

## Part III - Administrative, Procedural, and Miscellaneous

### Qualifying Advanced Coal Project Program

Notice 2009-24

#### SECTION 1. PURPOSE

This notice provides additional procedures for the allocation of credits under the qualifying advanced coal project program of § 48A of the Internal Revenue Code. The procedures in this notice apply only to the credits authorized under the amendments made to § 48A by section 111 of the Energy Improvement and Extension Act of 2008, Pub. L. 110-343, 122 Stat. 3765 (October 3, 2008) (“the Act”). Section 111 of the Act amended § 48A to provide for a second phase of the qualifying advanced coal project program in which \$1.25 billion of additional credits are authorized (“the Phase II advanced coal program” and “the Phase II advanced coal credit”). To be considered in the first allocation round under the Phase II advanced coal 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Section 48A, as originally enacted, provided for the first phase of the qualifying

advanced coal project program and authorized \$1.3 billion of credits (“the Phase I advanced coal program” and “the Phase I advanced coal credit”). The Service intends to issue guidance in the future regarding any Phase I advanced coal credits that remain unallocated after the 2008-2009 allocation round or 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 advanced coal project credit.

.02 The qualifying advanced coal project credit is provided under § 48A, which was expanded and modified by section 111 of the Act.

.03 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 qualifying advanced coal projects (as defined in § 48A(c)(1) and (e)) described in § 48A(d)(3)(b)(i), (2) 15 percent of the qualified investment for that taxable year in qualified advanced coal projects described in § 48A(d)(3)(b)(ii), and (3) 30 percent of the qualified investment for that taxable year in qualifying advanced coal projects described in § 48A(d)(3)(B)(iii). Section 48A(d)(3)(b)(i) describes integrated gasification combined cycle (“IGCC”) projects (as defined in § 48A(c)(7)) for which applications were submitted during the Phase I application period (“Phase I IGCC projects”). Section 48A(d)(3)(b)(ii) describes projects that use other advanced coal-based generation technologies (as defined in § 48A(c)(2) and (f)) and for which applications were submitted during the Phase I application period (“other Phase I advanced coal projects”). Section

48A(d)(3)(b)(iii) describes projects that use advanced coal-based generation technologies and for which applications are submitted during the Phase II application period (“Phase II advanced coal projects”). Phase II advanced coal projects include both IGCC projects and projects that use other advanced coal-based technologies. For this purpose, the Phase I application period is the 3-year period following the establishment of the qualifying advanced coal program on March 13, 2006, and the Phase II application period is the 3-year period beginning on March 13, 2009.

.04 Section 48A(d)(3)(A) provides that the aggregate credits allowed under § 48A(a) may not exceed \$2.55 billion. Section 48A(d)(3)(B) provides that (1) \$800 million of credits are to be allocated to Phase I IGCC projects, (2) \$500 million of credits are to be allocated to other Phase I advanced coal projects, and (3) \$1.25 billion of credits are to be allocated to Phase II advanced coal projects.

.05 Section 48A(d)(2)(A) provides that (i) applications for the credits allocated to Phase I IGCC projects and other Phase I advanced coal projects may be submitted only during the Phase I application period, and (ii) applications for the credits allocated to Phase II advanced coal projects may be submitted only during the Phase II application period.

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

.07 Section 48A(e)(1)(G) provides that any project the application for which is submitted during the Phase II application period must include equipment that separates and sequesters--

(1) At least 65 percent of such project's total carbon dioxide ("CO<sub>2</sub>") emissions in the case of an application other than an application for reallocated credits under § 48A(d)(4); and

(2) At least 70 percent of such project's total CO<sub>2</sub> emissions in the case of an application for reallocated credits under § 48A(d)(4).

.08 Section 48A(e)(3) provides the following rules for determining the projects to which credits are allocated:

(1) Section 48A(e)(3)(A) provides that the credits 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.

(2) Section 48A(e)(3)(B) provides that high priority must be given to projects that include (i) greenhouse gas capture capability (as defined in § 48A(c)(5)), (ii) increased by-product utilization, (iii) applicant participants who have a research partnership with an eligible educational institution (as defined in section 529(e)(5)), and (iv) other benefits.

(3) Section 48A(e)(3)(C) provides that the highest priority is given to projects with the greatest separation and sequestration percentage of total CO<sub>2</sub> emissions.

.09 Section 48A(f) prescribes the requirements that must be satisfied to qualify as an advanced coal-based generation technology. These include requirements that the unit be designed to attain specified standards for emissions or removal of certain pollutants.

.10 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 § 48A, (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 § 48A 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).

.11 Section 48A(i) provides that the Secretary shall provide for recapturing the benefit of any credit allowable under § 48A(a) with respect to any project that fails to attain or maintain the separation and sequestration requirements of § 48A(e)(1)(G).

.12 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 (as defined in section 3.04 of this notice) 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.

.13 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 Service established this program in Notice 2006-24, 2006-1 C.B. 595, as modified and updated by

Notice 2007-52, 2007-26 I.R.B. 1456.

.14 Notice 2007-52 provides that the Service will consider a project under the qualifying advanced coal project program only if the DOE provides a certification of feasibility (“DOE certification”) and ranking (if any) for the project. Under the qualifying advanced coal project program, a taxpayer must submit, for each qualifying advanced coal project: (1) an application for certification by DOE (“application for DOE certification”), and (2) an application for certification under § 48A(d)(2) by the Service (“application for § 48A certification”). Certifications will be issued and credits will be allocated by the Service to projects in annual allocation rounds.

.15 The Phase I advanced coal program under Notice 2006-24 and Notice 2007-52 provided for three annual allocation rounds. An initial allocation round was conducted in 2006. A second allocation round was conducted in 2007-08, and a special allocation round was conducted in 2008. A third allocation round was conducted in 2008-09.

.16 This notice provides procedures for the Phase II advanced coal program. The guidance in this notice differs from the guidance provided in Notices 2006-24 and 2007-52 for the Phase I advanced coal program in a number of respects. The significant differences include the following:

(1) Section 3.05 provides a definition of the term “separation and sequestration” for purposes of § 48A.

(2) Section 4.02(2) provides that the qualifying advanced coal project credits of \$1.25 billion and the applications for certification are separated into three pools based on the feedstock coal used. There are no separate pools for IGCC projects and projects that use

other advanced coal-based generation technologies.

(3) Section 4.02(7) provides that the period for submitting the application for § 48A certification under Phase II advanced coal program for the 2009-10 allocation round begins on March 13, 2009, and ends on March 1, 2010.

(4) Section 4.02(3) provides that a taxpayer who was allocated a credit under the Phase I advanced coal 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 advanced coal program.

(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) Section 10.01 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 § 48A certification a declaration consenting to the disclosure by the Service of certain return information if the taxpayer is awarded an allocation of qualifying advanced coal project credit or provide the form of the declaration, as set forth in Appendix C of Notice 2007-52.

(7) Section 7.04 provides for recapturing the benefit of any credit allowable under the Phase II advanced coal program with respect to any project that fails to attain or maintain the separation and sequestration requirements of § 48A(e)(1)(G).

(8) 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.

### SECTION 3. DEFINITIONS

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

.01 Coal. Section 48A(c)(4) 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 Total Nameplate Generating Capacity.

(1) Except as provided in section 3.02(2) of this notice, the total nameplate generating capacity of a project is the aggregate of the numbers (in megawatts) stamped on the nameplate of each generator to be used in the project.

(2) If the number stamped on the nameplate of a generator is not determined at the International Standard Organization (ISO) optimal conditions of 59 degrees Fahrenheit, 60% relative humidity, and 14.7 psia at sea level, the number stamped on the nameplate is disregarded and the generator’s capacity (in megawatts) determined at such optimal conditions is used in its place.

.03 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 British thermal units (Btus) on an energy input basis and (ii) pursuant to applicable standards prescribed by the American Society for Testing and Materials (ASTM). For example, § 48A(e)(1)(B) provides that the fuel input for the project, when completed, must be at least 75 percent coal. This requirement is satisfied if, after completion and during normal plant operations, coal provides 75 percent of the project's fuel measured in Btus 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 § 48A and sections 5.02(5) and 5.02(13) of this notice. Normal plant operations are operations other than during periods of initial plant certification, plant startup, plant shutdown, integrated gasifier shutdown for gasification system maintenance, or interruption of the coal supply 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 non-coal fuels because fuel used during initial plant certification is disregarded in determining whether the 75-percent coal usage requirement of § 48A(e)(1)(B) is satisfied.

.04 Placed In Service. For purposes of § 48A, 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 advanced coal project or eligible property (as defined in § 48A(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 electricity from coal.

.05 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. PHASE II QUALIFYING ADVANCED COAL PROJECT PROGRAM

.01 In General. The Service will consider a project under the Phase II advanced coal 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 advanced coal 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 § 48A(d)(2) by the Service ("application for § 48A 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 advanced coal 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 advanced coal credits allocated to a Phase II advanced coal project at the time the Service accepts the application for § 48A certification for that project in accordance with section 4.02(11) 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 Phase II advanced coal credits of \$1.25 billion and the applications for Phase II certifications will be separated into the following three pools:

(a) Projects using an advanced coal-based generation technology and using bituminous coal as a primary feedstock. For the 2009-10 allocation round, the aggregate amount of the Phase II advanced coal credit for this pool is \$417 million.

(b) Projects using an advanced coal-based generation technology and using subbituminous coal as a primary feedstock. For the 2009-10 allocation round, the aggregate amount of the Phase II qualifying advanced coal project credit for this pool is \$417 million.

(c) Projects using an advanced coal-based generation technology and using lignite as a primary feedstock. For the 2009-10 allocation round, the aggregate amount of the Phase II advanced coal credit for this pool is \$416 million.

(3) A taxpayer who was allocated a Phase I advanced coal credit for a project may submit an application for a Phase II advanced coal credit for the same project if the project meets the additional requirements for a qualifying project under the Phase II advanced coal program. Thus, the project must separate and sequester at least 65 percent of the project's total CO<sub>2</sub> emissions.

(a) The Phase II advanced coal 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 advanced coal credit is allowable. Thus, if a Phase I advanced coal credit of \$133.5 billion has been allocated to an IGCC project, the Phase II advanced coal credit will be allowed only to the extent the taxpayer's qualified

investment in the project exceeds \$667.5 billion (the amount that results in a \$133.5 billion credit when multiplied by the 20-percent credit rate applicable to IGCC projects under Phase I). The Phase I advanced coal 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 advanced coal credit allocated to a project will be forfeited if the taxpayer fails to satisfy the certification requirements in § 48A(e)(2) within two years from the date of acceptance of the application under section 4.02(11) of this notice, or fails to place the project in service within 5 years of the date of issuance of the certification (as determined under section 6.03 of this notice). The allocation of a Phase II advanced coal credit to a project does not delay the taxpayer's certification and placed-in-service obligations with respect to any Phase I advanced coal credit previously allocated to the project. Accordingly, the Phase I advanced coal credit allocated to the project will be forfeited if the taxpayer fails to satisfy the certification requirements within two years from the date of acceptance under the Phase I advanced coal program, or fails to place the project in service within 5 years of the date of issuance of the certification under the Phase I advanced coal program.

(4) For each pool described in section 4.02(2) of this notice, DOE will rank the certified projects in descending order (that is, first, second, third, etc.). The amount available for allocation from the pool will be allocated as follows in the 2009-10 allocation round:

(a) If the requested allocation of credits for projects that DOE has certified for a pool described in section 4.02(2) of this notice does not exceed the amount available for allocation from that pool, each certified project will be allocated the full amount of credit

requested.

(b) If the requested allocation of credits for projects that DOE has certified for a pool described in section 4.02(2) of this notice exceeds the amount available for allocation from that pool, 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 from the pool) before any credit is allocated to a lower-ranked project. The amount available for allocation from the pool 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 credits and allocations to such projects will similarly reduce the remainder of the amount available for allocation from the pool until the amount available for allocation from the pool is exhausted.

(5) If the amount available for allocation from a pool 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 10.01 of this notice for further information about this announcement.

(6) 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 and

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

(7) For the 2009-10 allocation round, the application period for § 48A certification begins on March 13, 2009, and ends on March 1, 2010, and any completed application for § 48A 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 § 48A 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.

(8) If the same project would otherwise be allocated credits under both the qualifying advanced coal project program of § 48A and the qualifying gasification project program of § 48B, 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.

(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 in a pool described in section 4.02(2) of this notice, the DOE also will rank each of the projects it certifies (for example, first, second, third, etc.) relative to other certified projects in the same pool and credits will be allocated to projects based on the DOE ranking. 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 § 48A 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 § 48A certification and will notify the taxpayer, by letter, of its decision.

(12) 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 June 30 of the calendar year in which an application for § 48A 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 advanced coal project is placed in service, any credit allocated to the project (including any credit allocated under the Phase I advanced coal 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 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.

(13) The closing agreement relating to a credit allocation may be modified only if the modification is consistent with the objectives of the qualifying advanced coal project 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 credits available to the taxpayer under § 48A 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 § 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. 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 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) 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 a 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) used in normal plant operations (as defined in section 3.03(2) of this notice) of 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.

(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 amount of credit the taxpayer is or will be requesting under § 48B.

(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.

(10) A statement specifying whether the project is entitled to priority for greenhouse gas capture capability (as defined in § 48A(c)(5)), increased by-product utilization, or 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.

(11) A statement specifying the number and types of generators to be used in the project (for example, two combustion turbine generators and one steam turbine generator).

(12) The exact total nameplate generating capacity (as defined in section 3.02 of this notice) of the project.

(13) In the case of a project that will not achieve 99-percent removal of sulfur dioxide, a statement that the project is designed for the use of a feedstock substantially all of which is subbituminous coal and will achieve an emission level of not more than 0.04 pounds of sulfur dioxide per million Btu, determined on a 30-day average. For this purpose, a project is designed for the use of feedstock substantially all of which is subbituminous coal if at all times 80 percent or more of the cumulative total fuel input (coal and any other fuel input) used in normal plant operations (as defined in section 3.03(2) of this notice) of the project will be subbituminous coal. Such a project meets the requirements in § 48A(f)(1) by achieving either 99-percent removal of sulfur dioxide or an emission level of not more than 0.04 pounds of sulfur dioxide per million Btu, determined on a 30-day average. All other qualifying advanced coal projects must achieve 99-percent removal of sulfur dioxide.

.03 Information To Be Included 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. 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 advanced coal credit was allocated to the project, the estimated total cost and estimated total qualified investment of the Phase I advanced coal project (as represented in the application for the Phase I advanced coal credit), and the amount of the allocated Phase I advanced coal project credit.

.04 Instructions and Address for Filing § 48A Application. One paper copy and one electronic version on a floppy disc or a CD of the application for § 48A certification must be submitted. 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  
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. 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(11) of this notice, the taxpayer must submit to the Service both a paper copy and an electronic version on a floppy disc or a CD of the documentation establishing that the requirements of § 48A(e)(2) are satisfied. The electronic version of the documentation must be formatted in one of the following software applications: Microsoft Word<sup>™</sup> 2002 or later edition; Microsoft Excel<sup>™</sup> 2002 or later edition; or Adobe Acrobat<sup>™</sup> PDF 6.0 or later edition. 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 described 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. 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 of 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 § 48A and 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 § 48A 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 advanced coal 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 §48A(e)(1)(g).

.05 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.

.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 § 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.

.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. This debriefing will be held by the DOE after the Service has accepted the applications for § 48A 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 DOE within 30 days of receipt of the Service's decision to accept or reject the application.

## SECTION 8. REDUCTION OR FORFEITURE OF ALLOCATED CREDITS

.01 Under the closing agreement set forth in Appendix A to this notice, the qualifying advanced coal 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 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 2011-12 allocation round, future guidance will prescribe procedures applicable to applications for certification with respect to the amount of returned credit.

## 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(11) 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(11) 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;

(4) A significant change to the plans for the project as set forth in the applications for § 48A and DOE certification if, under section 7.03 of this notice, the Service's acceptance of the project is void as a result of the change; or

(5) 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 § 48A(e)(1)(G).

## SECTION 10. DISCLOSURE OF INFORMATION

.01 Announcement. Section 48A(d)(5) provides that the Secretary shall, upon making a certification under § 48A(d) or § 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 information in the event a qualifying advanced coal project credit is allocated to the taxpayer's project:

(a) the name of the taxpayer and (b) the amount of the qualifying advanced coal project credit allocated to the project.

.02 In general. An application for DOE certification, an application for § 48A certification, any other documentation submitted by the taxpayer pursuant to section 6.02 of this notice, and any documentation generated by the Service or DOE as part of this process

are return information subject to § 6103. Except for the items of information that § 48A(d)(5) requires 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 USC § 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 USC § 552. (b)(4)), as well as personal information (5 USC § 552(b)(6)).

.03 FOIA requests. Anyone interested in submitting a request for records under the FOIA with respect to the qualifying advanced coal project program under § 48A 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 11. EFFECT ON OTHER DOCUMENTS

Notice 2007-52 is clarified, modified, and amplified.

#### SECTION 12. EFFECTIVE DATE

This notice is effective March 13, 2009.

#### SECTION 13. 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 14. DRAFTING INFORMATION

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

regarding the application for § 48A certification, the documentation to be submitted to the Service establishing that the requirements of § 48A(e)(2) are satisfied, and the issuance of the certification that the requirements of § 48A(e)(2) are satisfied, 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 advanced coal program described in Notice 2009-24 ("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 an advanced coal-based generation technology (as defined in § 48A(c)(2) and (f));

(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 (as defined in section 3.02 of Notice 2009-24) of at least [insert number] megawatts;

(5) At all times more than 50 percent of the cumulative total fuel input (as defined in section 3.03(1) of Notice 2009-24 and including coal and any other fuel input) used during normal plant operations (as defined in section 3.03(2) of Notice 2009-24) for the Project will

be [insert either: “bituminous coal”; “subbituminous coal”; or “lignite”]; and

3. On [insert date of acceptance letter issued under section 4.02(11) of Notice 2009-24], the Service 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 the time specified in § 48A(d)(2)(D) (2 years from [insert the date in WHEREAS clause #3]), or if the Service does not issue a certification for the Project under Notice 2009-24, 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 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 § 48A(e)(1)(G), 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 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 2009-24, the qualifying advanced coal project credit in the amount of \$[insert the number in WHEREAS



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

5. 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 4.01 of Notice 2009-24) and the Application for § 48A Certification (as defined in section 4.01 of Notice 2009-24) and, under section 7.03 of Notice 2009-24, the acceptance of Taxpayer's Application for § 48A Certification on [insert the date in WHEREAS clause #3] is void, 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. (1) If the Project fails to satisfy any of the requirements in § 48A(e)(1)(A), (C), (D), (E), and (F) for a qualifying advanced coal project or, during normal plant operations (as defined in section 3.03(2) of Notice 2009-24), fails to satisfy the requirement in § 48A(e)(1)(B) 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 (as defined in section 3.03(1) of Notice 2009-24 and including coal and any other fuel input) used during normal plant operations (as defined in section 3.03(2) of Notice 2009-24) is not [insert the primary feedstock in WHEREAS clause #2(e)], the Project ceases to be investment credit

property and the recapture rules of § 50(a) apply.

7. 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.

8. 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(s) during which the Project is under construction and the Project ceases to be a qualifying advanced coal 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.

9. 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 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:** [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 clean coal 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 certification of feasibility to the Service. The Service will then accept or reject the taxpayer’s application for certification of tax credit.

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 relevant sections of Notice 2009-24 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 2009-24 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 relevant sections of Notice 2009-24.

An application to DOE 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(1) of Notice 2009-24, one paper copy and one electronic version of the application for DOE certification must be sent to the Service as part of the application for §48A certification. The application for §48A 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<sup>™</sup> 2002 or later edition
- Microsoft Excel<sup>™</sup> 2002 or later edition
- Adobe Acrobat<sup>™</sup> PDF 6.0 or later edition

Financial models should be submitted using the Excel<sup>™</sup> 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 § 48A are 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.
- For advanced coal-based electric generation:
  - The applicant must provide evidence sufficient to justify the actual heat rate and heat rate corrected to conditions specified in § 48A(f)(2).
  - For projects including existing units, the applicant must provide evidence sufficient to justify that the proposed technology meets heat rate requirements specified in § 48A(f)(3).
- Provide evidence sufficient to justify that the proposed project is designed to meet the following performance requirements:
  - SO<sub>2</sub> (subbituminous coal is 80 percent or more of fuel input).....99 percent removal or emissions not more than 0.04 lbs/MMBTU
  - SO<sub>2</sub> (subbituminous coal is not more than 80 percent of fuel input)... ..99 percent removal
  - SO<sub>2</sub> (for all projects other than subbituminous coal projects).....99 percent removal
  - NO<sub>x</sub> 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) and section 3.01 of Notice 2009-24), on an energy input basis.
  - The project is located at one site and has a total nameplate electric power generating capacity (as defined in section 3.02 of Notice 2009-24) of at least 400 MW.
  - The project includes equipment which separates and sequesters at least 65 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. Priority for Qualifying Advanced Coal Projects**

The applicant must submit information sufficient for categorization and prioritization of projects for certification, including documentation pertaining to the following:

- Identification of the primary feedstock (as defined in section 5.02(5) of Notice 2009-24), and all other feedstocks.
- High priority project factors:
  - Greenhouse gas capture capability.
  - Increased by-product utilization, if applicable.

- Research partnership with an eligible educational institution as defined in §48A(e)(3)(B)(iii), if applicable.
- Highest priority factor: Separation and sequestration percentage of total CO<sub>2</sub> emissions.

## **5. Site Control and Ownership**

Provide evidence that demonstrates the overall feasibility of implementing the project at the proposed site.

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, coal supply, water supply, transmission interconnect, and public policy requirements. Such documentation may include signed agreements, letters of intent, or term sheets relating to coal 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, transmission lines 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 power 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 IGCC 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 IGCC 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.

## **6. Utilization of Project Output**

Provide evidence that demonstrates that a majority of the project output is reasonably expected to be acquired or utilized.

Provide a projection of the anticipated costs of electricity and other marketable by-products produced by the plant.

Provide documentation establishing that a majority of the output of the plant is reasonably expected to be acquired or utilized. 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, Option Agreements, and Power Purchase Agreements.

Describe any energy sales arrangements that exist or that may be contemplated (e.g., a Power Purchase Agreement or Energy Sales Agreement) and summarize 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, such as CO<sub>2</sub>, 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.

## **7. 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.

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

## **8. 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 most recently ended three

fiscal years and 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.

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, describe 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.

Include as an appendix copies of any existing funding commitments or expressions of interest from funding sources for the project.

For projects employing non-recourse or limited recourse 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; and (2) 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.

## **9. 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 5 above)
- 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 signed 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.
- 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.

## **10. 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.

## **11. 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.

## **12. 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.

The project schedule should be comprehensive and provide sufficient detail to demonstrate how applicant will meet the certification and placed-in-service requirements. 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.

Applicants should document their progress toward meeting the 2 year completion of permitting deadline. Existing permits and permit applications must be specific to the project proposed. If existing permits are not specific for the proposed coal-based project (e.g. the permits are for oil-fired or natural gas based units), specific plans, procedures and schedules for reapplying, modifying and/or renegotiating permits should be provided. Any local, state or federal permitting schedules which may impact the overall project schedule should be included.

Applicant should document their progress toward obtaining engineering design information (i.e., FEED) to initiate permitting activities and to finalize the turbine generator purchase specification within the 2 year window. Most often, this requires final site, technology, process selection. Signed FEED and/or EPC-type agreements, if available, should be provided.

### **13. 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, coal supply, water supply, transmission interconnect, and public policy reasons.
- d. Power Purchase or Energy Sales Agreement.
- e. Energy Market Study.
- f. Market Study for non-power output.
- g. Financial Model of project.
- h. 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.
- i. Expressions of interest or commitment letters from funding sources.
- j. For each project contract, if no contract currently exists, provide a summary of the expected terms and conditions.

- k. List of all federal, state, and local permits, including environmental authorizations or reviews, necessary to commence construction.

## **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**

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

If there are more certified applications than available amount of credit for a pool described in section 4.02(2) of Notice 2009-24, 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 Secondary Ranking Factors than to Tertiary Ranking Factors.

Primary Ranking Factor:

- Capture and sequestration of more than 65 percent CO<sub>2</sub> emissions. Only projects that capture and sequester 65 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 Factors:

- Greenhouse gas capture capability.
- Increased by-product utilization.
- Research partnership with an eligible educational institution as defined in §48A(e)(3)(B)(iii).

#### Tertiary Ranking Factors:

- Presentation of other environmental, economic, or performance benefits
- Higher plant efficiency.
- Geographic distribution of potential markets.
- The ratio of total nameplate generating capacity (as defined in section 3.02 of Notice 2009-24) 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.

The Applicant's capability to meet the legislated heat rate and/or environmental targets should be supported with design information, and or vendor guarantees which are project, site and coal specific.

#### **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.