

## Part III - Administrative, Procedural, and Miscellaneous

### Qualifying Gasification Project Program

Notice 2009-23

#### SECTION 1. PURPOSE

This notice provides additional procedures for the allocation of credits under the qualifying gasification project program of § 48B of the Internal Revenue Code. The procedures in this notice apply only to the credits authorized under the amendments made to § 48B by section 112 of the Energy Improvement and Extension Act of 2008, Pub. L. 110-343, 122 Stat. 3765 (October 3, 2008) (“the Act”). Section 112 of the Act amended § 48B to provide for a second phase of the qualifying gasification project program in which \$250 million of additional credits are authorized (“the Phase II gasification program” and “the Phase II gasification credit”). To be considered in the first allocation round under the Phase II gasification program, applications must be submitted to the Department of Energy (“DOE”) on or before November 2, 2009, and to the Internal Revenue Service (“Service”) before March 2, 2010. See section 5 of this notice for additional rules regarding these applications.

Section 48B, as originally enacted, provided for the first phase of the qualifying

gasification project program and authorized \$350 million of credits (“the Phase I gasification program” and “the Phase I gasification credit”). The Service intends to issue guidance in the future regarding any Phase I gasification credits that are subsequently forfeited.

## SECTION 2. BACKGROUND AND CHANGES

.01 Section 46 provides that the amount of the investment credit for any taxable year is the sum of the credits listed in § 46. That list includes the qualifying gasification project credit.

.02 The qualifying gasification project credit is provided under § 48B, which was expanded and modified by section 112 of the Act.

.03 Section 48B(a) provides that the qualifying gasification project credit for a taxable year is an amount equal to (1) 20 percent of the qualified investment (as defined in § 48B(b)) for that taxable year in qualifying gasification projects (as defined in § 48B(c)(1)) for which the credit is allocated under § 48B(d)(1)(A), and (2) 30 percent of the qualified investment for that taxable year in qualifying gasification projects for which the credit is allocated under § 48B(d)(1)(B).

.04 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 section 3.02 of this notice), 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 section 3.01 of this notice), 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.

.05 Section 48B(d)(1) provides that (1) \$350 million of credits are to be allocated to qualifying projects (“Phase I gasification projects”), and (2) an additional \$250 million of credits are to be allocated to qualifying projects that include equipment that separates and sequesters at least 75 percent of such project’s total CO<sub>2</sub> emissions (“Phase II gasification projects”).

.06 Section 48B(d)(4) provides that (i) highest priority is given to projects with the greatest separation and sequestration percentage of total CO<sub>2</sub> emissions, and (ii) high priority is given to applicant participants who have a research partnership with an eligible educational institution (as defined in § 529(e)(5)). The effective date of section 112 of the Act provides that this rule applies only to Phase II gasification projects.

.07 The at-risk rules in § 49 and the recapture and other special rules in § 50 apply to the qualifying gasification project credit. Further, 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 (as defined in section 3.05 of this notice) by the taxpayer.

.08 Section 48B(f) provides that the Secretary shall provide for recapturing the benefit of any credit allowable under § 48B(a) with respect to any project that fails to attain or maintain the separation and sequestration requirements of § 48B(d)(1).

.09 Section 48A(h) directs the Secretary to modify the terms of any competitive certification award and any associated closing agreement where such modification (i) is consistent with the objectives of § 48B, (ii) is requested by the recipient, and (iii) involves moving the project site to improve the potential to capture and sequester CO<sub>2</sub> emissions, reduce costs of transporting feedstock, and serve a broader customer base. This directive does not apply if the Secretary determines that the dollar amount of tax credits available to the taxpayer under § 48B would increase as a result of the modification or such modification would result in such project not being originally certified. In addition, the Secretary is required to consult with other relevant Federal agencies, including the Department of Energy, in considering any modification under § 48A(h).

.10 Section 48A(d)(5) provides that the Secretary shall, upon making a certification under § 48B(d), publicly disclose the identity of the applicant and the amount of the credit certified with respect to such applicant.

.11 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 credit under § 48B to qualifying gasification project sponsors. The Treasury Department and the Service established this program in Notice 2006-25, 2006-1 C.B. 609, as modified and updated by Notice 2007-53, 2007-26 I.R.B. 1474. 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.

.12 Notice 2007-53 provides that the Service will consider a project under the

qualifying gasification project program only if the DOE provides a certification of feasibility (“DOE certification”) and ranking (if any) for the project. Under the qualifying gasification project program, a taxpayer must submit, for each qualifying gasification project: (1) an application for certification by DOE (“application for DOE certification”), and (2) an application for certification under § 48B(d)(1) by the Service (“application for § 48B certification”). Certifications will be issued and the credit will be allocated by the Service to projects in annual allocation rounds.

.13 The Phase I gasification program under Notice 2006-25 and Notice 2007-53 provided for annual allocation rounds. The initial allocation round was conducted in 2006. An additional allocation round was conducted in 2007-08. The entire Phase I gasification credit amount of \$350 million was allocated in these two allocation rounds.

.14 This notice provides procedures for the Phase II gasification program. The guidance in this notice differs from the guidance provided in Notices 2006-25 and 2007-53 for the Phase I gasification program in a number of respects. The significant differences include the following:

(1) Section 3.02 of this notice provides that the definition of the term “eligible entity” under § 48B(c)(7) includes any person whose application for certification is principally intended for use in a domestic project that employs domestic gasification applications related to transportation grade liquid fuels.

(2) Section 3.06 provides a definition of the term “separation and sequestration” for purposes of § 48B.

(3) Section 4.02(3) provides that a taxpayer who was allocated a credit under the

Phase I gasification program may re-submit an application for the same project if the project is enhanced to meet the additional requirements for a qualifying project under the Phase II gasification program.

(4) Section 4.02(8) provides that the period for submitting the application for § 48B certification under Phase II gasification program for the 2009-10 allocation round begins on March 13, 2009, and ends on March 1, 2010.

(5) Section 4.02(10) provides that the deadline for taxpayers to submit applications for DOE certification for the 2009-10 allocation round is November 2, 2009, that the DOE will rank certified projects, and that the due date for the DOE to provide the Service with the certification and ranking of these projects is March 1, 2010.

(6) The information required to be included in the application for DOE certification is modified. Section 5.02 requires submission of additional information regarding CO<sub>2</sub> separation and sequestration. In addition, the program policy factors listed in Appendix B have been modified.

(7) Section 5.03 modifies the information required to be included in the application for § 48B certification.

(8) Section 6.04 provides for recapturing the benefit of any credit allowable under the Phase II gasification program with respect to any project that fails to attain or maintain the separation and sequestration requirements of § 48B(d)(1)(B).

(9) Section 9.01 provides that the Service will announce the results of each allocation round as required by § 48A(d)(5). Accordingly, the notice does not include a request that taxpayers submit with the application for § 48B certification a declaration

consenting to the disclosure by the Service of certain return information if the taxpayer is awarded an allocation of qualifying gasification project credit or provide the form of the declaration, as set forth in Appendix C of Notice 2007-53.

### SECTION 3. DEFINITIONS

The following definitions apply for purposes of § 48B and this notice:

.01 Coal. Section 48B(c)(6) defines the term "coal" as meaning anthracite, bituminous coal, subbituminous coal, lignite, and peat. Coal includes waste coal (that is, usable material that is a byproduct of the previous processing of anthracite, bituminous coal, subbituminous coal, lignite, or peat). Examples of waste coal include fine coal of any of the listed ranks, coal of any of the listed ranks obtained from a refuse bank or slurry dam, anthracite culm, bituminous gob, and lignite waste.

.02 Eligible entity. Section 48B(c)(7) defines "eligible entity" as meaning any person whose application for certification is principally intended for use in a domestic project that employs domestic gasification applications related to chemicals, fertilizers, glass, steel, petroleum residues, forest products, agriculture (including feedlots and dairy operations), and transportation grade liquid fuels. For purposes of § 48B, a qualifying gasification project is carried out by an eligible entity if the project supplies more than 50 percent of the thermal output in British thermal units ("Btu") from the gasification process in the form of synthesis gas for direct use or subsequent chemical or physical conversion in an application related to one or more of the industries listed in § 48B(c)(7) or if more than 50 percent of the fuel input in Btu to the gasification process is supplied from one or more of the industries listed in § 48B(c)(7).

.03 Total synthesis gas capacity. The total synthesis gas capacity of a project is the total MMBtu (one million Btu) per hour of the synthesis gas (higher heating value (HHV)) at the gasifier outlet of the project. The synthesis gas must be composed primarily of carbon monoxide and hydrogen for direct use or subsequent chemical or physical conversion.

.04 Fuel Input.

(1) In general. The term “fuel input” means, with respect to any type of fuel, the amount of such fuel used during normal plant operations. The amounts of the fuel used are measured (i) in Btu on an energy input basis and (ii) pursuant to applicable standards prescribed by the American Society for Testing and Materials (“ASTM”). For example, § 48B(d)(3)(D) provides that 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. This requirement is satisfied if, after completion and during normal plant operations, the fuels identified in § 48B(c)(2) will cumulatively comprise at least 90 percent of the project’s total fuels measured in Btu on an energy input basis and pursuant to applicable ASTM standards.

(2) Only normal plant operations taken into account. Only fuel used during normal plant operations is taken into account for purposes of § 48B. Normal plant operations are operations other than during periods of initial plant certification, plant startup, plant shutdown, interconnected gasifier(s) shutdown for gasification system maintenance, or interruptions of the supply of fuels identified in § 48B(c)(2) to the project resulting from an event of force majeure (including an act of God, war, strike, or other similar event

beyond the control of the taxpayer). For example, the fuel input during the initial plant certification may consist entirely of natural gas or other fuels not identified in § 48B(c)(2) because fuel used during initial plant certification is disregarded in determining whether the requirement of § 48B(d)(3)(D) to use 90 percent of the fuels identified in § 48B(c)(2) is satisfied.

.05 Placed In Service. For purposes of § 48B, property is placed in service in the taxable year in which the property is placed in a condition or state of readiness and availability for a specifically assigned function. See § 1.46-3(d)(1)(ii) of the Income Tax Regulations. Thus, a qualifying gasification project or eligible property (as defined in § 48B(c)(3)) that is a part of the project is placed in service in the taxable year in which the project is placed in a condition or state of readiness and availability for producing synthesis gas from the feedstocks identified in § 48B(c)(2).

.06 Separation and Sequestration. The term “separation and sequestration” refers to the separation and capture of a project’s CO<sub>2</sub> emissions, and the placement of the captured CO<sub>2</sub> into a repository in which the CO<sub>2</sub> will remain permanently sequestered.

#### SECTION 4. QUALIFYING GASIFICATION PROJECT PROGRAM

.01 In General. The Service will consider a project under the Phase II gasification program only if the DOE provides a certification (“DOE certification”) and ranking (if any) for the project. Accordingly, a taxpayer must submit, for each Phase II gasification project: (1) an application for certification by DOE that the project is technically and economically feasible (“application for DOE certification”), and (2) an application for certification under § 48B(d)(1) by the Service (“application for § 48B certification”). Both

applications may be submitted only during the Phase II application period beginning on March 13, 2009 and ending on March 12, 2012. The Service will issue certifications and allocate credits to projects in annual allocation rounds. The first allocation round for Phase II gasification program will be conducted in 2009-10. If necessary, additional allocation rounds will be conducted in 2010-11, and 2011-12.

.02 Program Specifications.

(1) The Service determines the amount of the Phase II gasification 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(12) of this notice (see section 5 of this notice for the requirements applicable to the application for DOE certification and the application for § 48B certification).

(2) The aggregate amount of the Phase II gasification credit is \$250 million, and the certification for a Phase II gasification project cannot apply to more than \$650 million of the qualified investment in the project. Thus, the maximum amount of the Phase II gasification credit that will be allocated to a project is \$195 million. This limitation applies to a qualifying project, and rather than to the taxpayer holding interests in the project. Therefore, the number or type of entities holding ownership interests in a project does not change the maximum amount of the Phase II gasification credit that may be allocated to that project. Conversely, a taxpayer holding interests in multiple projects may be allocated more than the maximum Phase II gasification credit that may be allocated to a single project.

(3) A taxpayer who was allocated a Phase I gasification credit for a project may

submit an application for a Phase II gasification credit for the same project if the project meets the additional requirements for a qualifying project under the Phase II gasification program. Thus, the project must separate and sequester at least 75 percent of the project's total CO<sub>2</sub> emissions.

(a) The Phase II gasification credit will be allowed with respect to the taxpayer's qualified investment in the project only to the extent such investment exceeds the qualified investment with respect to which the Phase I gasification credit is allowable but does not exceed \$650 million. Thus, if the qualified investment in a project is \$700 million and the Phase I gasification credit was allowable with respect to \$500 million of the qualified investment, the Phase II gasification credit will be allowed with respect to only \$150 million (\$650 million - \$500 million) of the qualified investment. The Phase I gasification credit allocated to a project is not allowable for purposes of this section 4.02(3) to the extent the right to claim such credit has been irrevocably waived in such manner as the Commissioner may require.

(b) The Phase II gasification credit allocated to a project will be forfeited if the taxpayer fails to place the project in service by the taxpayer within 7 years of the date of acceptance of application under section 4.02(11) of this notice. The allocation of a Phase II gasification credit does not delay the taxpayer's placed-in-service obligations with respect to any Phase I gasification credit previously allocated to the project. Accordingly, the Phase I gasification credit allocated to the project will be forfeited if the taxpayer fails to place the project in service by the taxpayer within 7 years of the date of acceptance of application under the Phase I gasification program.

(4) DOE will rank the certified projects in descending order (that is, first, second, third, etc.) and the amount available for allocation will be allocated as follows in the 2009-2010 allocation round:

(a) If the requested allocation of credit for projects that DOE has certified does not exceed the amount available for allocation, each certified project will be allocated the full amount of credit requested.

(b) If the requested allocation of credit for projects that DOE has certified exceeds the amount available for allocation, the amount available for allocation will be allocated as follows:

(i) The project receiving the highest ranking (that is, first) will be allocated the full amount of credit requested (but not exceeding the amount available for allocation) before any credit is allocated to a lower-ranked project. The amount available for allocation is reduced by the amount of credit so allocated and only the remainder is available for allocation to a lower-ranked project.

(ii) Second and lower-ranked projects will be entitled to similar priority in the allocation of credit and allocations to such projects will similarly reduce the remainder of the amount available for allocation until the amount available for allocation is exhausted.

(5) If the amount available for allocation is not fully allocated in the 2009-10 allocation round, similar allocation rounds will be conducted in 2010-11 and 2011-12 until the available amount is fully allocated. The results of each allocation round will be announced. See section 9.01 of this notice for further information about this announcement.

(6) If the same project would otherwise be allocated credit under both the qualifying gasification project program of § 48B and the qualifying advanced coal project program of § 48A, the following rules apply:

(a) The qualifying gasification project credit may not be allocated to the project with respect to any qualified investment under § 48B for which a qualifying advanced coal project credit is allowed under § 48A; and

(b) 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.

(7) 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 and the DOE ranking (if any) for the project before the end of that application period.

(8) For the 2009-10 allocation round, the application period for § 48B certification begins on March 13, 2009, and ends on March 1, 2010, and any completed application for § 48B certification received by the Service after March 12, 2009, and before March 2, 2010, will be deemed to be submitted by the taxpayer on March 1, 2010. For the 2010-11 allocation round (if necessary), the application period for § 48B certification begins on March 2, 2010, and ends on March 1, 2011, and any completed application for § 48A certification received by the Service after March 1, 2010, and before

March 2, 2011, will be deemed to be submitted by the taxpayer on March 1, 2011. For the 2011-12 allocation round (if necessary), the application period for § 48A certification begins on March 2, 2011, and ends on March 1, 2012, and any completed application for § 48A certification received by the Service after March 1, 2011, and before March 2, 2012, will be deemed to be submitted by the taxpayer on March 1, 2012.

(9) 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).

(10) 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 technical and economic feasibility of the project and, if the project is determined to be feasible, will provide a DOE certification for the project to the Service. If the DOE certifies two or more projects, the DOE will rank each of the projects it certifies (for example, first, second, third, etc.) relative to other certified projects. If an application for DOE certification is postmarked on or before October 31 of a calendar year, the DOE will determine the feasibility of the project and (for projects determined to be feasible) provide the DOE certification and the DOE ranking (if any) to the Service by March 1 of the following calendar year. Thus, after application of § 7503, relating to the time for performance of acts when the last day falls on a Saturday, Sunday, or legal holiday, applications for DOE certification must be

postmarked on or before November 2, 2009, to be considered in the 2009-10 allocation round, on or before November 1, 2010, to be considered in the 2010-11 allocation round, and on or before November 1, 2011, to be considered in the 2011-12 allocation round.

(11) By April 30 of the calendar year in which an application for § 48B certification is deemed to be submitted (as determined under section 4.02(9) 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.

(12) A taxpayer that receives an acceptance letter under section 4.02(11) 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.

(13) If the taxpayer's application for § 48B certification is accepted, the acceptance letter will state the amount of 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 June 30 of the calendar year in which an application for § 48B certification is accepted (July 2 after application of § 7503 for applications accepted in 2012), 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 August 31 of such

calendar 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 no later than the due date (including extensions) of the successor in interest's Federal income tax return for the taxable year in which the transfer occurs. 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 (including any credit allocated under the Phase I gasification program) 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.

(14) The closing agreement relating to a credit allocation may be modified only if the modification is consistent with the objectives of the qualifying gasification program, is requested by the taxpayer that received the credit allocation, involves moving the project site to improve the potential to capture and sequester CO<sub>2</sub> emissions, reduce costs of transporting feedstock, and serve a broader customer base. The Service will not modify a closing agreement if the dollar amount of tax credit available to the taxpayer under § 48B would increase as a result of the modification or if the project would not have been originally certified had such modification been included in the

taxpayer's application. In considering such modification, the Service will consult with the DOE.

## 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. If the taxpayer is a member of an affiliated group filing consolidated returns, also provide the name, address, and taxpayer identification number of the common parent of the group.

(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 \$195 million (the amount permitted under § 48B(a) and (c)(1)(C)).

(7) If the taxpayer is or will be requesting an amount of the qualifying gasification project credit under § 48A for the same project, a statement specifying the amount of credit the taxpayer is or will be requesting under § 48A.

(8) The exact total synthesis gas capacity (as defined in section 3.03 of this notice) of the project.

(9) A statement specifying whether the project is entitled to priority for separation and sequestration of more than 75% of such project's total CO<sub>2</sub> emissions or having a research partnership with an eligible educational institution (as defined in § 529(e)(5)) and, if entitled to priority, a statement identifying which of these priorities apply to the project.

(10) 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 To Be Included 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. If the taxpayer is a member of an affiliated group filing consolidated returns, also provide the

name, address, and taxpayer identification number of the common parent of the group.

(2) The name, telephone number, and fax number of a contact person. For such person, attach a properly executed power of attorney, preferably on Form 2848, Power of Attorney and Declaration of Representative.

(3) One paper copy and one electronic version on a floppy disc or a CD of the completed application for DOE certification submitted with respect to the project in accordance with section 5.02 of this notice.

(4) If the Phase I gasification credit was allocated to the project, the estimated total cost of the Phase I project and the estimated total qualifying investment in the eligible property (as represented in the application for the Phase I gasification credit), and the amount of the allocated Phase I gasification credit.

.04 Instructions and Address for Filing § 48B Application. One paper copy and one electronic version on a floppy disc or a CD of the application for § 48B certification must be submitted. 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  
Industry Director, Natural Resources and Construction  
Attn: Executive Assistant  
1919 Smith Street  
Stop HOU 1000  
Houston, TX 77002

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

Internal Revenue Service  
Industry Director, Natural Resources and Construction  
Attn: Executive Assistant  
1919 Smith Street, Floor P2  
Stop HOU 1000  
Houston, TX 77002

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

Internal Revenue Service  
Industry Director, Natural Resources and Construction  
Attn: Executive Assistant  
1919 Smith Street, Floor P2  
Stop HOU 1000  
Houston, TX 77002

## 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. Further, the declaration must be signed by an officer on behalf of a corporation, a general partner on behalf of a

state-law partnership, a member-manager on behalf of a limited liability company, a trustee on behalf of a trust, and the proprietor in the case a sole proprietorship. If the taxpayer is a member of an affiliated group filing consolidated returns, the declaration also must be signed by a duly authorized officer of the common parent of the group. A stamped signature or faxed signature is not permitted.

.03 Significant Change in Plans. The Service must be informed if the plans for the project change in any significant respect from the plans set forth in the applications for § 48B or DOE certification. Except as otherwise provided under § 48A(h), any significant change to the plans set forth in the applications will have the following effects:

(1) If the Service is informed of the change after the date on which the applications for DOE certification were due for the allocation round under section 4.02(10) of this notice and before the Service accepts or rejects the taxpayer's application for § 48B certification under section 4.02(11) of this notice, the Service will not consider the project during the allocation round; and

(2) Any acceptance provided by the Service and any allocation or certification based on that acceptance will be void unless the Service is informed of the change before the date on which the acceptance is provided under section 4.02(11) of this notice.

.04 Failure to Capture and Sequester CO<sub>2</sub> Emissions. The Phase II gasification credit allocated to a project will be recaptured if, at any time during the applicable recovery period (as defined in § 168(c)) for such project, the project fails to attain or maintain the separation and sequestration requirements for such project under

§48B(d)(1)(B).

.05 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.

.06 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.

.07 DOE Debriefings. Although a taxpayer does not have a right to a conference relating to any matters under this notice, the DOE will offer debriefings to all applicants that submitted an application for DOE certification. The debriefing will be held by the DOE after the Service has accepted the applications for § 48B certification (as determined under section 4.02(11) of this notice). The sole purpose of the debriefing is to enable applicants to develop better proposals in future allocation rounds by providing DOE's review of the strengths and weaknesses of their application for DOE certification. All requests for debriefings must be submitted to the DOE within 30 days of receipt of the Service's decision to accept or reject the application.

## SECTION 7. REDUCTION OR FORFEITURE OF ALLOCATED CREDITS

.01 Under the closing agreement set forth in Appendix A to this notice, the qualifying gasification project credit 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.

.02 The amount of any reduction or forfeiture of the allocated credit 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 2011-12 allocation round, future guidance will prescribe procedures applicable to applications for certification with respect to the amount of returned credit.

## 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(11) 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(11) of this notice;

(2) A significant change to the plans for the project as set forth in the applications for § 48B and DOE certification if, under section 6.03 of this notice, the Service's acceptance of the project is void as a result of the change; or

(3) Failure of the project, at any time during the applicable recovery period (as defined in § 168(c)) for such project, to attain or maintain the separation and

sequestration of CO<sub>2</sub> emissions required by § 48B(d)(1)(B).

## SECTION 9. DISCLOSURE OF INFORMATION

.01 Announcement. Section 48A(d)(5) provides that the Secretary shall, upon making a certification under § 48A(d) and § 48B(d), publicly disclose the identity of the applicant and the amount of the credit certified with respect to such applicant.

Accordingly, the Service intends to publish the results of the allocation process, and disclose the following return information in the event a qualifying gasification project credit is allocated to the taxpayer's project: (a) the name of the taxpayer and (b) the amount of the qualifying gasification project credit allocated to the project.

.02 In general. An application for DOE certification, an application for § 48B certification, any other documentation submitted by the taxpayer pursuant to section 5.02 of this notice, and any documentation generated by the Service or the DOE as part of this process are return information subject to § 6103. Except for the items of information that § 48A(d)(5) authorizes the Service to make available to the public, the other material remains the applicant's confidential return information, which is exempt from disclosure under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552(b)(3), in conjunction with § 6103. Other FOIA exemptions may also apply. For example, FOIA includes exemptions for trade secrets and commercial or financial information (5 U.S.C. 552(b)(4)), as well as personal information (5 U.S.C. 552(b)(6)).

.03 FOIA requests. Anyone interested in submitting a request for records under the FOIA with respect to the qualifying gasification project program under § 48B should

direct a request that conforms to the Service's FOIA regulations, found at 26 C.F.R. § 601.702, to the following address:

IRS FOIA Request  
Baltimore Disclosure Office  
Room 940  
31 Hopkins Plaza  
Baltimore, MD 21201

#### SECTION 10. EFFECT ON OTHER DOCUMENTS

Notice 2007-53 is clarified, modified, and amplified.

#### SECTION 11. EFFECTIVE DATE

This notice is effective March 13, 2009.

#### SECTION 12. 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 5, 6, 8, and Appendix B of this notice. This information is required to obtain an allocation of qualifying gasification project credit. This information will be used by the Service to verify that the taxpayer is eligible for the qualifying gasification project credit. 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 13. 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 on (202) 622-3110 (not a toll-free call). For further information regarding the application for § 48B certification, contact Tina Meaux, Executive Assistant, Office of the Industry Director, Natural Resources and Construction, at (713) 209-4074 (not a toll-free number).

**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 March [insert date and year], Taxpayer submitted to the Internal Revenue Service ("Service"), an application for certification under the Phase II gasification program described in Notice 2009-23 ("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 have a total synthesis gas capacity (as defined in section 3.03 of Notice 2009-23) of at least [insert number] total MMBtu per hour of synthesis gas. The synthesis gas 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 fuel input (as defined in section 3.04(1) of Notice 2009-23 and including fuels identified in § 48B(c)(2) and any other fuel input) required by the Project for normal plant operations (as defined in section 3.04(2) of Notice 2009-23) for the production of chemical feedstocks, liquid transportation fuels, or co-production of electricity; and

3. On [insert date of acceptance letter issued under section 4.02(11) of Notice 2009-23], the Service 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 the date in WHEREAS clause #3], 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 fails, at any time during the applicable recovery period (as defined in § 168(c)) for such project, to attain or maintain the separation and sequestration of CO<sub>2</sub> emissions required by § 48B(d)(1)(B), the qualifying gasification project credit in the amount of \$[insert the number in WHEREAS clause #3] allocated to the Project is fully forfeited.

4. If the plans for the Project change in any significant respect from the plans set forth in the application for DOE certification (as defined in section 5.02 of Notice 2009-23) and the Application for § 48B Certification (as defined in section 5.03 of Notice 2009-23) and, under section 6.03 of Notice 2009-23, the acceptance of Taxpayer's Application for § 48B Certification on [insert the date in WHEREAS clause #3] is void, the qualifying gasification project credit in the amount of \$[insert the number

in WHEREAS clause #3] allocated to the Project is fully forfeited.

5. (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 section 3.02 of Notice 2009-23), 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 fuel input (as defined in section 3.04(1) of Notice 2009-23 and including fuels identified in § 48B(c)(2) and any other fuel input) required by the Project for normal plant operations (as defined in section 3.04(2) of Notice 2009-23) 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.

6. 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.

7. If Taxpayer elects to claim the qualifying gasification project credit on the qualified progress expenditures paid or incurred by Taxpayer during the taxable year(s) during which the Project is under construction and the Project ceases to be a qualifying gasification project (whether before, at the time, or after the Project is placed in service), 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 Service. 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:** [insert title]

**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**

The Internal Revenue Service (“Service”) and the Department of Energy (“DOE”) seek to certify applications that demonstrate a high likelihood of being successfully implemented by the applicants. To qualify, projects must be technically and economically feasible and use the appropriate gasification technology.

This request for submission of supplemental application information:

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

If, after review by the DOE a project is determined to be feasible, DOE will provide a DOE certificate of feasibility to the Service. The Service will then accept or reject the taxpayer’s application for certification of the tax credits.

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 certification to the Service 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.

#### **INFORMATION TO BE SUBMITTED FOR DOE CERTIFICATION APPLICATION**

##### **A. General**

This request, together with the information in sections 5.02, 6.01, and 6.02 of Notice 2009-23 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 2009-23 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 2009-23.

An application will not be considered in the allocation round conducted in 2009-10 unless it is postmarked by November 2, 2009. (If allocation rounds are conducted in 2010-11 and 2011-12, applications must be postmarked by November 1 of the year in which the allocation round begins.) One paper copy 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 5.03(3) of Notice 2009-23, one paper copy and one electronic version must be sent to the Service as part of the application for § 48B certification. The application for § 48B certification will not be considered in the allocation round conducted in 2009-10 unless it is submitted to the Service by March 1, 2010. (If allocation rounds are conducted in 2010-11 and 2011-12, applications must be postmarked by March 1 of the year in which the allocation round ends.)

**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™ 2002 or later edition
- Microsoft Excel™ 2002 or later edition
- Adobe Acrobat™ PDF 6.0 or later edition

Financial models should be submitted using the Excel™ 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. Project Information Memorandum**

**1. Summary and Introduction**

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

## **2. Technology and Technical Information**

Provide a description of the proposed technology, including sufficient supporting information (such as vendor guarantees, 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 are 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 (synthesis gas capacity).
- Provide the total MMBtu/hr of the synthesis gas (HHV) at the gasifier outlet.
- Provide evidence sufficient to ensure that fuels identified in § 48B(c)(2) will comprise 90 percent of the total fuel input (fuels identified in § 48B(c)(2) and any other fuel input) for the project. Provide the total quantities of CO, H<sub>2</sub>, CH<sub>4</sub>, CO<sub>2</sub>, and water in the synthesis gas.
- 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 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 CO<sub>2</sub> 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.
- Provide evidence sufficient to demonstrate that the project includes equipment which separates and sequesters at least 75 percent of such project's total carbon dioxide (CO<sub>2</sub>) emissions. The CO<sub>2</sub> separation, capture, sequestration, and emission values shall be reported on metric tons per hour and metric tons per year basis under normal plant operating conditions. The CO<sub>2</sub> separation and sequestration percentages shall be calculated based on the total CO<sub>2</sub> which would otherwise be released into the atmosphere as industrial emission of greenhouse gas.

## **3. Applicant's Capability to Accomplish the Technical Objectives**

Provide a narrative supporting the applicant's capability to accomplish the technical objectives of the proposed project, including supporting documentation demonstrating

that the applicant has assembled a team that is formally committed to participate in the proposed project.

Provide information to support that the applicant has assembled a team with the skills and resources needed to implement the project as proposed.

Provide signed agreements or letters from team members demonstrating that the proposed team members are fully committed to the project.

Provide information, including examples of prior similar projects completed by applicant, engineering-procurement-construction (EPC) contractor, and suppliers of major subsystems or equipment, which support the capabilities of the applicant and its team members to design, construct, permit, and operate the facility. The applicant should demonstrate that the team members have a corporate history of successful completion of similar projects.

Provide information to support that key personnel of the applicant and its team members have knowledge, experience, and adequate degree of involvement to successfully implement the project.

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. Include copies of any signed agreements to support project status claims regarding preliminary design studies, front-end engineering design (FEED), and EPC-type agreements.

#### **4. 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. Documentation such as a deed demonstrating the applicant owns the project site, a signed option to purchase the site from the site owner, or a letter of intent signed by the site owner and stating the site owner's intent to sell the site to the applicant should be provided.

Describe the current infrastructure at the site available to meet the needs of the project.

Provide documentation supporting applicant's conclusion that the proposed site can fully meet all environmental, feedstock supply, water supply, transportation and public policy requirements. Such documentation may include signed agreements, letters of

intent, or term sheets relating to feedstock supply, water supply, and product (e.g. CO<sub>2</sub>) transportation etc., and regulatory approvals supporting the key claims.

Provide detailed plans, schedules and status updates, particularly for sites with pre-existing conditions that could impact the proposed project. Pre-existing conditions may include, but are not limited to, sites with mandated environmental remediation efforts; brown-field sites that will require building demolition; or sites requiring substantial rerouting of existing roads, railroads, or pipelines prior to the start of the project.

Applicants must select one “proposed site.” However, projects with key physical or logistical elements that require close integration with another system for the project to succeed should provide information on all integrated systems regardless of where they are located. Example 1: a gasification plant designed to operate exclusively on coal from a to-be-opened mine should provide supporting documentation for the new mine. Example 2: an oxygen-blown gasification plant planning to purchase oxygen from a third party who will construct a plant exclusively for this project should provide documentation for the oxygen supplier. Example 3: an industrial gasification plant planning to sell CO<sub>2</sub> for enhanced oil recovery (EOR) should provide an agreement for such a transaction indicating the annual CO<sub>2</sub> purchase quantity, expected project lifetime sales, CO<sub>2</sub> capacity of the site for EOR, and EOR site ownership.

## **5. 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. Such documentation should be signed by authorizing officials of both the buyer and seller, and may include: Sales Agreements, Letters of Intent, Memoranda of Understanding, and Option Agreements.

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.

## **6. Project Economics**

Describe the project economics and provide satisfactory evidence of economic feasibility as demonstrated through the financial forecast and the underlying project assumptions. The project economic and financial assumptions should be clearly stated and explained.

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

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

## **7. Project Development and Financial Plan**

Provide the total project budget and major plant costs (e.g., development, operating, capital, construction, and financing costs). Provide the estimated annual budget for and source of project development costs from the time of the application until the beginning of construction, including legal, engineering, financial, environmental, overhead, and other development 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 (a) the applicant, (b) for any of the project parties providing funding, and (c) for any third party funding source. If the applicant or another party does not have audited financial statements, the applicant or the party should provide equivalent financial statements prepared by the applicant or the party, in accordance with Generally Accepted Accounting Principles, and certified as to accuracy and completeness by the Chief Financial Officer of the party providing the statements. 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: (1) provide an Excel based financial model of the project, with formulas, so that review of the model calculations and assumptions may be facilitated; (2) provide pro-forma project financial, economic, capital cost, and operating assumptions, including detail of all project capital costs, development costs, interest during construction, other operating expenses, and all other costs and expenses.

## **8. 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 signed 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.
- If CO<sub>2</sub> is to be sold a third party for sequestration, provide a Sales Agreement and provide specifics, such as CO<sub>2</sub> sales (metric tons per year), expected project lifetime sales (metric tons), potential CO<sub>2</sub> capacity of the site for sequestration (metric tons), technology and site suitability for sequestration, and sequestration site ownership and operation.

## **9. Permits Including Environmental 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.

Existing permits and permit applications must be specific to the project proposed. If existing permits are not specific for the proposed project (i.e. permits for oil-fired or natural gas based systems), specific plans, procedures and schedules for reapplying, modifying and/or renegotiating permits should be provided.

## **10. 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 placed-in-service requirement.

The project schedule should be comprehensive and provide sufficient detail to demonstrate how applicant will meet the placed-in-service requirement. The schedule should demonstrate that the applicant understands the required tasks, and has allowed realistic times for accomplishing the technical and financial tasks. The schedule should include the milestone accomplishments needed to obtain the financing for the project.

## **11. Appendices**

- a. Copy of internal or external engineering reports.
- b. 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.
- c. 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.
- d. Project Market Study.

- e. Financial Model of project.
- f. Financial statements for the applicant and other project funding sources for the most recently ended three fiscal years, and the unaudited quarterly interim financial statements for the current fiscal year.
- g. Expressions of interest or commitment letters from funding sources.
- h. For each project contract, if no contract currently exists, provide a summary of the expected terms and conditions.
- i. List of all federal, state, and local permits, including environmental authorizations or reviews, necessary to commence construction.
- j. Copies of any contract or written statements from customers of intent to purchase project products.

## **E. Evaluation Criteria**

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**

Section 48B identifies minimum requirements for consideration for the qualifying gasification project credit, including the project's technical feasibility, cost, and applicant's ability. In the event that there are more qualified (certifiable) applications than the available tax credits, the DOE will apply additional factors to rank eligible projects based on their ability to advance the deployment of industrial gasification technology beyond its current state.

If there are more certified applications than available credits, DOE will rank the certified projects based on evaluation of the following Program Policy Factors. In ranking certified projects, highest priority will be given to the Primary Ranking Factor. Secondary and Tertiary Ranking Factors will be taken into account to rank projects that are not clearly differentiated on the basis of the Primary Ranking Factor, with higher priority given to the Secondary Ranking Factor than to Tertiary Ranking Factors.

Primary Ranking Factor:

- Capture and sequestration of more than 75 percent CO<sub>2</sub> emissions. Only projects that capture and sequester 75 percent or more of the plant's CO<sub>2</sub> emissions will be considered for DOE certification. Among the certified projects, highest rankings will be given to projects with the greatest separation and sequestration percentages of total CO<sub>2</sub> emissions.

Secondary Ranking Factor:

- Research partnership with an eligible educational institution as defined in §48B(d)(4)(B).

Tertiary Ranking Factors:

- Presentation of other environmental, economic, or performance benefits
- Higher plant efficiency.
- Geographic distribution of potential markets.
- The ratio of total synthesis gas capacity (as defined in section 3.03 of Notice 2009-23) to requested tax credit.
- Diversity of technology approaches and methods.

## **G. Supplemental Technical and Financial Guidance for Project Information Memorandum**

### **Technology and Technical Information**

It is important that the applicant select a specific gasification system for the project. Without that decision, it is difficult to provide the necessary specific design information needed for DOE to evaluate the project feasibility with respect to performance, emissions, outputs of major streams as well as capital and operating costs.

### **Project Economics**

Applicants should demonstrate the project's economic feasibility and financial viability by providing a clear statement and explanation of the economic and financial

assumptions made by the applicant, and a financial forecast for the project. The financial forecast should flow logically from the applicant's assumptions and be consistent with them. Applicants should include assumptions regarding financial and economic issues that may not be included in the project costs but have a direct impact on the project. The examples given in the "Site Control and Ownership" section are relevant here and their impact on the project economics should be discussed here.

### **Project Development and Financial Plan**

The information provided by the applicant in this section should demonstrate that the applicant's financial plan for developing the project is feasible and that the applicant will have access to necessary financing. The applicant should explain the source and timing for obtaining all financing, including the project development costs. It is important that the applicant explain and provide evidence that it has the capacity to fund the pre-construction project development costs, together with a budget for and description of those costs. Note that financial information is required for the applicant and for any other funding source.

### **Project Contract Structure**

This section requires that the applicant demonstrate an understanding of the commercial contracting process and show progress in establishing the framework of contracts and agreements that a project typically requires. Applicants should show that their intended contract structure is reasonable and that their assumptions relative to price, terms, and conditions are consistent with current market conditions. Evidence of final agreements, agreements in principle, or summaries of terms and conditions between the applicant and contract counterparties should be provided, if available.