calendar Year Resident Population Estimates

Notice 2006–22

This notice informs (1) state and local housing credit agencies that allocate low-income housing tax credits under § 42 of the Internal Revenue Code and (2) states and other issuers of tax-exempt private activity bonds under § 141, of the proper population figures to be used for calculating the 2006 calendar year population-based component of the state housing credit ceiling (Credit Ceiling) under § 42(h)(3)(C)(ii), the 2006 calendar year volume cap (Volume Cap) under § 146, and the 2006 volume limit (Volume Limit) under § 142(k)(5).

The population figures both for the population-based component of the Credit Ceiling and for the Volume Cap are determined by reference to § 146(j). That section provides generally that determinations of population for any calendar year are made on the basis of the most recent census estimate of the resident population of a state (or issuing authority) released by the U.S. Census Bureau before the beginning of such calendar year. Section 142(k)(5) provides that the Volume Limit is based on the State population.

The population-based component of the Credit Ceiling and the Volume Cap are adjusted for inflation pursuant to §§ 42(h)(3)(H) and 146(d)(2), respectively. The adjustments for the 2006 calendar year were published in Rev. Proc. 2005–70, 2005–47 I.R.B. 979. Section 3.07 of Rev. Proc. 2005–70 provides that, for calendar year 2006, the amounts used under § 42(h)(3)(C)(ii) to calculate the Credit Ceiling is the greater of $1.90 multiplied by the State population (see the resident population figures provided below) or $2,190,000. Further, section 3.15 of Rev. Proc. 2005–70 provides that the amounts used under § 146(d)(1) to calculate the Volume Cap for calendar year 2006 is the greater of $80 multiplied by the State population (see the resident population figures provided below) or $246,610,000.

The proper population figures for calculating the Credit Ceiling, the Volume Cap, and the Volume Limit for the 2006 calendar year are the estimates of the resident population of the 50 states, the District of Columbia, and Puerto Rico released by the U.S. Census Bureau on December 22, 2005, in Press Release CB05–187. The proper population figures for calculating the Credit Ceiling, the Volume Cap, and the Volume Limit for the 2006 calendar year for the insular areas (American Samoa, Guam, Northern Mariana Islands, and U.S. Virgin Islands) are the figures released electronically by the U.S. Census Bureau on July 17, 2003, and referenced in Census Bureau Tip Sheet TP03–16, dated August 8, 2003. For convenience, these estimates are reprinted below.

Resident Population Figures

Alabama	4,557,808
Alaska	663,661
American Samoa	57,881
Arizona	5,939,292
Arkansas	2,779,154
California	36,132,147
Colorado	4,665,177
Connecticut	3,510,297
Delaware	843,524
D.C.	550,521
Florida	17,789,864
Georgia	9,072,576
Guam	168,564
Hawaii	1,275,194
Idaho	1,429,096
Illinois	12,763,371
Indiana	6,271,973
Iowa	2,966,334
Kansas	2,744,687
Kentucky	4,173,405

Louisiana	4,523,628
Maine	1,321,505
Maryland	5,600,388
Massachusetts	6,398,743
Michigan	10,120,860
Minnesota	5,132,799
Mississippi	2,921,088
Missouri	5,800,310
Montana	935,670
Nebraska	1,758,787
Nevada	2,414,807
New Hampshire	1,309,940
New Jersey	8,717,925
New Mexico	1,928,384
New York	19,254,630
North Carolina	8,683,242
North Dakota	636,677
Northern Mariana Islands	80,362
Ohio	11,464,042
Oklahoma	3,547,884
Oregon	3,641,056
Pennsylvania	12,429,616
Puerto Rico	3,912,054
Rhode Island	1,076,189
South Carolina	4,255,083
South Dakota	775,933
Tennessee	5,962,959
Texas	22,859,968
U.S. Virgin Islands	108,708
Utah	2,469,585
Vermont	623,050
Virginia	7,567,465
Washington	6,287,759
West Virginia	1,816,856
Wisconsin	5,536,201
Wyoming	509,294

The principal authors of this notice are Christopher J. Wilson, Office of the Associate Chief Counsel (Passthroughs and Special Industries) and Timothy L. Jones, Office of the Division Counsel/Associate Chief Counsel (Tax-Exempt and Government Entities). For further information regarding this notice, contact Mr. Wilson at (202) 622–3040 (not a toll-free call).

Patriots' Day Filings and Payments

Notice 2006–23

This notice provides guidance regarding the impact of Patriots' Day on the April 17, 2006, due date for filing Federal tax documents and making Federal tax pay-

ments. For filing season 2006 (tax year 2005), individual income taxpayers living in Maine, Massachusetts, New Hampshire, New York, Vermont, Maryland, and the District of Columbia have until Tuesday, April 18, 2006, to file documents in paper or electronic form that are otherwise due on April 17, 2006. These documents include U.S. individual income tax returns in the Form 1040 series and Form 4868, *Application for Automatic Extension of Time To File U.S. Individual Income Tax Return*. Individual income taxpayers in these states and the District of Columbia also have until April 18, 2006, to make Federal tax payments otherwise due on April 17, 2006, including the first installment of estimated tax for tax year 2006.

The principal author of this notice is John M. Moran of the Office of Associate Chief Counsel, Procedure & Administration (Administrative Provisions and Judicial Practice Division). For further information regarding this notice, contact John M. Moran at (202) 622–4940 (not a toll-free call).

Qualifying Advanced Coal Project Program

Notice 2006–24

SECTION 1. PURPOSE

This notice establishes the qualifying advanced coal project program under § 48A(d) of the Internal Revenue Code. The purpose of the program is the deployment of advanced coal-based generation technologies.

SECTION 2. BACKGROUND

.01 Section 46 provides that the amount of the investment credit for any taxable year is the sum of the credits listed in § 46. Section 1307(a) of the Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (August 8, 2005) (the "Act"), amended § 46 to add two new credits to that list: the qualifying advanced coal project credit and the qualifying gasification project credit.

.02 The qualifying advanced coal project credit is provided under § 48A, as added by § 1307(b) of the Act. Section 48A(a) provides that the qualifying advanced coal project credit for a taxable year is an amount equal to (1) 20 percent of the qualified investment (as defined in § 48A(b)) for that taxable year in certified qualifying advanced coal projects (as defined in § 48A(c)(1) and (e)) using an integrated gasification combined cycle (IGCC) (as defined in § 48A(c)(7)), and (2) 15 percent of the qualified investment for that taxable year in other certified qualifying advanced coal projects.

.03 Section 48A(d)(3)(A) provides that the aggregate credits allowed under § 48A(a) may not exceed $1.3 billion. Section 48A(d)(3)(B) provides that (i) $800 million of credits are to be allocated to IGCC projects, and (ii) $500 million of credits are to be allocated to projects that use other advanced coal-based generation technologies (as defined in § 48A(c)(2) and (f)).

.04 Section 48A(e)(3)(A) provides that the credits for IGCC projects must be allocated in accordance with the procedures set forth in § 48A(d), and in relatively equal amounts to (i) projects using bituminous coal as a primary feedstock, (ii) projects using subbituminous coal as a primary feedstock, and (iii) projects using lignite as a primary feedstock. Further, § 48A(e)(3)(B) provides that IGCC projects that include (i) greenhouse gas capture capability (as defined in § 48A(c)(5)), (ii) increased by-product utilization, and (iii) other benefits must be given high priority in the allocation of credits for IGCC projects.

.05 The at-risk rules in § 49 and the recapture and other special rules in § 50 apply to the qualifying advanced coal project credit. Further, the qualifying advanced coal project credit generally is allowed in the taxable year in which the eligible property (as defined in § 48A(c)(3)) is placed in service by the taxpayer. Pursuant to § 48A(D)(2)(E), a taxpayer that receives a certification under § 48A(d)(2)(D) has 5 years from the date of issuance of the certification to place the qualifying advanced coal project in service.

SECTION 3. QUALIFYING ADVANCED COAL PROJECT PROGRAM

Section 48A(d)(1) provides that the Secretary, in consultation with the Secretary of Energy, shall establish a qualifying advanced coal project program for the deployment of advanced coal-based generation technologies. The Treasury Department and the Internal Revenue Service are establishing this program under the rules set forth in sections 4 through 9 of this notice.

SECTION 4. ESTABLISHMENT OF QUALIFYING ADVANCED COAL PROJECT PROGRAM

.01 *In General*. The Service will consider a project under the qualifying advanced coal project program only if the U.S. Department of Energy ("DOE") provides a certification of feasibility and consistency with energy policy goals ("DOE certification") for the project. Accordingly, a taxpayer must submit, for each qualifying advanced coal project: (1) an application for certification by the DOE ("application for DOE certification"), and (2) an application for certification under § 48A(d)(2) by the Service ("application for § 48A certification"). Both applications may be submitted only during the 3-year period beginning on February 21, 2006. Certifications will be issued and credits will be allocated to projects in annual allocation rounds. The initial allocation round will be conducted in 2006. If necessary, additional allocation rounds will be conducted in 2007 and 2008.

.02 *Program Specifications*.

(1) The Service will determine the amount of the qualifying advanced coal project credits allocated to a qualifying advanced coal project at the time the Service accepts the application for § 48A certification for that project in accordance with section 4.02(10) of this notice (see section 5 of this notice for the requirements applicable to the application for DOE certification and the application for § 48A certification).

(2) The qualifying advanced coal project credits of $1.3 billion and the applications for certification will be separated into the following four pools:

(a) Projects using an advanced coal-based generation technology other than IGCC. The aggregate amount of qualifying advanced coal project credit for this pool is $500 million. The maximum amount of credits that will be allocated to a project is $125 million.

(b) IGCC projects using bituminous coal as a primary feedstock. The aggre-

gate amount of qualifying advanced coal project credit for this pool is $267 million. The maximum amount of credits that will be allocated to a project is $133.5 million.

(c) IGCC projects using subbituminous coal as a primary feedstock. The aggregate amount of qualifying advanced coal project credit for this pool is $267 million. The maximum amount of credits that will be allocated to a project is $133.5 million.

(d) IGCC projects using lignite as a primary feedstock. The aggregate amount of qualifying advanced coal project credit for this pool is $266 million. The maximum amount of credits that will be allocated to a project is $133 million.

(3) For projects using an advanced coal-based generation technology other than IGCC, the aggregate credit of $500 million for this pool as described in section 4.02(2)(a) of this notice will be allocated in the initial round of allocations to projects providing the highest ratio of total nameplate generating capacity to requested allocation of credits.

(4) For each IGCC pool described in section 4.02(2)(b), (c), and (d) of this notice, the aggregate credit for that pool will be allocated as follows in the initial round of allocations:

(a) The aggregate credit will be allocated first to the projects entitled to priority under § 48A(e)(3)(B) for greenhouse gas capture capability or increased by-product utilization.

(b) If the requested allocation of credits for these priority projects exceeds the aggregate credit for the pool, the credit for that pool will be allocated to the priority projects providing the highest ratio of total nameplate generating capacity to requested allocation of credits.

(c) If the requested allocation of credits for the priority projects in a pool does not exceed the aggregate credit for the pool, the remaining amount of the credit will be allocated to the nonpriority projects providing the highest ratio of total nameplate generating capacity to requested allocation of credits.

(5) If the aggregate credit for a pool is not fully allocated in the initial round of allocations in 2006, similar allocation rounds will be conducted in 2007 and 2008 until the aggregate credit is fully allocated. Generally, the results of each year will be announced.

(6) If the same project would otherwise be allocated credits under both the qualifying advanced coal project program under this notice and the qualifying gasification project program under Notice 2006–25, 2006–11 I.R.B. 609, the following rules apply:

(a) If the project is allocated the full amount of the qualifying advanced coal project credit requested by the taxpayer, no qualifying gasification project credit will be allocated to the project;

(b) If the project is allocated the full amount of the qualifying gasification project credit requested by the taxpayer, no qualifying advanced coal project credit will be allocated to the project;

(c) If the project is allocated less than the full amount of the qualifying advanced coal project credit requested by the taxpayer, the qualifying gasification project credit may be allocated to the project with respect to the qualified investment under § 48B for which a qualifying advanced coal project credit is not allowed under § 48A; and

(d) If the project is allocated less than the full amount of the qualifying gasification project credit requested by the taxpayer, the qualifying advanced coal project credit may be allocated to the project with respect to the qualified investment under § 48A for which a qualifying gasification project credit is not allowed under § 48B.

(7) For each allocation round there will be an annual application period during which a taxpayer may file its application for § 48A certification. The Service will consider a project in an allocation round only if the application for § 48A certification for the project is submitted during the application period for that round and the DOE provides the DOE certification for the project before the end of the application period.

(8) For the initial allocation round conducted in 2006, the application period begins on February 21, 2006, and ends on October 2, 2006. Any completed application for § 48A certification received by the Service before October 3, 2006, will be deemed to be submitted by the taxpayer on October 2, 2006. For 2007, the application period begins on October 3, 2006, and ends on October 1, 2007, and any completed application for § 48A certification received by the Service after October 2, 2006, and before October 2, 2007, will be deemed to be submitted by the taxpayer on October 1, 2007. For 2008, the application period begins on October 2, 2007, and ends on October 1, 2008, and any completed application for § 48A certification received by the Service after October 1, 2007, and before October 2, 2008, will be deemed to be submitted by the taxpayer on October 1, 2008. For purposes of this notice, an application that is submitted by U.S. mail will be treated as received by the Service on the date of the postmark and an application submitted by a private delivery service will be treated as received by the Service on the date recorded or the date marked in accordance with § 7502(f)(2)(C).

(9) See section 5.02 of this notice and Appendix B to this notice for the information to be submitted to the DOE in an application for DOE certification. Appendix B to this notice also provides the instructions and address for filing the application for DOE certification. The DOE will determine the feasibility of the project and its consistency with energy policy goals and, if the project is determined to be feasible and consistent with energy policy goals, will provide a DOE certification for the project to the Service. If an application for DOE certification is postmarked on or before June 30 of a calendar year, the DOE will determine the feasibility of the project and its consistency with energy policy goals and (for projects determined to be feasible and consistent) provide the DOE certification by October 1 of that calendar year.

(10) By November 30 of the calendar year in which an application for § 48A certification is deemed to be submitted (as determined under section 4.02(8) of this notice), the Service will accept or reject the taxpayer's application for § 48A certification and will notify the taxpayer, by letter, of its decision.

(11) If the taxpayer's application for § 48A certification is accepted, the acceptance letter will state the amount of the credit allocated to the project. If a credit is allocated to a taxpayer's project, the taxpayer will be required to execute a closing agreement in the form set forth in Appendix A to this notice. By January 31 of the following year, the taxpayer must execute and return the closing agreement to the Service at the appropriate address listed in section 5.04 of this notice or listed in later guidance published in the Internal

Revenue Bulletin. The Service will execute and return the closing agreement to the taxpayer by March 31 of such following year. The executed closing agreement applies only to the accepted taxpayer. Accordingly, any successor in interest must execute a new closing agreement with the Service. If the successor in interest does not execute a new closing agreement, the following rules apply:

(a) In the case of an interest acquired at or before the time the qualifying advanced coal project is placed in service, any credit allocated to the project will be fully forfeited (and rules similar to the recapture rules of § 50(a) apply with respect to qualified progress expenditures); and

(b) In the case of an interest acquired after the qualifying advanced coal project is placed in service, the project ceases to be investment credit property and the recapture rules of § 50(a) (and similar rules with respect to qualified progress expenditures) apply.

SECTION 5. APPLICATIONS FOR CERTIFICATIONS

.01 *In General*. An application for § 48A certification and a separate application for DOE certification must be submitted for each qualifying advanced coal project. If an application for DOE certification does not include all of the information required by section 5.02 of this notice and meet the requirements in sections 7.01 and 7.02 of this notice, the DOE may decline to accept the application. If an application for § 48A certification does not include all of the information listed in section 5.03 of this notice and meet the requirements in sections 7.01 and 7.02 of this notice, the application will not be accepted by the Service.

.02 *Information Required in the Application for DOE Certification*. An application for DOE certification must include all of the information requested in Appendix B to this notice and all of the following:

(1) The name, address, and taxpayer identification number of the taxpayer;

(2) The name and telephone number of a contact person;

(3) The name and address (or other unique identifying designation) of the qualifying advanced coal project;

(4) A statement specifying whether the project is an IGCC project or a qualifying advanced coal project that uses another advanced coal-based technology;

(5) In the case of an IGCC project, a statement specifying the type of coal (bituminous coal, subbituminous coal, or lignite) that will be the primary feedstock. An application for DOE certification with respect to an IGCC project will not be considered unless one of these types of coal is the primary feedstock. For purposes of § 48A(e)(3)(A), a type of coal is the primary feedstock only if at all times more than 50 percent of the cumulative total fuel input (coal and any other fuel input) for the project will consist of that type of coal;

(6) The estimated total cost of the project and the estimated total qualified investment in the eligible property that will be part of the project;

(7) The amount of the qualifying advanced coal project credit requested for the project. The amount requested must not exceed the maximum amount provided in section 4.02(2) of this notice;

(8) If the taxpayer is or will be requesting an amount of the qualifying gasification project credit under § 48B for the same project, a statement specifying the credit the taxpayer prefers to receive;

(9) A statement specifying whether the project is a new electric generation unit (as defined in § 48A(c)(6)), a retrofit of an existing electric generation unit, or a repower of an existing electric generation unit; and

(10) The exact total nameplate generating capacity of the project.

.03 *Information Required in the Application for § 48A Certification*. Pursuant to § 48A(d)(2)(B), an application for § 48A certification must include all of the following:

(1) The name, address, and taxpayer identification number of the taxpayer;

(2) The name and telephone number of a contact person. If necessary, attach any required power of attorney, preferably on Form 2848, *Power of Attorney and Declaration of Representative*; and

(3) A paper copy of the completed application for DOE certification submitted with respect to the project in accordance with section 5.02 of this notice.

.04 *Instructions and Address for Filing § 48A Application*. Applications for § 48A certification should be marked: SECTION 48A APPLICATION FOR CERTIFICATION. There is no user fee for these applications.

(1) Applications submitted by U.S. mail must be sent to:

Internal Revenue Service
Attn: CC:PSI:6, Room 5313
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Applications submitted by a private delivery service must be sent to:

Internal Revenue Service
Attn: CC:PSI:6, Room 5313
1111 Constitution Ave., N.W.
Washington, DC 20224

(2) Applications may also be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to:

Courier's Desk
Internal Revenue Service
Attn: CC:PSI:6, Room 5313
1111 Constitution Avenue, N.W.
Washington, DC 20224

SECTION 6. ISSUANCE OF CERTIFICATION

.01 *In General*. Section 48A(d)(2)(D) provides that a taxpayer shall have 2 years from the date of acceptance of the § 48A application during which to provide evidence that the criteria set forth in § 48A(e)(2) have been met. Pursuant to § 48A(e)(2), a project shall be eligible for certification only if (A) the taxpayer has received all federal and state environmental authorizations or reviews necessary to commence construction of the project, and (B) the taxpayer, except in the case of a retrofit or repower of an existing generation unit, has purchased or entered into a binding contract for the purchase of the main steam turbine or turbines for the project, except that this contract may be contingent upon receipt of a certification under § 48A(d)(2). Section 48A(d)(2)(E) provides that a taxpayer that receives a certification has 5 years from the date of issuance of the certification to place the project in service and that the certification

is void if the project is not placed in service by the end of that five-year period.

.02 *Requirements for Certification*. Within 2 years from the date that the Service accepts the taxpayer's application for § 48A certification under section 4.02(10) of this notice, the taxpayer must submit to the Service documentation establishing that the requirements of § 48A(e)(2) are satisfied. See also sections 7.01 and 7.02 of this notice for other requirements that must be satisfied. The taxpayer should mark the package "SECTION 48A CERTIFICATION REQUIREMENTS" and send it to the appropriate address listed in section 5.04 of this notice or listed in later guidance published in the Internal Revenue Bulletin.

.03 *Service's Action on Certification*. After receiving the material in section 6.02 of this notice, the Service will decide whether or not to certify the project and will notify the taxpayer, by letter, of that decision. If the Service certifies the project, the date of this letter is the date of issuance of the certification.

SECTION 7. OTHER REQUIREMENTS

.01 *Signature*. Each submission under sections 5 and 6 of this notice must be signed and dated by the taxpayer. A stamped signature or faxed signature is not permitted.

.02 *Penalties of Perjury Statement*.

(1) Each submission under sections 5 and 6 of this notice must be accompanied by the following declaration: "Under penalties of perjury, I declare that I have examined this submission, including accompanying documents, and, to the best of my knowledge and belief, all of the facts contained herein are true, correct, and complete."

(2) The declaration must be signed and dated by the taxpayer. The person signing for the taxpayer must have personal knowledge of the facts. A stamped signature or faxed signature is not permitted.

.03 *Effect of an Acceptance, Allocation, or Certification*. An acceptance, allocation, or certification by the Service under this notice is not a determination that a project qualifies for the qualifying advanced coal project credit under § 48A. The Service may, upon examination (and after any appropriate consultation with DOE), determine that the project does not qualify for this credit.

.04 *No Right to a Conference or Appeal*. A taxpayer does not have a right to a conference relating to any matters under this notice. Further, a taxpayer does not have a right to appeal the decisions made under this notice (including the acceptance or rejection of the application for DOE or § 48A certification, the amount of credit allocated to the project, or whether or not to certify the project) to an Associate Chief Counsel or any other official of the Service.

SECTION 8. REVIEW AND REDISTRIBUTION

.01 *In General*. Section 48A(d)(4)(A) provides that the credits allocated under § 48A must be reviewed not later than August 8, 2011. Pursuant to § 48A(d)(4)(B), credits available under § 48A(d)(3)(B)(i) and (ii) may be reallocated if (i) there is an insufficient quantity of qualifying applications for certification pending at the time of the review; or (ii) any certification made pursuant to § 48A(d)(2) has been revoked pursuant to § 48A(d)(2)(D). If credits under § 48A(d)(3)(B)(i) and (ii) are available for reallocation, § 48A(d)(4)(C) authorizes the conduct of an additional program for applications for certification.

.02 *Review and Redistribution of Credits*.

(1) *In general*. If, after the allocation round in 2008, the entire credit for a pool is not fully subscribed (*i.e.*, the aggregate credit for the pool has not been fully allocated), the remaining credits from that pool will be reallocated to pools that have been fully subscribed. Credits from pools not fully subscribed will be reallocated to fully subscribed pools in proportion to the aggregate amounts of credit specified for the fully subscribed pools in section 4.02(2) of this notice. Future guidance will prescribe the procedures applicable to applications for certification with respect to the reallocated credits.

(2) *Reduction or forfeiture of allocated credits*. Under the closing agreement set forth in Appendix A to this notice, the qualifying advanced coal project credits allocated under section 4 of this notice will be reduced or forfeited in certain situations. A taxpayer must notify the Service of the amount of any reduction or forfeiture required under the closing agreement. This notification must be sent to the appropriate address listed in section 5.04 of this notice or listed in later guidance published in the Internal Revenue Bulletin.

The amount of any reduction or forfeiture of the allocated credits will be returned to the appropriate allocation pool and included in the aggregate credit remaining to be allocated in the allocation round following the reduction or forfeiture. If the reduction or forfeiture occurs after the allocation round in 2008, future guidance will prescribe procedures applicable to applications for certification with respect to the returned credits.

SECTION 9. QUALIFIED PROGRESS EXPENDITURES

.01 Section 48A(b)(3) provides that rules similar to the rules of § 46(c)(4) and (d) (as in effect on the day before the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of § 48A. Former §§ 46(c)(4) and 46(d) provided the rules for claiming the investment credit on qualified progress expenditures (as defined in former § 46(d)(3)) made by a taxpayer during the taxable year for the construction of progress expenditure property (as defined in former § 46(d)(2)).

.02 In the case of self-constructed property (as defined in former § 46(d)(5)(A)), former § 46(d)(3)(A) defined qualified progress expenditures to mean the amount that is properly chargeable (during the taxable year) to capital account with respect to that property. With respect to a qualifying advanced coal project that is self-constructed property, amounts paid or incurred are chargeable to capital account at the time and to the extent they are properly includible in computing basis under the taxpayer's method of accounting (for example, after applying the requirements of § 461, including the economic performance requirement of § 461(h)).

.03 To claim the qualifying advanced coal project credit on the qualified progress expenditures paid or incurred by a taxpayer during the taxable year for construction of a qualifying advanced coal project, the taxpayer must make an election under the rules set forth in § 1.46–5(o) of the Income Tax Regulations. A taxpayer may not make the qualified progress expenditures election for a qualifying advanced coal project until the taxpayer

has received an acceptance letter for the project under section 4.02(10) of this notice.

.04 If a taxpayer makes the qualified progress expenditures election pursuant to section 9.03 of this notice, rules similar to the recapture rules in § 50(a)(2)(A)-(D) apply. In addition to the cessation events listed in § 50(a)(2)(A), examples of other events that will cause the project to cease being a qualifying advanced coal project are:

(1) Failure to satisfy any of the certification requirements in § 48A(e)(2) within 2 years from the date that the Service accepted the taxpayer's application for § 48A certification for the project under section 4.02(10) of this notice;

(2) Failure to receive a certification for the project in accordance with section 6.03 of this notice;

(3) Failure to place the project in service within 5 years from the date of issuance of the certification under section 6.03 of this notice; or

(4) In the case of an IGCC project that was entitled to priority under § 48A(e)(3)(B), failure to provide the priority benefit on the date the project is placed in service.

SECTION 10. EFFECTIVE DATE

This notice is effective February 21, 2006.

SECTION 11. PAPERWORK REDUCTION ACT

The collection of information contained in this notice has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–2003.

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 OMB control number.

The collections of information in this notice are in sections 4, 5, 6, 7, 8, and Appendix B of this notice. This information is required to obtain an allocation of qualifying advanced coal project credits. This information will be used by the Service to verify that the taxpayer is eligible for the qualifying advanced coal project credits. The collection of information is required to obtain a benefit. The likely respondents are business or other for-profit institutions.

The estimated total annual reporting burden is 4,950 hours.

The estimated annual burden per respondent varies from 70 to 150 hours, depending on individual circumstances, with an estimated average of 110 hours. The estimated number of respondents is 45.

The estimated annual frequency of responses is on occasion.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

SECTION 12. DRAFTING INFORMATION

The principal author of this notice is Douglas H. Kim of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, contact Mr. Kim at (202) 622–3110 (not a toll-free call).

APPENDIX A

CLOSING AGREEMENT

Under § 7121 of the Internal Revenue Code, [insert taxpayer's name, address, and identifying number] ("Taxpayer") and the Commissioner of Internal Revenue ("Commissioner") make the following closing agreement:

WHEREAS:

1. On or before October [insert date and year], Taxpayer submitted to the Internal Revenue Service ("IRS"), an application for certification under the qualifying advanced coal project program described in Notice 2006–24 ("Application for § 48A Certification");

2. Taxpayer's Application for § 48A Certification is for the qualifying advanced coal project (the "Project") described below—

(1) The Project will use [insert either "an integrated gasification combined cycle (as defined in § 48A(c)(7))" or "an advanced coal-based technology (as defined in § 48A(c)(2) and (f)) other than an integrated gasification combined cycle"];

(2) The Project will be located at [insert address or other identifying designation];

(3) The Project is [insert either: "a new electric generation unit (as defined in § 48A(c)(6))"; "a retrofit of an existing electric generation unit (as defined in § 48A(c)(6))"; or "a repower of an existing electric generation unit (as defined in § 48a(c)(6)");

(4) The Project will have a total nameplate generating capacity of [insert number] megawatts;

[If the Project is an integrated gasification combined cycle project, insert:

(5) At all times more than 50 percent of the cumulative total fuel input (coal and any other fuel input) for the Project will be [insert either: "bituminous coal"; "subbituminous coal"; or "lignite"];

(6) The Project is entitled to priority under § 48A(e)(3)(B) for [insert either: "greenhouse gas capture capability (as defined in § 48A(c)(5))"; "increased by-product utilization"; or "both greenhouse gas capture capability (as defined in § 48A(c)(5)) and increased by-product utilization"];**]** and

3. On or before November 30, [insert year], the IRS accepted Taxpayer's Application for § 48A Certification for the Project and allocated a qualifying advanced coal project credit under § 48A in the amount of $[insert number] to the Project.

NOW IT IS HEREBY DETERMINED AND AGREED FOR FEDERAL INCOME TAX PURPOSES THAT:

1. The total amount of the qualifying advanced coal project credit to be claimed for the Project under § 48A(a) must not exceed $[insert the number in WHEREAS clause #3].

2. If Taxpayer fails to satisfy any of the certification requirements in § 48A(e)(2) within 2 years of [insert date of acceptance letter issued under section 4.02(10) of Notice 2006–24], or if the IRS does not issue a certification for the Project under Notice 2006–24, the qualifying advanced coal project credit in the amount of $[insert the number in WHEREAS clause #3] allocated to the Project is fully forfeited.

3. If the Project is not placed in service by Taxpayer within 5 years of the date of issuance of the certification as determined under section 6.03 of Notice 2006–24, the qualifying advanced coal project credit in the amount of $[insert the number in WHEREAS clause #3] allocated to the Project is fully forfeited.

4. If the Project does not have a total nameplate generating capacity of [insert the number in WHEREAS clause #2(4)] megawatts on the date the Project is placed in service, the qualifying advanced coal project credit in the amount of $[insert the number in WHEREAS clause #3] allocated to the Project is reduced proportionately.

[If the Project is not an integrated gasification combined cycle project, insert:

5. If the Project fails to satisfy any of the requirements in § 48A(e)(1) for a qualifying advanced coal project—

(1) at the time the Project is placed in service, the qualifying advanced coal project credit in the amount of $[insert the number in WHEREAS clause #3] allocated to the Project is fully forfeited; and

(2) after the Project is placed in service (and after satisfying all such requirements at the time the Project is placed in service), the Project ceases to be investment credit property and the recapture rules of § 50(a) apply.**]**

[If the Project is an integrated gasification combined cycle project, insert:

5. (1) If the Project fails to satisfy any of the requirements in § 48A(e)(1) for a qualifying advanced coal project—

(a) at the time the Project is placed in service, the qualifying advanced coal project credit in the amount of $[insert the number in WHEREAS clause #3] allocated to the Project is fully forfeited; and

(b) after the Project is placed in service (and after satisfying all such requirements at the time the Project is placed in service), the Project ceases to be investment credit property and the recapture rules of § 50(a) apply.

(2) If at any time more than 50 percent of the cumulative total fuel input (coal and any other fuel input) for the Project is not [insert the primary feedstock in WHEREAS clause #2(5)], the Project ceases to be investment credit property and the recapture rules of § 50(a) apply.

(3) If the Project fails to provide [insert priority benefits in WHEREAS clause #2(6)] at the time the Project is placed in service, the qualifying advanced coal project credit in the amount of $[insert the number in WHEREAS clause #3] allocated to the Project is fully forfeited.**]**

6. Taxpayer will not claim the qualifying gasification project credit under § 48B for any qualified investment for which the qualifying advanced coal project credit is allowed under § 48A.

7. If Taxpayer elects to claim the qualifying advanced coal project credit on the qualified progress expenditures paid or incurred by Taxpayer during the taxable year for construction of a qualifying advanced coal project, rules similar to the recapture rules in § 50(a)(2)(A) through (D) apply.

8. This agreement applies only to Taxpayer. Any successor in interest must execute a new closing agreement with the IRS. If the interest is acquired at or before the time the Project is placed in service and the successor in interest fails to execute a new closing agreement, the qualifying advanced coal project credit in the amount of $[insert the number in WHEREAS clause #3] allocated to the Project is fully forfeited. If the interest is acquired after the time the Project is placed in service and the successor in interest fails to execute a new closing agreement, the Project ceases to be investment credit property and the recapture rules of § 50(a) apply.

THIS AGREEMENT IS FINAL AND CONCLUSIVE EXCEPT:

1. The matter it relates to may be reopened in the event of fraud, malfeasance, or misrepresentation of a material fact;

2. It is subject to the Internal Revenue Code sections that expressly provide that effect be given to their provisions (including any stated exception for § 7122) notwithstanding any law or rule of law; and

3. If it relates to a tax period ending after the date of this Closing Agreement, it is subject to any law enacted after such date, which applies to the tax period.

By signing, the parties certify that they have read and agreed to the terms of this Closing Agreement.

Taxpayer: [insert name and identifying number]

By: _____ **Date Signed:** _____
[insert name]

Title: [insert title]
[insert taxpayer's name]

Commissioner of Internal Revenue

By: _____ **Date Signed:** _____
[insert name]

Title: Associate Chief Counsel, Passthroughs and Special Industries, CC:PSI

I have examined the specific matters involved and recommend the acceptance of the proposed agreement.

(Receiving Officer) _____
(Title) _____
Date Signed _____

I have reviewed the specific matters involved and recommend the acceptance of the proposed agreement.

(Reviewing Officer) _____
(Title) _____
Date Signed _____

APPENDIX B

APPLICATION FOR DOE CERTIFICATION

REQUEST FOR SUPPLEMENTAL APPLICATION INFORMATION FOR DOE

Pursuant to Notice 2006–24 establishing the Qualifying Advanced Coal Project Program, the Internal Revenue Service ("IRS") will allocate a credit under § 48A of the Internal Revenue Code to a project only if, among other things, the IRS receives from the Department of Energy ("DOE") a certification of feasibility and consistency with energy policy goals ("DOE certification") for the project. This DOE certification shall assure that the applications selected meet the requirements of § 48A and the intent of § 48A to provide credits to projects that are both technically and economically feasible.

The IRS and DOE seek to certify applications that demonstrate a high likelihood of being successfully implemented by the applicants. To qualify, projects must be economically feasible and use the appropriate clean coal technology.

This request for submission of supplemental application information:

1. Describes the information to be provided by the applicant seeking a DOE certification, and
2. Lists the evaluation criteria, and Program Policy Factors to be used by DOE in the evaluation of applications.

In conducting this evaluation, the DOE may utilize assistance and advice from qualified personnel from other Federal agencies and/or non-conflicted contractors. DOE will obtain assurances in advance from all evaluators that application information shall be kept confidential and used only for evaluation purposes. DOE reserves the right to request clarifications and/or supplemental information from some or all applicants through written submissions and/or oral presentations.

Notice is given that DOE may determine whether or not to provide a DOE certification to the IRS at any time after the application has been received, without further exchanges or discussions. Therefore, all applicants are advised to submit their most complete and responsive application.

Applications will not be returned.

SUBMISSION INFORMATION FOR DOE CERTIFICATION APPLICATION

A. General

This request, together with the information in sections 5.02, 7.01, and 7.02 of Notice 2006–24 includes all the information needed to complete an application for DOE certification. All applications shall be prepared in accordance with this request in order to provide a standard basis for evaluation and to ensure that each application will be uniform as to format and sequence.

Each application should clearly demonstrate the applicant's capability, knowledge, and experience in regard to the requirements described herein.

Applicants should fully address the requirements of Notice 2006–24 and this request and **not** rely on the presumed background knowledge of reviewers. DOE may reject an application that does not follow the instructions regarding the organization and content of the application when the nature of the deviation and/or omission precludes meaningful review of the application.

B. Unnecessarily Elaborate Applications

Unnecessarily elaborate brochures or other presentations beyond those sufficient to present a complete and effective application are not desired. Elaborate art work, graphics and pictures are neither required nor encouraged.

C. Application Submission for DOE Certification

The application submission to DOE must include the information and documentation required by sections 5.02, 7.01, and 7.02 of Notice 2006–24.

A project will not be considered in the allocation round conducted in a calendar year unless the application for DOE certification of the project is postmarked by June 30 of that calendar year. Two paper copies and one electronic version on a floppy disc or a CD of the Application must be submitted to:

Melissa Robe
National Energy Technology Laboratory
3610 Collins Ferry Road
Morgantown, WV 26507

Note that under section 5 of Notice 2006–24, one paper copy must be sent to the IRS as part of the application for IRS certification. The project will not be considered in the allocation round conducted in a calendar year unless the application is submitted to the IRS by the date specified for that calendar year in section 4.02(8) of Notice 2006–24.

THE INFORMATION REQUIRED BY THIS REQUEST MUST BE SUBMITTED USING THE FORMAT AND THE HEADINGS OF THE "PROJECT INFORMATION MEMORANDUM" AS DESCRIBED BELOW.

To aid in evaluation, applications shall be clearly and concisely written and logically assembled. All pages of each part shall be appropriately numbered and identified with the name of the applicant and the date.

The application, including the Project Information Memorandum, MUST be formatted in one of the following software applications:

Microsoft Word[tm] 2002 or later edition

Microsoft Excel[tm] 2002 or later edition

Adobe Acrobat[tm] PDF 6.0 or later edition

Financial models should be submitted using the Excel[tm] spreadsheet and must include calculation formulas and assumptions.

The applicant is responsible for the integrity and structure of the electronic files. The DOE will not be responsible for reformatting, restructuring or converting any files submitted under this announcement.

The Project Information Memorandum, *excluding Appendices*, shall not exceed seventy-five (75) pages. Pages in excess of the page limitation will not be considered for evaluation. All text shall be typed, single spaced, using 12 point font, 1 inch margins, and unreduced 8-1/2-inch by 11-inch pages. Illustrations and charts shall be legible with all text in legible font. Pages shall be sequentially numbered. Except as otherwise noted herein the page guidelines previously set forth constitute a limitation on the total amount of material that may be submitted for evaluation. No material may be incorporated in any application by reference as a means to circumvent the page limitation.

D. Form of Project Information Memorandum

PROJECT INFORMATION MEMORANDUM

I. SUMMARY AND INTRODUCTION

- Description of the Project
- Financing and Ownership Structure
- Describe the main parties to the project, including background, ownership and related experience
- Current Project Status and Schedule to Beginning of Construction

II. TECHNOLOGY AND TECHNICAL INFORMATION

Provide a description of the proposed technology, including sufficient supporting information (such as process flow diagrams, equipment descriptions, information on each major process unit and the total plant, compositions of major streams, and the technical plan for achieving the goals proposed for the project) as would be needed to allow DOE to confirm that the technical requirements of § 48A could, in principle, be met. Specifically the applicant should:

- Provide evidence sufficient to demonstrate that the proposed technology meets the definition of "Advanced Coal-Based Generation Technology," either as integrated gasification combined cycle (IGCC) technology, or other advanced coal-based electric generation technology meeting the heat rate requirement of 8530 Btu/kWh
  - The applicant must provide actual heat rate and heat rate corrected to conditions specified in § 48A(f)(2)
  - For projects including existing units, the applicant must provide information sufficient to justify that the proposed technology meets heat rate requirements specified in § 48A(f)(3)
- Provide evidence sufficient to ensure that the proposed project is designed to meet the following performance requirements:
  - SO2 percent removal.....99 percent
  - NOx emissions.....0.07 lbs / MMBTU
  - PM emissions.....0.015 lbs / MMBTU
  - Hg percent removal.....90 percent
- Provide evidence sufficient to demonstrate that the project meets the requirements for qualifying advanced coal projects as specified under § 48A(e)(1) including:
  - The project will power a new electric generation unit or retrofit/repower an existing electric generation unit. At least 50% of the useful output of the project is electrical power.
  - The fuel for the project is at least 75% coal (as defined in § 48A(c)(4)), on an energy input basis.
  - The project is located at one site and has a total nameplate electric power generating capacity of at least 400 MW.
- Provide information and data, including examples of prior similar projects completed by applicant, EPC contractor, and suppliers of major subsystems or equipment which support the capabilities of the applicant to construct and operate the facility.
- Include the project status and relevant information from ongoing engineering activities. Also include in an appendix any engineering report or reports used by the applicant to develop the project and to estimate costs and operating performance.

III. PRIORITY FOR INTEGRATED GASIFICATION COMBINED CYCLE PROJECTS

For IGCC Projects, the applicant must submit information sufficient for categorization and prioritization of projects for certification, including:

- Identification of the primary feedstock (as defined in section 5.02(5) of Notice 2006–24), and all other feedstocks.
- If applicable, evidence demonstrating that the project will be capable of adding components that can capture, separate and permanently sequester greenhouse gases.
- A plan showing how project by-products will be marketed and utilized.
- Other benefits, if any.

IV. SITE CONTROL AND OWNERSHIP

- Provide evidence that the applicant owns or controls a site in the United States of sufficient size to allow the proposed project to be constructed and operated on a long-term basis.
- Describe the current infrastructure at the site available to meet the needs of the project.
- Provide information supporting applicant's conclusion that the proposed site can fully meet all environmental, coal supply, water supply, transmission interconnect, and public policy requirements.

V. UTILIZATION OF PROJECT OUTPUT

- A projection of the anticipated costs of electricity and other marketable by-products produced by the plant.
- Provide evidence that a majority of the output of the plant is reasonably expected to be acquired or utilized.
- Describe any energy sales arrangements that exist or that may be contemplated, *e.g.*, Power Purchase Agreement or Energy Sales Agreement, and summaries of their key terms and conditions.
- Include as an appendix any independent Energy Price Market Study that has been done in connection with this project, or if no independent market study has been completed, provide a copy of the applicant-prepared market study.
- Identify and describe any firm arrangements to sell non-power output, and provide any evidence of such arrangements. If the project produces a product in addition to power, include as an appendix any related market study of price and volume of sales expected for that product.

VI. PROJECT ECONOMICS

Describe the project economics and provide satisfactory evidence of economic feasibility as demonstrated through the financial forecast and the underlying project assumptions.

Discuss the market potential for the proposed technology beyond the project proposed by the applicant.

Show calculation of the amount of tax credit applied for based on allowable cost.

VII. PROJECT DEVELOPMENT AND FINANCIAL PLAN

Provide the total project budget and major plant costs, *e.g.*, development, operating, capital, construction, and financing costs. Describe the overall approach to project development and financing sufficient to demonstrate project viability. Provide a complete explanation of the source and amount of project equity. Provide a complete explanation of the source and amount of project debt. Provide the audited financial statements for the applicant for the most recently ended three fiscal years, and the unaudited quarterly interim financial statements for the current fiscal year.

For internally financed projects, provide evidence that the applicant has sufficient assets to fund the project with its own resources. Identify any internal approvals required to commit such assets. Include in an appendix copies of any board resolution or other approval authorizing the applicant to commit funds and proceed with the project.

For projects financed through debt instruments either unsecured or secured by assets other than the project, provide evidence that the applicant has sufficient creditworthiness to obtain such financing along with a discussion of the status of such instruments. Identify any internal approvals required to commit the applicant to pursue such financing. Include in an appendix, copies of any board resolution or other approval authorizing the applicant to commit to such financing.

For projects financed through investor equity contributions, discuss the source and status of each contribution. Discuss each investor's financial capability to meet its commitments. Include in an appendix, copies of any executed investment agreements.

If financing through a public offering or private placement of either debt or equity is planned for the project, provide the expected debt rating for the issue and an explanation of applicant's justification for the rating. Describe the status of any discussions with prospective investment bankers or other financial advisors.

For projects employing nonrecourse debt financing, provide a complete discussion of the approach to, and status of, such financing.

In an appendix, provide (1) an Excel based financial model of the project, with formulas, so that review of the model calculations and assumptions may be facilitated; provide *pro-forma* project financial, economic, capital cost, and operating assumptions, including detail of all project capital costs, development costs, interest during construction, transmission interconnection costs, other operating expenses, and all other costs and expenses, and (2) a report of an independent financial analyst in accordance with the instructions in Section G of this Appendix B.

VIII. PROJECT CONTRACT STRUCTURE

Describe the current status of each of the agreements set forth below. Include as an appendix copies of the contracts or summaries of the key provisions of each of the following agreements:

- Power Purchase Agreement (if not fully explained in Section IV)
- Coal Supply: describe the source and price of coal supply for the project. Include as an appendix any studies of coal supply price and amount that have been prepared. Include a summary of the coal supply contract and a copy of the contract.
- Coal transportation: explain the arrangements for transporting coal, including costs.
- Operations & Maintenance Agreement: include a summary of the terms and conditions of the contract and a copy of the contract.
- Shareholders Agreement: summarize key terms and include the agreement as an appendix.
- Engineering, Procurement and Construction Agreement: describe the key terms of the existing or expected EPC contract arrangement, including firm price, liquidated damages, hold-backs, performance guarantees, etc.
- Water Supply Agreement: confirm the amount, source, and cost of water supply.
- Transmission interconnection agreement: explain the requirements to connect to the system and the current status of negotiations in this respect.

IX. PERMITS INCLUDING EVIRONMENTAL AUTHORIZATIONS

- Provide a complete list of all federal, state, and local permits, including environmental authorizations or reviews, necessary to commence construction of the project.
- Explain what actions have been taken to date to satisfy the required authorizations and reviews, and the status of each.
- Provide a description of the applicant's plan to obtain and complete all necessary permits, and environmental authorizations and reviews.

X. STEAM TURBINE PURCHASE

- If applicant plans to purchase a steam turbine or turbines for the project, indicate the prospective vendors for the turbine and explain the current status of purchase negotiations, and provide a timeline for negotiation and purchase with expected purchase date.

XI. PROJECT SCHEDULE

- Provide an overall project schedule which includes technical, business, financial, permitting and other factors to substantiate that the project will meet the 2 year project certification and 5 year placed-in-service requirement.

- Independent Financial Report.
- Copy of internal or external engineering reports.
- Copy of site plan, together with evidence that applicant owns or controls a site. Examples of evidence would include a deed, or an executed contract to purchase or lease the site.
- Information supporting applicant's conclusion that the site is fully acceptable as the project site with respect to environment, coal supply, water supply, transmission interconnect, and public policy reasons.
- Power Purchase or Energy Sales Agreement.
- Energy Market Study.
- Market Study for non-power output.
- Financial Model of project.
- Audited financial statements for the applicant for the most recently ended three fiscal years, and the unaudited quarterly interim financial statements for the current fiscal year.
- For each project contract, if no contract currently exists, provide a summary of the expected terms and conditions.
- List of all federal, state, and local permits, including environmental authorizations or reviews, necessary to commence construction.
- If an appendix listed above is not provided, include in its place a complete explanation of the reasons for the omission.

E. Evaluation Criteria:

Advanced coal projects: will be evaluated on whether they meet all the requirements of § 48A.

Technical: will be evaluated on whether the applicant has demonstrated the capability to accomplish the technical objectives.

Site: will be evaluated on the basis that the site requirement for ownership or control has been met, and that the site is suitable for the proposed project.

Economic: will be evaluated on whether the project has demonstrated economic feasibility, taking into consideration the submitted financial and project development and structural information and financial plan.

Schedule: will be evaluated on the applicant's ability to meet the 2 year project certification and the 5 year placed-in-service requirement.

F. Program Policy Factors to be used by DOE in the evaluation of applications and a description of how they will be applied.

These factors, while not indicators of the applicant's merit, *e.g.*, technical excellence, cost, applicant's ability, etc., may be essential to the process of selecting the application(s) that, individually or collectively, will best achieve the objectives of the authorizing legislation. Such factors are often beyond the control of the applicant. Applicants should recognize that some very good applications may not receive selection for certification because they do not fit within a mix of projects and technologies that maximize the probability of achieving the overall objective of deployment of advanced coal-based generation technology. Therefore, the following Program Policy Factors may be used individually or collectively by DOE following application of evaluation criteria to determine which of the applications shall receive certification by DOE.

- Diversity of technology approaches and methods
- Geographic distribution of potential markets
- Presentation of unique environmental, economic, or performance benefits

G. Instructions for independent financial reports

The applicant shall provide an independent report by a qualified Independent Financial Analyst (such as a bank, investment bank, or other independent financial advisory firm). In the report, the Independent Financial Analyst shall describe qualifications and experience that establish the Analyst's competence to evaluate project financing for projects similar in scope and size to the Applicant's project. The Independent Financial Analyst shall provide a thorough, independent review of the Applicant's approach to project financing. The report shall include the opinion of the Independent Financial Analyst as to the Applicant's likelihood to achieve financial closure in accordance with the Applicant's financing plan.

Required Certification by Independent Financial Analyst:

The report shall be certified by the Independent Financial Analyst, who shall (a) acknowledge that the report has been prepared for submission to the Department of Energy as a part of an application by applicant for an investment credit, and (b) certify that the Independent Financial Analyst has no obligation to the applicant and has acted to the best of its ability as an independent expert.

At a minimum, the Independent Financial Analyst shall:

- Review the financial model.
- Review the project financial assumptions, including economic, capital costs, operating assumptions, and all project development costs.
- Review the financial calculations, including rates of return and coverage ratios.
- Confirm the calculation of the amount of the tax credit applied for.
- Review the project development cost budget.
- Review and comment on the source of funding and evidence of funding.
- Review and comment on project debt and equity sources.
- Confirm that the application includes the required financial reports and debt ratings.
- Describe and comment on the capabilities of the applicant to provide the required financing for the project, and the likelihood of obtaining financing from a source other than the applicant, if such financing is required by the project.

Qualifying Gasification Project Program

Notice 2006–25

SECTION 1. PURPOSE

This notice establishes the qualifying gasification project program under § 48B(d) of the Internal Revenue Code. The purpose of this program is to consider and award certifications for qualified investment eligible for credits under § 48B to qualifying gasification project sponsors.

SECTION 2. BACKGROUND

.01 Section 46 provides that the amount of the investment credit for any taxable year is the sum of the credits listed in § 46. Section 1307(a) of the Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (August 8, 2005) (the "Act"), amended § 46 to add two new credits to that list: the qualifying advanced coal project credit and the qualifying gasification project credit.

.02 The qualifying gasification project credit is provided under § 48B, as added by § 1307(b) of the Act. Section 48B(a) provides that the qualifying gasification project credit for a taxable year is an amount equal to 20 percent of the qualified investment (as defined in § 48B(b)) for that taxable year in qualifying gasification projects. Pursuant to § 48B(d)(1), the aggregate amount of credits allocated to all qualifying gasification projects may not exceed $350 million.

.03 The term "qualifying gasification project" is defined in § 48B(c)(1) as meaning any project that (A) employs gasification technology, (B) will be carried out by an eligible entity (as defined in § 48B(c)(7)), and (C) includes a qualified investment of which an amount not to exceed $650 million is certified under the qualifying gasification program as eligible for credit under § 48B. Pursuant to § 48B(c)(2), gasification technology is any process that converts a solid or liquid product from coal (as defined in § 48B(c)(6)), petroleum residue (as defined in § 48B(c)(8)), biomass (as defined in § 48B(c)(4)), or other materials that are recovered for their energy or feedstock value into a synthesis gas composed primarily of carbon monoxide and hydrogen for direct use or subsequent chemical or physical conversion.

.04 The qualifying gasification project credit generally is allowed in the taxable year in which the eligible property (as defined in § 48B(c)(3)) is placed in service by the taxpayer. Further, the at-risk rules in § 49 and the recapture and other special

rules in § 50 apply to the qualifying gasification project credit.

SECTION 3. QUALIFYING GASIFICATION PROJECT PROGRAM

Section 48B(d)(1) provides that the Secretary, in consultation with the Secretary of Energy, shall establish a qualifying gasification project program to consider and award certifications for qualified investment eligible for credits under § 48B to qualifying gasification project sponsors. The Treasury Department and the Internal Revenue Service are establishing the qualifying gasification project program under the rules set forth in sections 4 through 8 of this notice. Pursuant to § 48B(d)(2), certificates of eligibility may be issued under the program only during the 10-year period beginning on October 1, 2005.

SECTION 4. ESTABLISHMENT OF QUALIFYING GASIFICATION PROJECT PROGRAM

.01 *In General*. The Service will consider a project under the qualifying gasification project program only if the U.S. Department of Energy ("DOE") provides a certification of feasibility and consistency with energy policy goals ("DOE certification") for the project. Accordingly, for each qualifying gasification project, a taxpayer must submit: (1) an application for certification by the DOE ("application for DOE certification"), and (2) an application for certification under § 48B by the Service ("application for § 48B certification"). Both applications may be submitted only during the 3-year period beginning on February 21, 2006. Certifications will be issued and credits will be allocated to projects in annual allocation rounds. The initial allocation round will be conducted in 2006. If necessary, additional allocation rounds will be conducted in 2007 and 2008.

.02 *Program Specifications*.

(1) The Service will determine the amount of the qualifying gasification project credits allocated to a qualifying gasification project at the time the Service accepts the application for § 48B certification for that project in accordance with section 4.02(9) of this notice. The qualified investment in the project will be certified as eligible for the credit to the extent such investment does not exceed the amount of the credit allocated to the project multiplied by five. See section 5 of this notice for the requirements applicable to the application for DOE certification and the application for § 48B certification.

(2) The certification for a project cannot apply to more than $650 million of the qualified investment in the project. Thus, the maximum amount of qualifying gasification project credits that will be allocated to a project is $130 million.

(3) The aggregate credit of $350 million will be allocated as follows in the initial round of allocations conducted in 2006:

(a) The aggregate credit will be allocated first to the projects that have carbon capture capability (as defined in § 48B(c)(5)), use renewable fuel, or have project teams with experience that demonstrates successful and reliable operations of the gasification technology on the domestic fuels identified in § 48B(c)(2).

(b) If the requested allocation of credits for these priority projects exceeds the aggregate credit of $350 million, the credit will be allocated to the priority projects providing the highest ratio of the total amount of synthesis gas to be supplied by the project ("nameplate capacity") to requested allocation of credits.

(c) If the requested allocation of credits for the priority projects does not exceed the aggregate credit of $350 million, the remaining amount of the credit will be allocated to the nonpriority projects providing the highest ratio of nameplate capacity to requested allocation of credits.

(4) If the aggregate credit of $350 million is not fully allocated in the initial round of allocations in 2006, similar allocation rounds will be conducted in 2007 and 2008 until the aggregate credit of $350 million is fully allocated. Generally, the results of each year will be announced.

(5) If the same project would otherwise be allocated credits under both the qualifying gasification project program under this notice and the qualifying advanced coal project program under Notice 2006–24, 2006–11 I.R.B. 595, the following rules apply:

(a) If the project is allocated the full amount of the qualifying advanced coal project credit requested by the taxpayer, no qualifying gasification project credit will be allocated to the project;

(b) If the project is allocated the full amount of the qualifying gasification project credit requested by the taxpayer, no qualifying advanced coal project credit will be allocated to the project;

(c) If the project is allocated less than the full amount of the qualifying advanced coal project credit requested by the taxpayer, the qualifying gasification project credit may be allocated to the project with respect to the qualified investment under § 48B for which a qualifying advanced coal project credit is not allowed under § 48A; and

(d) If the project is allocated less than the full amount of the qualifying gasification project credit requested by the taxpayer, the qualifying advanced coal project credit may be allocated to the project with respect to the qualified investment under § 48A for which a qualifying gasification project credit is not allowed under § 48B.

(6) For each allocation round, there will be an annual application period during which a taxpayer may file its application for § 48B certification. The Service will consider a project in an allocation round only if the application for § 48B certification for the project is submitted during the application period for that round and the DOE provides the DOE certification for the project before the end of that application period.

(7) For the initial allocation round conducted in 2006, the application period begins on February 21, 2006, and ends on October 2, 2006. Any completed application for § 48B certification received by the Service before October 3, 2006, will be deemed to be submitted by the taxpayer on October 2, 2006. For 2007, the application period begins on October 3, 2006, and ends on October 1, 2007, and any completed application for § 48B certification received by the Service after October 2, 2006, and before October 2, 2007, will be deemed to be submitted by the taxpayer on October 1, 2007. For 2008, the application period begins on October 2, 2007, and ends on October 1, 2008, and any completed application for § 48B certification received by the Service after October 1, 2007, and before October 2, 2008, will be deemed to be submitted by the taxpayer on October 1, 2008. For purposes of this notice, an application that is submitted by U.S. mail will be treated as received by the Service on the date of the postmark and an application submitted by a private delivery service will be treated as received by the Service

on the date recorded or the date marked in accordance with § 7502(f)(2)(C).

(8) See section 5.02 of this notice and Appendix B to this notice for the information to be submitted to the DOE in an application for DOE certification. Appendix B to this notice also provides the instructions and address for filing the application for DOE certification. The DOE will determine the feasibility of the project and its consistency with energy policy goals and, if the project is determined to be feasible and consistent with energy policy goals, will provide a DOE certification for the project to the Service. If an application for DOE certification is postmarked on or before June 30 of a calendar year, the DOE will determine the feasibility of the project and its consistency with energy policy goals and (for projects determined to be feasible and consistent) provide the DOE certification by October 1 of that calendar year.

(9) By November 30 of the calendar year in which an application for § 48B certification is deemed to be submitted (as determined under section 4.02(7) of this notice), the Service will accept or reject the taxpayer's application for § 48B certification and will notify the taxpayer, by letter, of its decision.

(10) A taxpayer that receives an acceptance letter under section 4.02(9) of this notice has 7 years from the date of the acceptance letter to place the project in service and if the project is not placed in service by the end of that period then the acceptance letter is void.

(11) If the taxpayer's application for § 48B certification is accepted, the acceptance letter will state the amount of the credit allocated to the project and the amount of qualified investment that is certified as eligible for the credit. If a credit is allocated to a taxpayer's project, the taxpayer will be required to execute a closing agreement in the form set forth in Appendix A to this notice. By January 31 of the following year, the taxpayer must execute and return the closing agreement to the Service at the appropriate address listed in section 5.04 of this notice or listed in later guidance published in the Internal Revenue Bulletin. The Service will execute and return the closing agreement to the taxpayer by March 31 of such following year. The executed closing agreement applies only to the accepted taxpayer. Accordingly, any successor in interest must execute a new closing agreement with the Service. If the successor in interest does not execute a new closing agreement, the following rules apply:

(a) In the case of an interest acquired at or before the time the qualifying gasification project is placed in service, any credit allocated to the project will be fully forfeited (and rules similar to the recapture rules of § 50(a) apply with respect to qualified progress expenditures); and

(b) In the case of an interest acquired after the qualifying gasification project is placed in service, the project ceases to be investment credit property and the recapture rules of § 50(a) (and similar rules with respect to qualified progress expenditures) apply.

SECTION 5. APPLICATIONS FOR CERTIFICATIONS

.01 *In General.* An application for § 48B certification and a separate application for DOE certification must be submitted for each qualifying gasification project. If an application for DOE certification does not include all of the information required by section 5.02 of this notice and meet the requirements in sections 6.01 and 6.02 of this notice, the DOE may decline to accept the application. If an application for § 48B certification does not include all of the information listed in section 5.03 of this notice and meet the requirements in sections 6.01 and 6.02 of this notice, the application will not be accepted by the Service.

.02 *Information Required in the Application for DOE Certification.* An application for DOE certification must include all of the information requested in Appendix B to this notice and all of the following:

(1) The name, address, and taxpayer identification number of the taxpayer;

(2) The name and telephone number of a contact person;

(3) The name and address (or other unique identifying designation) of the qualifying gasification project;

(4) A statement specifying the projected placed-in-service date of the qualifying gasification project;

(5) The estimated total cost of the project and the estimated total qualified investment in the eligible property that will be part of the project;

(6) The amount of the qualifying gasification project credit requested for the project. The amount requested must not exceed $130 million (the maximum amount permitted under § 48B(a) and (c)(1)(C));

(7) If the taxpayer is or will be requesting an amount of the qualifying advanced coal project credit under § 48A for the same project, a statement specifying the credit the taxpayer prefers to receive;

(8) The amount of synthesis gas to be supplied by the qualifying gasification project (nameplate capacity). The synthesis gas must be composed primarily of carbon monoxide and hydrogen for direct use or subsequent chemical or physical conversion; and

(9) Documentation or other evidence establishing that the taxpayer is financially viable without the receipt of additional federal funding associated with the qualifying gasification project.

.03 *Information Required in the Application for § 48B Certification.* An application for § 48B certification must include all of the following:

(1) The name, address, and taxpayer identification number of the taxpayer;

(2) The name and telephone number of a contact person. If necessary, attach any required power of attorney, preferably on Form 2848, *Power of Attorney and Declaration of Representative*; and

(3) A paper copy of the completed application for DOE certification submitted with respect to the project in accordance with section 5.02 of this notice.

.04 *Instructions and Address for Filing § 48B Application.* Applications for § 48B certification should be marked: SECTION 48B APPLICATION FOR CERTIFICATION. There is no user fee for these applications.

(1) Applications submitted by U.S. mail must be sent to:

Internal Revenue Service
Attn: CC:PSI:6, Room 5313
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Applications submitted by a private delivery service must be sent to:

Internal Revenue Service
Attn: CC:PSI:6, Room 5313
1111 Constitution Ave., N.W.
Washington, DC 20224

(2) Applications may also be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to:

Courier's Desk
Internal Revenue Service
Attn: CC:PSI:6, Room 5313
1111 Constitution Avenue, N.W.
Washington, DC 20224

SECTION 6. OTHER REQUIREMENTS

.01 *Signature*. Each submission under section 5 of this notice must be signed and dated by the taxpayer. A stamped signature or faxed signature is not permitted.

.02 *Penalties of Perjury Statement*.

(1) Each submission under section 5 of this notice must be accompanied by the following declaration: "Under penalties of perjury, I declare that I have examined this submission, including accompanying documents, and, to the best of my knowledge and belief, all of the facts contained herein are true, correct, and complete."

(2) The declaration must be signed and dated by the taxpayer. The person signing for the taxpayer must have personal knowledge of the facts. A stamped signature or faxed signature is not permitted.

.03 *Effect of an Acceptance or Allocation*. An acceptance or allocation by the Service under this notice is not a determination that a project qualifies for the qualifying gasification project credit under § 48B. The Service may, upon examination (and after any appropriate consultation with DOE), determine that the project does not qualify for this credit.

.04 *No Right to a Conference or Appeal*. A taxpayer does not have a right to a conference relating to any matters under this notice. Further, a taxpayer does not have a right to appeal the decisions made under this notice (including the acceptance or rejection of the application for DOE or § 48B certification or the amount of credit allocated to the project) to an Associate Chief Counsel or any other official of the Service.

SECTION 7. REVIEW AND REDISTRIBUTION

.01 *In General*. Section 48B(d)(1) provides for the review and redistribution of credits allocated under the qualifying gasification project program under rules similar to the rules of § 48A(d)(4).

.02 *Review and Redistribution of Credits*.

(1) *In general*. If, after the allocation round in 2008, the aggregate credit of $350 million is not fully subscribed (*i.e.*, the aggregate credit is not fully allocated), an additional program for applications for certification to allocate the remaining credits will be conducted. Future guidance will prescribe the procedures applicable to applications for certification with respect to the remaining credits.

(2) *Reduction or forfeiture of allocated credits*. Under the closing agreement set forth in Appendix A to this notice, the qualifying gasification project credits allocated under section 4 of this notice will be reduced or forfeited in certain situations. A taxpayer must notify the Service of the amount of any reduction or forfeiture required under the closing agreement. This notification must be sent to the appropriate address listed in section 5.04 of this notice or listed in later guidance published in the Internal Revenue Bulletin.

The amount of any reduction or forfeiture of the allocated credits will be returned and included in the aggregate credit remaining to be allocated in the allocation round following the reduction or forfeiture. If the reduction or forfeiture occurs after the allocation round in 2008, future guidance will prescribe procedures applicable to applications for certification with respect to the returned credits.

SECTION 8. QUALIFIED PROGRESS EXPENDITURES

.01 Section 48B(b)(3) provides that rules similar to the rules of § 46(c)(4) and (d) (as in effect on the day before the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of § 48B. Former §§ 46(c)(4) and 46(d) provided the rules for claiming the investment credit on qualified progress expenditures (as defined in former § 46(d)(3)) made by a taxpayer during the taxable year for the construction of progress expenditure property (as defined in former § 46(d)(2)).

.02 In the case of self-constructed property (as defined in former § 46(d)(5)(A)), former § 46(d)(3)(A) defined qualified progress expenditures to mean the amount that is properly chargeable (during the taxable year) to capital account with respect to that property. With respect to a qualifying gasification project that is self-constructed property, amounts paid or incurred are chargeable to capital account at the time and to the extent they are properly includible in computing basis under the taxpayer's method of accounting (for example, after applying the requirements of § 461, including the economic performance requirement of § 461(h)).

.03 To claim the qualifying gasification project credit on the qualified progress expenditures paid or incurred by a taxpayer during the taxable year for construction of a qualifying gasification project, the taxpayer must make an election under the rules set forth in § 1.46–5(o) of the Income Tax Regulations. The taxpayer may not make the qualified progress expenditures election for a qualifying gasification project until the taxpayer has received an acceptance letter for the project under section 4.02(9) of this notice.

.04 If a taxpayer makes the qualified progress expenditures election pursuant to section 8.03 of this notice, rules similar to the recapture rules in § 50(a)(2)(A)-(D) apply. In addition to the cessation events listed in § 50(a)(2)(A), examples of other events that will cause the project to cease being a qualifying gasification project are:

(1) Failure to place the project in service within 7 years from the date of the acceptance letter under section 4.02(9) of this notice; or

(2) In the case of a project that was entitled to priority for carbon capture capability, failure to provide that priority benefit on the date the project is placed in service.

SECTION 9. EFFECTIVE DATE

This notice is effective February 21, 2006.

SECTION 10. PAPERWORK REDUCTION ACT

The collection of information contained in this notice has been reviewed and approved by the Office of Management and

Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–2002.

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 OMB control number.

The collections of information in this notice are in sections 4, 5, 6, 7, and Appendix B of this notice. This information is required to obtain an allocation of qualifying gasification project credits. This information will be used by the Service to verify that the taxpayer is eligible for the qualifying gasification project credits. The collection of information is required to obtain a benefit. The likely respondents are business or other for-profit institutions.

The estimated total annual reporting burden is 1,700 hours.

The estimated annual burden per respondent varies from 50 to 125 hours, depending on individual circumstances, with an estimated average of 85 hours. The estimated number of respondents is 20.

The estimated annual frequency of responses is on occasion.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

SECTION 11. DRAFTING INFORMATION

The principal author of this notice is Jennifer Bernardini of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, contact Douglas H. Kim at (202) 622–3110 (not a toll-free call).

APPENDIX A

CLOSING AGREEMENT

Under § 7121 of the Internal Revenue Code, [insert taxpayer's name, address, and identifying number] ("Taxpayer") and the Commissioner of Internal Revenue ("Commissioner") make the following closing agreement:

WHEREAS:

1. On or before October [insert date and year], Taxpayer submitted to the Internal Revenue Service ("IRS"), an application for certification under the qualifying gasification project program described in Notice 2006–25 ("Application for § 48B Certification");

2. Taxpayer's Application for § 48B Certification is for the qualifying gasification project (the "Project") described below—

(1) The Project will be located at [insert address or other identifying designation];

(2) The Project will supply [insert number] mcf of synthesis gas that is composed primarily of carbon monoxide and hydrogen for direct use or subsequent chemical or physical conversion;

(3) The fuels identified in § 48B(c)(2) will at all times cumulatively comprise at least 90 percent of the total fuels (fuels identified in § 48B(c)(2) and any other fuel input) required by the Project for the production of chemical feedstocks, liquid transportation fuels, or co-production of electricity;

[If the Project is a priority project, insert:

(4) The Project is entitled to priority under Notice 2006–25 [insert either: "for carbon capture capability (as defined in § 48B(c)(5)) or use of renewable fuels"; "because the project team has experience that demonstrates successful and reliable operations of the gasification technology on domestic fuels identified in § 48B(c)(2)"; or "both for carbon capture capability (as defined in § 48B(c)(5)) or use of renewable fuels and because the project team has experience that demonstrates successful and reliable operations of the gasification technology on domestic fuels identified in § 48B(c)(2)"];**]** and

3. On or before November 30, [insert year], the IRS accepted Taxpayer's Application for § 48B Certification for the Project and allocated a qualifying gasification project credit under § 48B in the amount of $[insert number] to the Project.

NOW IT IS HEREBY DETERMINED AND AGREED FOR FEDERAL INCOME TAX PURPOSES THAT:

1. The total amount of the qualifying gasification project credit to be claimed for the Project under § 48B(a) must not exceed $[insert the number in WHEREAS clause #3].

2. If the Project is not placed in service by Taxpayer within 7 years of [insert date of acceptance letter issued under section 4.02(9) of Notice 2006–25], the qualifying gasification project credit in the amount of $[insert the number in WHEREAS clause #3] allocated to the Project is fully forfeited.

3. If the Project does not supply synthesis gas in the amount of [insert the number in WHEREAS clause #2(2)] on the date the Project is placed in service, the qualifying gasification project credit in the amount of $[insert the number in WHEREAS clause #3] allocated to the Project is reduced proportionately.

[If the Project is not a priority project for carbon capture capability, for use of renewable fuels, or because the project team has experience that demonstrates successful and reliable operations of the gasification technology on domestic fuels identified in § 48B(c)(2), insert:

4. (1) If the Project fails to use gasification technology as defined in § 48B(c)(2) or is not carried out by an eligible entity as defined in § 48B(c)(7), the qualifying gasification project credit in the amount of $[insert the number in WHEREAS clause #3] allocated to the Project is fully forfeited.

(2) If, at any time, the fuels identified in § 48B(c)(2) with respect to the gasification technology for the Project do not cumulatively comprise at least 90 percent of the total fuels (fuels identified in § 48B(c)(2) and any other fuel input) required by the Project for the production of chemical feedstocks, liquid transportation fuels, or co-production of electricity, the Project ceases to be investment credit property and the recapture rules of § 50(a) apply.**]**

[If the Project is a priority project for carbon capture capability, for use of renewable fuels, or because the project team has experience that demonstrates successful and reliable operations of the gasification technology on domestic fuels identified in § 48B(c)(2), insert:

4. (1) If the Project fails to use gasification technology as defined in § 48B(c)(2) or is not carried out by an eligible entity as defined in § 48B(c)(7), the qualifying gasification project credit in the amount of $[insert the number in WHEREAS clause #3] allocated to the Project is fully forfeited.

(2) If, at any time, the fuels identified in § 48B(c)(2) with respect to the gasification technology for the Project do not cumulatively comprise at least 90 percent of the total fuels (fuels identified in § 48B(c)(2) and any other fuel input) required by the Project for the production of chemical feedstocks, liquid transportation fuels, or co-production of electricity, the Project ceases to be investment credit property and the recapture rules of § 50(a) apply.

(3) If the Project fails to provide [insert priority benefits in WHEREAS clause #2(4)] on the date the Project is placed in service, the qualifying gasification project credit in the amount of $[insert the number in WHEREAS clause #3] allocated to the Project is fully forfeited.**]**

5. Taxpayer will not claim the qualifying advanced coal project credit under § 48A for any qualified investment for which the qualifying gasification project credit is allowed under § 48B.

6. If Taxpayer elects to claim the qualifying gasification project credit on the qualified progress expenditures paid or incurred by Taxpayer during the taxable year for construction of a qualifying gasification project, rules similar to the recapture rules in § 50(a)(2)(A) through (D) apply.

7. This agreement applies only to Taxpayer. Any successor in interest must execute a new closing agreement with the IRS. If the interest is acquired at or before the time the Project is placed in service and the successor in interest fails to execute a new closing agreement, the qualifying gasification project credit in the amount of $[insert the number in WHEREAS clause #3] allocated to the Project is fully forfeited. If the interest is acquired after the time the Project is placed in service and the successor in interest fails to execute a new closing agreement, the Project ceases to be investment credit property and the recapture rules of § 50(a) apply.

THIS AGREEMENT IS FINAL AND CONCLUSIVE EXCEPT:

1. The matter it relates to may be reopened in the event of fraud, malfeasance, or misrepresentation of a material fact;

2. It is subject to the Internal Revenue Code sections that expressly provide that effect be given to their provisions (including any stated exception for § 7122) notwithstanding any law or rule of law; and

3. If it relates to a tax period ending after the date of this Closing Agreement, it is subject to any law enacted after such date, which applies to the tax period.

By signing, the parties certify that they have read and agreed to the terms of this Closing Agreement.

Taxpayer: [insert name and identifying number]

By: _____ **Date Signed:** _____
[insert name]

Title: [insert title]
[insert taxpayer's name]

Commissioner of Internal Revenue

By: _____ **Date Signed:** _____
[insert name]

Title: Associate Chief Counsel, Passthroughs and Special Industries, CC:PSI

I have examined the specific matters involved and recommend the acceptance of the proposed agreement.

(Receiving Officer) _____
(Title) _____
Date Signed _____

I have reviewed the specific matters involved and recommend the acceptance of the proposed agreement.

(Reviewing Officer) _____
(Title) _____
Date Signed _____

APPENDIX B

APPLICATION FOR DOE CERTIFICATION

REQUEST FOR SUPPLEMENTAL APPLICATION INFORMATION FOR DOE

Pursuant to Notice 2006–25 establishing the Qualifying Gasification Project Program, the Internal Revenue Service ("IRS") will certify that the investment in a project is eligible for a credit under § 48B of the Internal Revenue Code only if, among other things, the IRS receives from the Department of Energy ("DOE") a certification of feasibility and consistency with energy policy goals ("DOE certification") for the project. This DOE certification shall assure that the applications selected meet the requirements of § 48B and the intent of § 48B to provide credits to projects that are both technically and economically feasible.

The IRS and DOE seek to certify applications that demonstrate a high likelihood of being successfully implemented by the applicants. To qualify, projects must be economically feasible and use the appropriate gasification technology.

This request for submission of supplemental application information:

1. Describes the information to be provided by the applicant seeking a DOE certification, and
2. Lists the evaluation criteria, and Program Policy Factors to be used by DOE in the evaluation of applications.

In conducting this evaluation, the DOE may utilize assistance and advice from qualified personnel from other Federal agencies and/or non-conflicted contractors. DOE will obtain assurances in advance from all evaluators that application information shall be kept confidential and used only for evaluation purposes. DOE reserves the right to request clarifications and/or supplemental information from some or all applicants through written submissions and/or oral presentations.

Notice is given that DOE may determine whether or not to provide a DOE certification to the IRS at any time after the application has been received, without further exchanges or discussions. Therefore, all applicants are advised to submit their most complete and responsive application.

Applications will not be returned.

SUBMISSION INFORMATION FOR DOE CERTIFICATION APPLICATION

A. General

This request, together with the information in sections 5.02, 6.01, and 6.02 of Notice 2006–25 includes all the information needed to complete an application for DOE certification. All applications shall be prepared in accordance with this request in order to provide a standard basis for evaluation and to ensure that each application will be uniform as to format and sequence.

Each application should clearly demonstrate the applicant's capability, knowledge, and experience in regard to the requirements described herein.

Applicants should fully address the requirements of Notice 2006–25 and this request and **not** rely on the presumed background knowledge of reviewers. DOE may reject an application that does not follow the instructions regarding the organization and content of the application when the nature of the deviation and/or omission precludes meaningful review of the application.

B. Unnecessarily Elaborate Applications

Unnecessarily elaborate brochures or other presentations beyond those sufficient to present a complete and effective application are not desired. Elaborate art work, graphics and pictures are neither required nor encouraged.

C. Application Submission for DOE Certification

The application submission to DOE must include the information and documentation required by sections 5.02, 6.01, and 6.02 of Notice 2006–25.

A project will not be considered in the allocation round conducted in a calendar year unless the application for DOE certification of the project is postmarked by June 30 of that calendar year. Two paper copies and one electronic version on a floppy disc or a CD of the Application must be submitted to:

Melissa Robe
National Energy Technology Laboratory
3610 Collins Ferry Road
Morgantown, WV 26507

Note that under section 5 of Notice 2006–25, one paper copy must be sent to the IRS as part of the application for IRS certification. The project will not be considered in the allocation round conducted in a calendar year unless the application is submitted to the IRS by the date specified for that calendar year in section 4.02(7) of Notice 2006–25.

THE INFORMATION REQUIRED BY THIS REQUEST MUST BE SUBMITTED USING THE FORMAT AND THE HEADINGS OF THE PROJECT INFORMATION MEMORANDUM AS DESCRIBED BELOW.

To aid in evaluation, applications shall be clearly and concisely written and logically assembled. All pages of each part shall be appropriately numbered and identified with the name of the applicant and the date.

The application, including the Project Information Memorandum, MUST be formatted in one of the following software applications:

Microsoft Word[tm] 2002 or later edition

Microsoft Excel[tm] 2002 or later edition

Adobe Acrobat[tm] PDF 6.0 or later edition

Financial models should be submitted using the Excel[tm] spreadsheet and must include calculation formulas and assumptions.

The applicant is responsible for the integrity and structure of the electronic files. The DOE will not be responsible for reformatting, restructuring or converting any files submitted under this announcement.

The Project Information Memorandum, *excluding Appendices*, shall not exceed seventy-five (75) pages. Pages in excess of the page limitation will not be considered for evaluation. All text shall be typed, single spaced, using 12 point font, 1 inch margins, and unreduced 8-1/2-inch by 11-inch pages. Illustrations and charts shall be legible with all text in legible font. Pages shall be sequentially numbered. Except as otherwise noted herein the page guidelines previously set forth constitute a limitation on the total amount of material that may be submitted for evaluation. No material may be incorporated in any application by reference as a means to circumvent the page limitation.

D. Form of Project Information Memorandum

PROJECT INFORMATION MEMORANDUM

I. SUMMARY AND INTRODUCTION

- Description of the Project
- Financing and Ownership Structure
- Describe the main parties to the project, including background, ownership and related experience
- Current Project Status and Schedule to Beginning of Construction

II. TECHNOLOGY AND TECHNICAL INFORMATION

Provide a description of the proposed technology, including sufficient supporting information (such as process flow diagrams, equipment descriptions, information on each major process unit and the total plant, compositions of major streams, and the technical plan for achieving the goals proposed for the project) as would be needed to allow DOE to confirm that the technical requirements of § 48B could, in principle, be met. Specifically, the applicant should:

- Provide evidence sufficient to demonstrate that the proposed technology will employ gasification technology as defined in § 48B(c)(2).
- Present information sufficient to justify the total amount of synthesis gas (as defined in § 48B(c)(2)) to be produced by the project (nameplate capacity).
- Provide evidence sufficient to ensure that fuels defined in § 48B(c)(2) will comprise at least 90 percent of the total fuel input (fuels defined in § 48B(c)(2) and any other fuel input) for the project.
- Identify the domestic industry for which the proposed project is intended to be used.

- Identify the specific products and quantities produced by the proposed project, providing sufficient evidence to support claims.
- Provide information and data, including examples of prior similar projects completed by applicant, EPC contractor, and suppliers of major subsystems or equipment, which support the capabilities of the applicant to construct and operate the facility.
- Provide evidence that indicates, for projects using nonrenewable fuels, the gasification technology design reflects reasonable consideration for, and is capable of, accommodating equipment necessary to capture carbon dioxide for later use or sequestration. Include the project status and relevant information from ongoing engineering activities. Also include in an appendix any engineering report or reports used by the applicant to develop the project and to estimate costs and operating performance.

III. SITE CONTROL AND OWNERSHIP

- Provide evidence that the applicant owns or controls a site in the United States of sufficient size to allow the proposed project to be constructed and operated on a long-term basis.
- Describe the current infrastructure at the site available to meet the needs of the project.
- Provide information supporting applicant's conclusion that the proposed site can fully meet all environmental, feedstock supply, water supply, transportation, and public policy requirements.

IV. UTILIZATION OF PROJECT OUTPUT

- Provide evidence that a market exists for the products of the proposed project as evidenced by contracts or written statements of intent from potential customers.
- Describe any sales arrangements that exist or that may be contemplated and summaries of their key terms and conditions.
- Include as an appendix any independent Market Study that has been done in connection with this project, or if no independent market study has been completed, provide a copy of the applicant-prepared market study.

V. PROJECT ECONOMICS

Describe the project economics and provide satisfactory evidence of economic feasibility as demonstrated through the financial forecast and the underlying project assumptions.

Discuss the market potential for the proposed technology beyond the project proposed by the applicant.

Show calculation for the amount of tax credit applied for based on allowable cost.

VI. PROJECT DEVELOPMENT AND FINANCIAL PLAN

Provide the total project budget and major plant costs, *e.g.*, development, operating, capital, construction, and financing costs. Describe the overall approach to project development and financing sufficient to demonstrate project viability. Provide a complete explanation of the source and amount of project equity. Provide a complete explanation of the source and amount of project debt. Provide the audited financial statements for the applicant for the most recently ended three fiscal years, and the unaudited quarterly interim financial statements for the current fiscal year. Applicant should demonstrate that the award recipient is financially viable without the receipt of additional federal funding associated with the proposed project.

For internally financed projects, provide evidence that the applicant has sufficient assets to fund the project with its own resources. Identify any internal approvals required to commit such assets. Include in an appendix copies of any board resolution or other approval authorizing the applicant to commit funds and proceed with the project.

For projects financed through debt instruments either unsecured or secured by assets other than the project, provide evidence that the applicant has sufficient creditworthiness to obtain such financing along with a discussion of the status of such instruments. Identify any internal approvals required to commit the applicant to pursue such financing. Include in an appendix, copies of any board resolution or other approval authorizing the applicant to commit to such financing.

For projects financed through investor equity contributions, discuss the source and status of each contribution. Discuss each investor's financial capability to meet its commitments. Include in an appendix, copies of any executed investment agreements.

If financing through a public offering or private placement of either debt or equity is planned for the project, provide the expected debt rating for the issue and an explanation of applicant's justification for the rating. Describe the status of any discussions with prospective investment bankers or other financial advisors.

For projects employing nonrecourse debt financing, provide a complete discussion of the approach to, and status of, such financing.

In an appendix, provide (1) an Excel based financial model of the project, with formulas, so that review of the model calculations and assumptions may be facilitated; provide *pro-forma* project financial, economic, capital cost, and operating assumptions, including details of all project capital costs, development costs, interest during construction, transmission interconnection costs, other operating expenses, and all other costs and expenses, and (2) a report of an independent financial analyst in accordance with the instructions in Section G of this Appendix B.

VII. PROJECT CONTRACT STRUCTURE

Describe the current status of each of the agreements set forth below. Include as an appendix copies of the contracts or summaries of the key provisions of each of the following agreements:

- Raw Material Input Supply: describe the source and price of raw material inputs for the project. Include as an appendix any studies of price and amount of raw materials that have been prepared. Include a summary of any supply contracts and a copy of the contracts.
- Transportation: explain the arrangements for transporting project inputs and outputs, including costs.
- Operations & Maintenance Agreement: include a summary of the terms and conditions of the contract and a copy of the contract.
- Shareholders Agreement: summarize key terms and include the agreement as an appendix.
- Engineering, Procurement and Construction Agreement: describe the key terms of the existing or expected EPC contract arrangement, including firm price, liquidated damages, hold-backs, performance guarantees, etc.
- Water Supply Agreement: confirm the amount, source, and cost of water supply.

VIII. PERMITS INCLUDING EVIRONMENTAL AUTHORIZATIONS

- Provide a complete list of all federal, state, and local permits, including environmental authorizations or reviews, necessary to commence construction of the project.
- Explain what actions have been taken to date to satisfy the required authorizations and reviews, and the status of each.
- Provide a description of the applicant's plan to obtain and complete all necessary permits, and environmental authorizations and reviews.

IX. PROJECT SCHEDULE

- Provide an overall project schedule which includes technical, business, financial, permitting and other factors to substantiate that the project will meet the 7 year requirement for placing the plant in service.

- Independent Financial Report.
- Copy of internal or external engineering reports.
- Copy of site plan, together with evidence that applicant owns or controls a site. Examples of evidence would include a deed, or an executed contract to purchase or lease the site.
- Information supporting applicant's conclusion that the site is fully acceptable as the project site with respect to environment, raw material supply, water supply, and public policy reasons.
- Project Market Study.
- Financial Model of project.
- Audited financial statements for the applicant for the most recently ended three fiscal years, and the unaudited quarterly interim financial statements for the current fiscal year.
- Project contracts or summary of thereof.
- If no contract currently exists, provide a summary of the expected terms and conditions.
- List of all federal, state, and local permits, including environmental authorizations or reviews, necessary to commence construction.
- Copies of any contract or written statements from customers of intent to purchase project products.

If an appendix listed above is not provided, include in its place a complete explanation of the reasons for the omission.

E. Evaluation Criteria:

Industrial Gasification Projects: will be evaluated on whether they meet all the requirements of § 48B.

Technical: will be evaluated on whether the applicant has demonstrated the capability to accomplish the technical objectives.

Site: will be evaluated on the basis that the site requirement for ownership or control has been met, and that the site is suitable for the proposed project.

Economic: will be evaluated on whether the project has demonstrated economic feasibility, taking into consideration the submitted financial and project development and structural information and financial plan.

Schedule: will be evaluated on the applicant's ability to meet the 7 year placed-in-service requirement.

F. Program Policy Factors to be used by DOE in the evaluation of applications and a description of how they will be applied.

These factors, while not indicators of the applicant's merit, *e.g.*, technical excellence, cost, applicant's ability, etc., may be essential to the process of selecting the application(s) that, individually or collectively, will best achieve the objectives of the authorizing legislation. Such factors are often beyond the control of the applicant. Applicants should recognize that some very good applications may not receive selection for certification because they do not fit within a mix of projects and technologies that maximize the probability of achieving the overall objective of deployment of industrial gasification technology. Therefore, the following Program Policy Factors may be used individually or collectively by DOE following application of evaluation criteria to determine which of the applications shall receive certification by DOE.

- Diversity of technology approaches and methods
- Geographic distribution of potential markets
- Presentation of unique environmental, economic, or performance benefits

G. Instructions for independent financial reports

The applicant shall provide an independent report by a qualified Independent Financial Analyst (such as a bank, investment bank, or other independent financial advisory firm). In the report, the Independent Financial Analyst shall describe qualifications and experience that establish the Analyst's competence to evaluate project financing for projects similar in scope and size to the Applicant's project. The Independent Financial Analyst shall provide a thorough, independent review of the Applicant's approach to project financing. The report shall include the opinion of the Independent Financial Analyst as to the Applicant's likelihood to achieve financial closure in accordance with the Applicant's financing plan.

Required Certification by Independent Financial Analyst:

The report shall be certified by the Independent Financial Analyst, who shall (a) acknowledge that the report has been prepared for submission to the Department of Energy as a part of an application by applicant for an investment credit, and (b) certify that the Independent Financial Analyst has no obligation to the applicant and has acted to the best of its ability as an independent expert.

At a minimum, the Independent Financial Analyst shall:

- Review the financial model.
- Review the project financial assumptions, including economic, capital costs, operating assumptions, and all project development costs.
- Review the financial calculations, including rates of return and coverage ratios.
- Confirm the calculation of the amount of the tax credit applied for.
- Review the project development cost budget.
- Review and comment on the source of funding and evidence of funding.
- Review and comment on project debt and equity sources.
- Confirm that the application includes the required financial reports and debt ratings.
- Describe and comment on the capabilities of the applicant to provide the required financing for the project, and the likelihood of obtaining financing from a source other than the applicant, if such financing is required by the project.

Credit for Nonbusiness Energy Property

Notice 2006–26

SECTION 1. PURPOSE

This notice sets forth interim guidance, pending the issuance of regulations, relating to the credit for nonbusiness energy property under § 25C of the Internal Revenue Code. Specifically, this notice provides procedures that manufacturers may follow to certify property as either an Eligible Building Envelope Component or Qualified Energy Property, as well as guidance regarding the conditions under which taxpayers seeking to claim the § 25C credit may rely on a manufacturer's certification (or, in the case of certain windows, an Energy Star label). The Internal Revenue Service and the Treasury Department expect that the regulations will incorporate the rules set forth in this notice.

SECTION 2. BACKGROUND

.01 Section 1333 of the Energy Policy Act of 2005, Pub. L. No. 109–58, 119 Stat. 594 (2005), added § 25C to the Internal Revenue Code. Section 25C provides a credit against tax for the taxable year in an amount equal to the sum of—

(1) Ten percent of the amount paid or incurred by the taxpayer for qualified energy efficiency improvements (that is, property described in section 4.01 of this notice) installed during the taxable year; and

(2) The amount of expenditures for residential energy property (that is, property described in section 5.01 of this notice) paid or incurred by the taxpayer during the taxable year.

.02 Under § 25C(b), the maximum amount of the credit allowable to a taxpayer under § 25C(a) for all taxable years is $500 ($200 in the case of amounts paid or incurred for exterior windows (including storm windows and skylights)). In addition, the maximum amount of credit allowed is—

(1) $50 for any advanced main air circulating fan;

(2) $150 for any qualified natural gas, propane, or oil furnace or hot water boiler; and

(3) $300 for any item of energy-efficient building property (that is, property described in section 5.01(1)–(7) of this notice).

.03 Section 25C(g) and § 1333(c) of the Energy Policy Act provide that the credit applies to property placed in service after December 31, 2005, and before January 1, 2008.

SECTION 3. REFERENCES TO INTERNATIONAL ENERGY CONSERVATION CODE

Manufacturers and taxpayers may treat any reference in this notice to the International Energy Conservation Code (IECC) as a reference to either the 2001 Supplement of the 2000 International Energy Conservation Code or the 2004 Supplement of the 2003 International Energy Conservation Code.

SECTION 4. QUALIFIED ENERGY EFFICIENCY IMPROVEMENTS

.01 *Eligible Building Envelope Components.*

The credit for qualified energy efficiency improvements is allowed with respect to the following building envelope components (Eligible Building Envelope Components):

(1) An insulation material or system (including any vapor retarder or seal to limit infiltration) that—

(a) Is specifically and primarily designed (within the meaning of section 4.04 of this notice) to reduce heat loss or gain of a dwelling unit when installed in or on the dwelling unit; and

(b) May be taken into account in determining whether the building thermal envelope requirements established by the IECC are satisfied;

(2) An exterior window, skylight, or door (other than a storm window or storm door) that meets or exceeds the prescriptive criteria established by the IECC for the climate zone in which the window, skylight, or door is installed;

(3) A storm window that, in combination with the exterior window over which it is installed, meets or exceeds the prescriptive criteria established by the IECC for the climate zone in which such storm window is installed;

(4) A storm door that, in combination with a wood door assigned a default U-factor by the IECC, does not exceed the default U-factor requirement assigned to such combination by the IECC; and

(5) Any metal roof that—

(a) Has appropriate pigmented coatings that are specifically and primarily designed to reduce the heat gain of a dwelling unit when installed on the dwelling unit; and

(b) Meets or exceeds Energy Star program requirements (as in effect at the time of installation).

.02 *Manufacturer's Certification.*

(1) *Requirements Applicable to Manufacturer.* The manufacturer of a building envelope component may certify to a taxpayer that the component is an Eligible Building Envelope Component by providing the taxpayer with a certification statement that satisfies the requirements of section 4.02(4) of this notice. The certification statement may be provided by including a written copy of the statement with the packaging of the component, in printable form on the manufacturer's website, or in any other manner that will permit the taxpayer to retain the certification statement for tax recordkeeping purposes.

(2) *Taxpayer Reliance.* Except as provided in section 4.02(3) and (6) of this notice, a taxpayer may rely on a manufacturer's certification that a building envelope component is an Eligible Building Envelope Component. A taxpayer is not required to attach the certification statement to the return on which the credit is claimed. However, § 1.6001–1(a) of the Income Tax Regulations requires that taxpayers maintain such books and records as are sufficient to establish the entitlement to, and amount of, any credit claimed by the taxpayer. Accordingly, a taxpayer claiming a credit for an Eligible Building Envelope Component should retain the certification statement as part of the taxpayer's records for purposes of § 1.6001–1(a).

(3) *Reliance Permitted Only for Installation Consistent with Certification.* A taxpayer may rely on a manufacturer's certification that a building envelope component is an Eligible Building Envelope Component—

(a) In the case of an exterior window, skylight, or door (other than a storm window or storm door), only if the component is installed in a climate zone identified in the certification statement; and

(b) In the case of a storm window, only if the component is installed over an exterior window of a class identified in the certification statement and in a climate zone identified for that class of exterior window.

(4) *Content of Manufacturer's Certification Statement.* A manufacturer's certification statement must contain the following:

(a) The name and address of the manufacturer;

(b) Identification of the component as an insulation material or system, an exterior window or skylight, an exterior door, or a metal roof;

(c) The make, model number, and any other appropriate identifiers of the component;

(d) A statement that the component is an Eligible Building Envelope Component that qualifies for the credit allowed under § 25C;

(e) In the case of an exterior window, skylight, or door (other than a storm window or storm door), the climate zone or zones for which the applicable prescriptive criteria are satisfied;

(f) In the case of a storm window—

(i) The classes of exterior window (*e.g.*, single pane; double pane, clear glass; double pane, Low-E coating) over which the storm window may be installed and that, in combination with the storm window, satisfy the applicable prescriptive criteria for one or more climate zones; and

(ii) For each such class of exterior window, the climate zone or zones for which the applicable prescriptive criteria are satisfied; and

(g) A declaration, signed by a person currently authorized to bind the manufacturer in such matters, in the following form:

"Under penalties of perjury, I declare that I have examined this certification statement, and to the best of my knowledge and belief, the facts are true, correct, and complete."

(5) *Manufacturer's Records.* A manufacturer that certifies to a taxpayer that a component is an Eligible Building Envelope Component must retain in its records documentation establishing that the component satisfies the applicable conditions of section 4.01 of this notice including, in the case of an exterior window, its National Fenestration Rating Council (NFRC) rating. The manufacturer must, upon request, make such documentation available for inspection by the Service.

(6) *Effect of Erroneous Certification or Failure to Satisfy Documentation Requirements.* The Service may, upon examination (and after any appropriate consultation with the Department of Energy (DOE) or Environmental Protection Agency (EPA)), determine that a com-

ponent that has been certified under this section is not an Eligible Building Envelope Component. In that event, or if the component's manufacturer fails to satisfy the requirements relating to documentation in section 4.02(5) of this notice, the manufacturer's right to provide a certification on which future purchasers of the component can rely will be withdrawn, and taxpayers purchasing the component after the date on which the Service publishes an announcement of the withdrawal may not rely on the manufacturer's certification. Taxpayers may continue to rely on the certification for components purchased on or before the date on which the announcement of the withdrawal is published (including in cases in which the component is not installed and the credit is not claimed until after the announcement of the withdrawal is published). Manufacturers are reminded that an erroneous certification statement may result in the imposition of penalties—

(a) Under § 7206 for fraud and making false statements; and

(b) Under § 6701 for aiding and abetting an understatement of tax liability (in the amount of $1,000 per return on which a credit is claimed in reliance on the certification).

(7) *Availability of Certification Information.* Manufacturers are encouraged to provide a listing of qualified components and applicable certification information on their websites to facilitate taxpayer identification of qualified components.

.03 *Special Rule for Energy Star Windows and Skylights.* A taxpayer may treat an exterior window or skylight that bears an Energy Star label and is installed in the region identified on the label as an Eligible Building Envelope Component and may rely on such Energy Star label, rather than on a manufacturer's certification statement, in claiming the § 25C credit.

.04 *Specifically and Primarily Designed.* A component is not specifically and primarily designed to reduce heat loss or gain of a dwelling unit if its principal purposes are to provide structural support, to provide a finished surface, as in the case of drywall or siding, or to serve any other function unrelated to the reduction of heat loss or gain. The principal purpose of a component serves functions unrelated to the reduction of heat loss or gain if production costs attributable to features other than those that reduce heat loss or gain exceed production costs attributable to features that reduce heat loss or gain.

.05 *Additional Requirements.* A taxpayer may claim a credit with respect to amounts paid or incurred for an Eligible Building Envelope Component only if the following additional requirements are satisfied:

(1) The component is installed in or on a dwelling unit located in the United States and, at the time of installation, the dwelling unit is owned and used by the taxpayer as the taxpayer's principal residence (within the meaning of § 121);

(2) The original use of the component commences with the taxpayer; and

(3) The component reasonably can be expected to remain in use for at least five years. For this purpose, a component will be treated as reasonably expected to remain in use for at least five years if the manufacturer offers, at no extra charge, at least a two-year warranty providing for repair or replacement of the component in the event of a defect in materials or workmanship. If the manufacturer does not offer such a warranty, all relevant facts and circumstances are taken into account in determining whether the component reasonably can be expected to remain in use for at least five years.

.06 *Installation Costs.* With respect to Eligible Building Envelope Components, the credit is allowed only for amounts paid or incurred to purchase the components. The credit is not allowed for amounts paid or incurred for the onsite preparation, assembly, or original installation of the components.

SECTION 5. RESIDENTIAL ENERGY PROPERTY

.01 *Qualified Energy Property.* The credit for residential energy property expenditures is allowed with respect to the following property (Qualified Energy Property):

(1) An electric heat pump water heater that yields an energy factor of at least 2.0 in the standard DOE test procedure;

(2) An electric heat pump that has a heating seasonal performance factor (HSPF) of at least 9, a seasonal energy efficiency ratio (SEER) of at least 15, and an energy efficiency ratio (EER) of at least 13;

(3) A closed loop geothermal heat pump that has an EER of at least 14.1 and a heating coefficient of performance (COP) of at least 3.3;

(4) An open loop geothermal heat pump that has an EER of at least 16.2 and a heating COP of at least 3.6;

(5) A direct expansion geothermal heat pump that has an EER of at least 15 and a heating COP of at least 3.5;

(6) A central air conditioner that achieves the highest efficiency tier that has been established by the Consortium of Energy Efficiency and is in effect on January 1, 2006;

(7) A natural gas, propane, or oil water heater that has an energy factor of at least 0.80;

(8) A natural gas, propane, or oil furnace or hot water boiler that achieves an annual fuel utilization efficiency rate of not less than 95; and

(9) A fan that is used in a natural gas, propane, or oil furnace and has an annual electricity use of no more than 2 percent of the total annual site energy use of the furnace (as determined in the standard DOE test procedure).

.02 *Manufacturer's Certification.* —

(1) *Requirements Applicable to Manufacturer.* The manufacturer of a product may certify to a taxpayer that the product is Qualified Energy Property by providing the taxpayer with a certification statement that satisfies the requirements of section 5.02(3) of this notice. The certification statement may be provided by including a written copy of the statement with the packaging of the product, in printable form on the manufacturer's website, or in any other manner that will permit the taxpayer to retain the certification statement for tax recordkeeping purposes.

(2) *Taxpayer Reliance.* Except as provided in section 5.02(5) of this notice, a taxpayer may rely on a manufacturer's certification that a product is Qualified Energy Property. A taxpayer is not required to attach the certification statement to the return on which the credit is claimed. However, § 1.6001–1(a) of the Income Tax Regulations requires that taxpayers maintain such books and records as are sufficient to establish the entitlement to, and amount of, any credit claimed by the taxpayer. Accordingly, a taxpayer claiming a credit for Qualified Energy Property should retain the certification statement as

part of the taxpayer's records for purposes of § 1.6001–1(a).

(3) *Content of Manufacturer's Certification Statement.* A manufacturer's certification statement to be provided to taxpayers who purchase Qualified Energy Property must contain the following:

(a) The name and address of the manufacturer;

(b) The class of Qualified Energy Property (as listed in section 5.01 of this notice) in which the product is included;

(c) The make, model number, and any other appropriate identifiers of the product;

(d) A statement that the product is Qualified Energy Property that qualifies for the credit allowed under § 25C; and

(e) A declaration, signed by a person currently authorized to bind the manufacturer in these matters, in the following form:

"Under penalties of perjury, I declare that I have examined this certification statement, and to the best of my knowledge and belief, the facts presented are true, correct, and complete."

(4) *Manufacturer's Records.* A manufacturer that certifies to a taxpayer that a product is Qualified Energy Property must retain in its records documentation establishing that the product satisfies the applicable conditions of section 5.01 of this notice. The manufacturer must, upon request, make such documentation available for inspection by the Service. The documentation—

(a) In the case of the EER for a central air conditioner or electric heat pump, must include measurements based on published data that are the result of manufacturer tests at 95 degrees Fahrenheit and may be based on the certified data of the Air Conditioning and Refrigeration Institute that are prepared in partnership with the Consortium for Energy Efficiency; and

(b) In the case of a geothermal heat pump, must be based on testing under the conditions of ARI/ISO Standard 13256–1 for Water Source Heat Pumps or ARI 870 for Direct Expansion GeoExchange Heat Pumps, as appropriate, and include evidence that water heating services have been provided through a desuperheater or integrated water heating system connected to the storage water heater tank.

(5) *Effect of Erroneous Certification or Failure to Satisfy Documentation Requirements.* The Service may, upon examination (and after any appropriate consultation with DOE or EPA), determine that a product that has been certified under this section is not Qualified Energy Property. In that event, or if the product's manufacturer fails to satisfy the requirements relating to documentation in section 5.02(4) of this notice, the manufacturer's right to provide a certification on which future purchasers of the product can rely will be withdrawn, and taxpayers purchasing the product after the date on which the Service publishes an announcement of the withdrawal may not rely on the manufacturer's certification. Taxpayers may continue to rely on the certification for products purchased on or before the date on which the announcement of the withdrawal is published (including in cases in which the product is not installed and the credit is not claimed until after the announcement of the withdrawal is published). Manufacturers are reminded that an erroneous certification statement may result in the imposition of penalties—

(a) Under § 7206 for fraud and making false statements; and

(b) Under § 6701 for aiding and abetting an understatement of tax liability (in the amount of $1,000 per return on which a credit is claimed in reliance on the certification).

(6) *Availability of Certification Information.* Manufacturers are encouraged to provide a listing of qualified products and applicable certification information on their websites to facilitate taxpayer identification of qualified products.

.03 *Additional Requirements.* A taxpayer may claim a credit with respect to expenditures paid or incurred for Qualified Energy Property only if the following additional requirements are satisfied:

(1) The property is installed on or in connection with a dwelling unit located in the United States and, at the time of installation, the dwelling unit is owned and used by the taxpayer as the taxpayer's principal residence (within the meaning of § 121); and

(2) The property is originally placed in service by the taxpayer.

.04 *Installation Costs.* The credit is allowed for amounts paid or incurred to purchase Qualified Energy Property and for expenditures for labor costs properly allocable to the onsite preparation, assembly, or original installation of the property.

SECTION 6. PAPERWORK REDUCTION ACT

The collection of information contained in this notice has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1989.

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 OMB control number.

The collections of information in this notice are in sections 4 and 5. This information is required to be collected and retained in order to ensure that property meets the requirements for the Nonbusiness Energy Credit under § 25C. This information will be used to determine whether the property for which manufacturers provide certifications is property that qualifies for the credit. The collection of information is required to obtain a benefit from manufacturers' certification statements that property qualifies for the credit. The likely respondents are corporations, partnerships, and individuals.

The estimated total annual reporting burden is 350 hours.

The estimated annual burden per respondent varies from 2 hours to 3 hours, depending on individual circumstances, with an estimated average burden of 2.5 hours to complete the requests for certification required under this notice. The estimated number of respondents is 140.

The estimated annual frequency of responses is on occasion.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

SECTION 7. DRAFTING INFORMATION

The principal author of this notice is Kelly R. Morrison-Lee of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact

Jennifer Bernardini at (202) 622–3120 (not a toll-free call).

Certification of Energy Efficient Home Credit

Notice 2006–27

SECTION 1. PURPOSE

This notice sets forth a process under which an eligible contractor who constructs a dwelling unit (other than a manufactured home) may obtain a certification that the dwelling unit is an energy efficient home that satisfies the requirements of § 45L(c)(1)(A) and (B) of the Internal Revenue Code. This notice also provides for a public list of software programs that may be used in calculating energy consumption for purposes of obtaining a certification that satisfies the requirements of § 45L(d). Guidance relating to manufactured homes will be provided in a separate notice.

SECTION 2. BACKGROUND

.01 *In General*. Section 45L provides a credit to an eligible contractor who constructs a qualified new energy efficient home. For qualified new energy efficient homes (other than manufactured homes), the amount of the credit is $2,000. A dwelling unit qualifies for the credit if—

(1) It is located in the United States;

(2) Its construction is substantially completed after August 8, 2005;

(3) It meets the energy saving requirements of § 45L(c)(1); and

(4) It is acquired from the eligible contractor after December 31, 2005, and before January 1, 2008, for use as a residence.

.02 *Energy Saving Requirements*. To meet the energy saving requirements of § 45L(c)(1), a dwelling unit must be certified to provide a level of heating and cooling energy consumption that is at least 50 percent below that of a comparable dwelling unit constructed in accordance with the standards of section 404 of the 2004 Supplement to the 2003 International Energy Conservation Code (2004 IECC Supplement), and to have building envelope component improvements that provide for a level of heating and cooling energy consumption that is at least 10 percent below that of a comparable dwelling unit. For this purpose, heating and cooling energy and cost savings must be calculated in accordance with the procedures prescribed in Residential Energy Services Network (RESNET) Publication No. 05–001 (Nov. 17, 2005).

SECTION 3. CERTIFICATION

A contractor must obtain the certification required under § 45L(c)(1) with respect to a dwelling unit (other than a manufactured home) from an eligible certifier before claiming the energy efficient home credit with respect to the dwelling unit. A contractor is not required to file the certification with the return on which the credit is claimed. However, § 1.6001–1(a) of the Income Tax Regulations requires that taxpayers maintain such books and records as are sufficient to establish the entitlement to, and amount of, any credit claimed by the taxpayer. Accordingly, an eligible contractor claiming a $2,000 credit under § 45L should retain the certification as part of the eligible contractor's records to satisfy this requirement. The certification will be treated as satisfying the requirements of § 45L(c)(1) if all construction has been performed in a manner consistent with the design specifications provided to the eligible certifier and the certification contains all of the following:

.01 The name, address, and telephone number of the eligible certifier.

.02 The address of the dwelling unit.

.03 A statement by the eligible certifier that—

(1) The dwelling unit has a projected level of annual heating and cooling energy consumption that is at least 50 percent below the annual level of heating and cooling energy consumption of a reference dwelling unit in the same climate zone;

(2) Building envelope component improvements alone account for a level of annual heating and cooling energy consumption that is at least 10 percent below the annual level of heating and cooling energy consumption of a reference dwelling unit in the same climate zone; and

(3) Heating and cooling energy and cost savings have been calculated in the manner prescribed in section 2.02 of this notice.

.04 A statement by the eligible certifier that field inspections of the dwelling unit (or of other dwelling units under the sampling protocol described below) performed by the eligible certifier during and after the completion of construction have confirmed that all features of the home affecting such heating and cooling energy consumption comply with the design specifications provided to the eligible certifier. With respect to builders who build at least 85 homes a year or build subdivisions with the same floor plan using the same subcontractors, the eligible certifier may use the sampling protocol found in the current ENERGY STAR® for Homes Sampling Protocol Guidelines instead of inspecting all of the homes. The sampling protocols can be found at the following web address: *http://www.energystar.gov/index.cfm?c=bldrs_lenders_raters.pt_homes_policies#SamplingProtocol*

.05 A list identifying—

(1) The dwelling unit's energy efficient building envelope components and their respective energy performance rating as required by section 401.3 of the 2004 IECC Supplement; and

(2) The energy efficient heating and cooling equipment installed in the dwelling unit and the energy efficiency performance of such equipment as rated under applicable Department of Energy Appliance Standards test procedures.

.06 Identification of the listed software program used to calculate energy consumption (see section 5 of this notice).

.07 A declaration, applicable to the certification and any accompanying documents, signed by a person currently authorized to bind the eligible certifier in these matters, in the following form:

> "Under penalties of perjury, I declare that I have examined this certification, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of this certification are true, correct, and complete."

SECTION 4. DEFINITIONS

The following definitions apply for purposes of this notice:

(1) Building envelope components are basement walls, exterior walls, floor, roof, and any other building element that encloses conditioned space, including any boundary between conditioned space and unconditioned space.

(2) A climate zone is a geographical area within which all locations have similar long-term climate conditions as defined in Chapter 3 of the 2004 IECC Supplement.

(3) A dwelling unit is a single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation, within a building that is not more than three stories above grade in height.

(4) An eligible certifier is a person that is not related (within the meaning of § 45(e)(4)) to the eligible contractor and has been accredited or otherwise authorized by RESNET (or an equivalent rating network) to use energy performance measurement methods approved by RESNET (or the equivalent rating network). An employee or other representative of a utility or local building regulatory authority may qualify as an eligible certifier if the employee or representative has been accredited or otherwise authorized by RESNET (or an equivalent rating network) to use the approved energy performance measurement methods.

(5) An eligible contractor is the person that constructed a qualified new energy efficient home.

(6) A manufactured home is a dwelling unit constructed in accordance with the Federal Manufactured Home Construction and Safety Standards (24 C.F.R § 3280).

(7) A reference dwelling unit is a dwelling unit that is comparable to the dwelling unit constructed by the eligible contractor except that—

(a) The comparable dwelling unit is constructed in accordance with the minimum standards of Chapter 4 of the 2004 IECC Supplement;

(b) The comparable dwelling unit's air conditioners have a Seasonal Energy Efficiency Ratio (SEER) of 13, measured in accordance with 10 C.F.R. 430.23(m); and

(c) The comparable dwelling unit's heat pumps have a SEER of 13 and a Heating Seasonal Performance Factor (HSPF) of 7.7, measured in accordance with 10 C.F.R. 430.23(m).

SECTION 5. SOFTWARE PROGRAMS

.01 *In General.* The Internal Revenue Service will create and maintain a public list of software programs that may be used to calculate energy consumption for purposes of providing a certification under section 3 of this notice. A software program will be included on the original list if the software developer submits the following information to the Service and RESNET:

(1) The name, address, and telephone number of the software developer;

(2) The name or other identifier of the program as it will appear on the list;

(3) The test results, test runs, and the software program with which the test was conducted; and

(4) A declaration by the developer of the software program, made under penalties of perjury, that the software program has satisfied all tests required to conform to the software accreditation process prescribed in RESNET Publication No. 05–001 (Nov. 17, 2005).

.02 *Addresses.* Submissions under this section must be addressed as follows:

Submissions to the Service submitted by U.S. mail:

Internal Revenue Service
Attn: Program Administrator
CC:PSI:7, Room 4315
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Submissions to the Service submitted by a private delivery service:

Internal Revenue Service
Attn: Program Administrator
CC:PSI:7, Room 4315
1111 Constitution Ave., N.W.
Washington, DC 20224

Submissions to RESNET:

Residential Energy Services Network
P.O. Box 4561
Oceanside, CA 92052–4561

.03 *Original and Updated Lists.* A software program will be included on the original list if the software developer's submission is received before March 1, 2006. The list will be updated as necessary to reflect submissions received after February 28, 2006.

.04 *Removal from Published List.* The Service may, upon examination (and after appropriate consultation with the Department of Energy), determine that a software program is not sufficiently accurate to justify its use in calculating energy consumption for purposes of providing a certification under section 3 of this notice and remove the software program from the published list. The Service may undertake an examination on its own initiative or in response to a public request supported by appropriate analysis of the software program's deficiencies.

.05 *Effect of Removal from Published List.* A software program may not be used to calculate energy consumption for purposes of providing a certification that satisfies the requirements of § 45L after the date on which the software is removed from the published list. The removal will not affect the validity of any certification provided with respect to a dwelling unit on or before the date on which the software is removed from the published list.

.06 *Public Availability of Information.* RESNET may make available for public review any information provided to it under section 5.01 of this notice.

SECTION 6. PAPERWORK REDUCTION ACT

The collections of information contained in this notice have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1995.

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 OMB control number.

The collections of information in this notice are in sections 3 and 5. This information is required to be collected and retained in order to ensure that a dwelling unit (other than a manufactured home) meets the requirements for the energy efficient home credit under § 45L. This information will be used to determine whether property for which certifications are provided is property that qualifies for the credit. The collection of information is required to obtain a benefit. The likely respondents are corporations and partnerships.

The estimated total annual reporting burden is 180 hours.

The estimated annual burden per respondent varies from 2.5 hours to 4 hours, depending on individual circumstances, with an estimated average burden of 3 hours to complete the certification required under this notice. The estimated number of respondents is 45.

The estimated annual frequency of responses is on occasion.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

SECTION 7. DRAFTING INFORMATION

The principal author of this notice is Jennifer C. Bernardini of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, contact Jennifer C. Bernardini at (202) 622–3120 (not a toll-free call).

Energy Efficient Home Credit; Manufactured Homes

Notice 2006–28

SECTION 1. PURPOSE

This notice sets forth a process under which an eligible contractor who constructs a manufactured home may obtain a certification that the dwelling unit is an energy efficient home that satisfies the requirements of § 45L(c)(2) or (3) of the Internal Revenue Code. This notice also provides for a public list of software programs that may be used in calculating energy consumption for purposes of providing a certification that satisfies the requirements of § 45L(d). Guidance relating to other dwelling units will be provided in a separate notice.

SECTION 2. BACKGROUND

.01 *In General.* Section 45L provides a credit to an eligible contractor who constructs a qualified new energy efficient home. For qualified new energy efficient homes that are manufactured homes, the amount of the credit is $1,000 or $2,000, depending on the energy savings that are achieved. A manufactured home qualifies for the credit if:

(1) It is located in the United States;

(2) Its construction is substantially completed after August 8, 2005;

(3) It meets the energy saving requirements of § 45L(c)(2) or (3); and

(4) It is acquired, directly or indirectly, from the eligible contractor after December 31, 2005, and before January 1, 2008, for use as a residence.

.02 *Energy Saving Requirements.* To meet the energy saving requirements of § 45L(c)(2) or (3), a manufactured home must meet one of the following standards:

(1) To meet the energy saving requirements of § 45L(c)(2) and qualify for the $2,000 credit, a manufactured home must be certified to provide a level of heating and cooling energy consumption that is at least 50 percent below that of a comparable manufactured home constructed in accordance with the standards of section 404 of the 2004 Supplement to the 2003 International Energy Conservation Code (2004 IECC Supplement), and to have building envelope component improvements that provide for a level of heating and cooling energy consumption that is at least 10 percent below that of a comparable dwelling unit (see section 3 of this notice); or

(2) To meet the energy saving requirements of § 45L(c)(3) and qualify for the $1,000 credit, a manufactured home must either—

(a) be certified to provide a level of heating and cooling energy consumption that is at least 30 percent below that of a comparable manufactured home constructed in accordance with the standards of section 404 of the 2004 IECC Supplement, and to have building envelope component improvements that provide for a level of heating and cooling energy consumption that is at least 10 percent below that of a comparable dwelling unit; or

(b) meet the current requirements established by the Administrator of the Environmental Protection Agency under the ENERGY STAR® Labeled Homes Program in effect on the date construction is substantially completed (See section 4 of this notice).

.03 For purposes of section 2.02 of this notice, heating and cooling energy and cost savings must be calculated in accordance with the procedures prescribed in Residential Energy Services Network (RESNET) Publication No. 05–001 (Nov. 17, 2005).

SECTION 3. REQUIREMENTS TO CLAIM THE $2,000 CREDIT

An eligible contractor must obtain the certification required under § 45L(c)(2) with respect to a manufactured home from an eligible certifier before claiming the $2,000 energy efficient home credit with respect to the manufactured home. An eligible contractor is not required to attach the certification to the return on which the credit is claimed. However, § 1.6001–1(a) of the Income Tax Regulations requires that taxpayers maintain such books and records as are sufficient to establish the entitlement to, and amount of, any deduction claimed by the taxpayer. Accordingly, an eligible contractor claiming a $2,000 credit under § 45L should retain the certification as part of the eligible contractor's records to satisfy this requirement. The certification will be treated as satisfying the requirements of § 45L(c)(2) if all construction has been performed in a manner consistent with the design specifications provided to the eligible certifier and the certification contains all of the following:

.01 The name, address, and telephone number of the eligible certifier;

.02 The dwelling unit's serial or other identification number;

.03 A statement by the eligible certifier that—

(1) The dwelling unit has a projected level of annual heating and cooling energy consumption that is at least 50 percent below the annual level of heating and cooling energy consumption of a reference dwelling unit in the same climate zone;

(2) Building envelope component improvements alone account for a level of annual heating and cooling energy consumption that is at least 10 percent below the annual level of heating and cooling energy consumption of a reference dwelling unit in the same climate zone; and

(3) Heating and cooling energy and cost savings have been calculated in the manner prescribed in section 2.02(3) of this notice;

.04 A statement by the eligible certifier that field inspections of the dwelling

unit (or of other dwelling units under the sampling protocol described below) performed by the eligible certifier after installation on the permanent site have confirmed that such heating and cooling energy consumption complies with the design specifications provided to the eligible certifier. With respect to manufacturers who manufacture at least 85 homes a year, the certifier may use the sampling protocol found in the current standards of the ENERGY STAR® Qualified Manufactured Homes — Design, Manufacturing, Installation, and Certification Procedures, located at the following web address: *http://www.energystar.gov/index.cfm?c=bldrs_lenders_raters.pt_builder_manufactured*

.05 A list identifying—

(1) The dwelling unit's energy efficient building envelope components and their respective energy performance rating as required by section 401.3 of the 2004 IECC Supplement; and

(2) The energy efficient heating and cooling equipment installed in the dwelling unit and the energy efficiency performance of such equipment as rated under applicable Department of Energy Appliance Standards test procedures;

.06 A statement identifying the listed software program used to calculate energy consumption (see section 6 of this notice); and

.07 A declaration, applicable to the certification and any accompanying documents, signed by a person currently authorized to bind the eligible certifier in such matters, in the following form:

"Under penalties of perjury, I declare that I have examined this certification, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of this certification are true, correct, and complete."

SECTION 4. REQUIREMENTS TO CLAIM THE $1,000 CREDIT

.01 *Certified Homes.* Except as provided in section 4.02 of this notice, an eligible contractor must obtain the certification required under § 45L(c)(3)(A) with respect to a manufactured home from an eligible certifier before claiming the $1,000 energy efficient home credit with respect to the manufactured home. An eligible contractor is not required to attach the certification to the return on which the credit is claimed. However, § 1.6001–1(a) requires that taxpayers maintain such books and records as are sufficient to establish the entitlement to, and amount of, any deduction claimed by the taxpayer. Accordingly, an eligible contractor claiming a $1,000 credit under § 45L should retain the certification as part of the eligible contractor's records to satisfy this requirement. The certification will be treated as satisfying the requirements of § 45L(c)(3)(A) if all construction has been performed in a manner consistent with the design specifications provided to the eligible certifier and the certification contains all of the following:

(1) The name, address, and telephone number of the eligible certifier;

(2) The dwelling unit's serial or other identification number;

(3) A statement by the eligible certifier that—

(a) The dwelling unit has a projected level of annual heating and cooling energy consumption that is at least 30 percent below the annual level of heating and cooling energy consumption of a reference dwelling unit in the same climate zone;

(b) Building envelope component improvements alone account for a level of annual heating and cooling energy consumption that is at least 10 percent below the annual level of heating and cooling energy consumption of a reference dwelling unit in the same climate zone; and

(c) Heating and cooling energy and cost savings have been calculated in the manner prescribed in section 2.02(3) of this notice;

(4) A statement by the eligible certifier that field inspections of the dwelling unit (or of other dwelling units under the sampling protocol described below) performed by the eligible certifier after installation on the permanent site have confirmed that such heating and cooling energy consumption complies with the design specifications provided to the eligible certifier. With respect to manufacturers who manufacture at least 85 homes a year, the certifier may use the sampling protocol found in the current standards of the current ENERGY STAR® Qualified Manufactured Homes: Guide for Retailers, located at the following web address: *http://www.energystar.gov/index.cfm?c=bldrs_lenders_raters.pt_builder_manufactured*

(5) A list identifying—

(a) The dwelling unit's energy efficient building envelope components and their respective energy performance rating as required by section 401.3 of the 2004 IECC Supplement; and

(b) The energy efficient heating and cooling equipment installed in the dwelling unit and the energy efficiency performance of the equipment as rated under applicable Department of Energy Appliance Standards test procedures;

(6) A statement identifying the listed software program used to calculate energy consumption (see section 6 of this notice); and

(7) A declaration, applicable to the certification and any accompanying documents, signed by a person currently authorized to bind the eligible certifier in these matters, in the following form:

"Under penalties of perjury, I declare that I have examined this certification, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of this certification are true, correct, and complete."

.02 *Energy Star Homes.* An eligible contractor may claim the $1,000 energy efficient home credit with respect to a manufactured home by meeting the applicable certification requirements established by the Administrator of the Environmental Protection Agency under the ENERGY STAR® Labeled Homes Program in effect on the date construction is substantially completed.

SECTION 5. DEFINITIONS

The following definitions apply for purposes of this notice:

.01 Building envelope components are basement walls, exterior walls, floor, roof, and any other building element that encloses conditioned space, including any boundary between conditioned space and unconditioned space;

.02 A climate zone is a geographical area within which all locations have similar long-term climate conditions as defined in Chapter 3 of the 2004 IECC Supplement;

.03 A dwelling unit is a single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation, within a building that is not more than three stories above grade in height;

.04 An eligible certifier is a person that is not related (within the meaning of § 45(e)(4)) to the eligible contractor and has been accredited or otherwise authorized by RESNET (or an equivalent rating network) to use energy performance measurement methods approved by RESNET (or an equivalent rating network). An employee or other representative of a utility or local building regulatory authority may qualify as an eligible certifier if the employee or representative has been accredited or otherwise authorized by RESNET (or an equivalent rating network) to use the approved energy performance measurement methods;

.05 An eligible contractor in the case of a qualified new energy efficient home that is a manufactured home is the manufactured home producer of the home;

.06 A manufactured home is a dwelling unit constructed in accordance with the Federal Manufactured Home Construction and Safety Standards (24 C.F.R. § 3280); and

.07 A reference dwelling unit is a dwelling unit that is comparable to the manufactured home produced by the eligible contractor except that—

(a) The comparable dwelling unit is constructed in accordance with the minimum standards of Chapter 4 of the 2004 IECC Supplement;

(b) The comparable dwelling unit's air conditioners have a Seasonal Energy Efficiency Ratio (SEER) of 13, measured in accordance with 10 C.F.R. 430.23(m); and

(c) The comparable dwelling unit's heat pumps have a SEER of 13 and a Heating Seasonal Performance Factor (HSPF) of 7.7, measured in accordance with 10 C.F.R. 430.23(m).

SECTION 6. SOFTWARE PROGRAMS

.01 *In General.* The Internal Revenue Service will create and maintain a public list of software programs that may be used to calculate energy consumption for purposes of providing a certification under section 3 or 4 of this notice. A software program will be included on the list if the software developer submits the following information to the Service and RESNET:

(1) The name, address, and telephone number of the software developer;

(2) The name or other identifier of the program as it will appear on the list;

(3) The test results, test runs, and the software program with which the test was conducted; and

(4) A declaration by the developer of the software program, made under penalties of perjury, that the software program has satisfied all tests required to conform to the software accreditation process prescribed in RESNET Publication No. 05–001 (Nov. 17, 2005).

.02 *Addresses.* Submissions under this section must be addressed as follows:

Submissions to the Service submitted by U.S. mail:

Internal Revenue Service
Attn: Program Administrator
CC:PSI:7, Room 4315
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Submissions to the Service submitted by a private delivery service:

Internal Revenue Service
Attn: Program Administrator
CC:PSI:7, Room 4315
1111 Constitution Ave., N.W.
Washington, DC 20224

Submissions to RESNET:

Residential Energy Services Network
P.O. Box 4561
Oceanside, CA 92052–4561

.03 *Original and Updated Lists.* A software program will be included on the original list if the software developer's submission is received before March 1, 2006. The list will be updated as necessary to reflect submissions received after February 28, 2006.

.04 *Removal from Published List.* The Service may, upon examination (and after appropriate consultation with the Department of Energy), determine that a software program is not sufficiently accurate to justify its use in calculating energy consumption for purposes of providing a certification under sections 3 and 4 of this notice and remove the software from the published list. The Service may undertake an examination on its own initiative or in response to a public request supported by appropriate analysis of the software program's deficiencies.

.05 *Effect of Removal from Published List.* A software program may not be used to calculate energy consumption for purposes of providing a certification that satisfies the requirements of § 45L after the date on which the software is removed from the published list. The removal will not affect the validity of any certification provided with respect to a dwelling unit on or before the date on which the software is removed from the published list.

.06 *Public Availability of Information.* RESNET may make available for public review any information provided to it under section 6.01 of this notice.

SECTION 7. SALES TO DEALERS

.01 *In General.* In the case of a manufactured home sold by an eligible contractor to a dealer of manufactured homes, the eligible contractor may rely on a statement by the dealer to establish the date on which a manufactured home is acquired, that it is located in the United States, and that it is acquired for use as a residence. The eligible contractor is not required to attach the statement to the return on which the credit is claimed. However, § 1.6001–1(a) requires that taxpayers maintain such books and records as are sufficient to establish the entitlement to, and amount of, any deduction claimed by the taxpayer. Accordingly, an eligible contractor claiming a $1,000 credit under § 45L should retain the statement as part of its records to satisfy this requirement, and is not entitled to rely on the statement unless the statement is so retained.

.02 *Content of Statement.* The eligible contractor may not rely on the statement by the dealer unless the statement specifies the date of the retail sale of the manufactured home, that the dealer delivered the manufactured home to the purchaser at an address in the United States, and that the dealer has no knowledge of any information suggesting that the purchaser will use the manufactured home other than as a res-

idence. The statement must also contain the following information:

(1) The name, address, and telephone number of the dealer; and

(2) A declaration, applicable to the statement made by a dealer and any accompanying documents, signed by a person currently authorized to bind the dealer in such matters, in the following form:

"Under penalties of perjury, I declare that to the best of my knowledge and belief, the facts presented with respect to this sale transaction are true, correct, and complete."

SECTION 8. PAPERWORK REDUCTION ACT

The collections of information contained in this notice have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1994.

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 OMB control number.

The collections of information in this notice are in sections 3, 4, 6, and 7. This information is required to be collected and retained in order to ensure that a manufactured home meets the requirements for the energy efficient home credit under § 45L. This information will be used to determine whether property for which certifications are provided is property that qualifies for the credit. The collection of information is required to obtain a benefit. The likely respondents are corporations, partnerships, and individuals.

The estimated total annual reporting burden is 75 hours.

The estimated annual burden per respondent varies from 3.5 hours to 5 hours, depending on individual circumstances, with an estimated average burden of 4 hours to complete the certification required under this notice. The estimated number of respondents is 15.

The estimated annual frequency of responses is on occasion.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

DRAFTING INFORMATION

The principal author of this notice is Jennifer C. Bernardini of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, contact Jennifer C. Bernardini at (202) 622–3120 (not a toll-free call).

Part IV. Items of General Interest

Guidance Under Section 1502; Application of Section 108 to Members of a Consolidated Group; Correction

Announcement 2006–15

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document corrects final regulations, (T.D. 9192, 2005–15 I.R.B. 866) that were published in the Federal Register on Tuesday, March 22, 2005 (70 FR 14395), that govern the application of section 108 when a member of a consolidated group realizes discharge of indebtedness income.

DATES: This correction is effective on March 22, 2005.

FOR FURTHER INFORMATION CONTACT: Amber Cook, (202) 622–7530 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations, temporary regulations, and removal of temporary regulations (T.D. 9192) that is the subject of this correction is under section 1502 of the Internal Revenue Code.

Need for Correction

As published, T.D. 9192 contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations, temporary regulations, and removal of temporary regulations (T.D. 9192) that were the subject of FR Doc. 05–5528, are corrected as follows:

PART 1—INCOME TAXES

1. The authority citation for 26 CFR part 1 continues to read as follows:

Authority: 26 U.S.C. 7805, unless otherwise noted. Section 1.1502–11 also issued under 26 U.S.C. 1502.

Sec. 1.1502–11 [Corrected]

2. In Sec. 1.1502–11, paragraph (c)(5), Example 3, (ii)(E), remove the words "take into account its $80 of excluded COD." and add in their place the words "take into account its $80 of excluded COD income.".

Cynthia E. Grigsby,
Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

(Filed by the Office of the Federal Register on April 15, 2005, 8:45 a.m., and published in the issue of the Federal Register for April 18, 2005, 70 F.R. 20049)

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D. —Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z —Corporation.

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[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2005–27 through 2005–52 is in Internal Revenue Bulletin 2005–52, dated December 27, 2005.

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[1] A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2005–27 through 2005–52 is in Internal Revenue Bulletin 2005–52, dated December 27, 2005.