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Qualifying Advanced Coal Project Program

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SECTION 1. PURPOSE

This notice updates the procedures for the allocation of credits under the qualifying advanced coal project program of § 48A of the Internal Revenue Code and defines certain terms for purposes of § 48A. The purpose of the qualifying advanced coal project program is the deployment of advanced coal-based generation technologies. To further this purpose, the method of allocation is being modified for allocation rounds after 2006. Under the modified method of allocation, the U.S. Department of Energy ("DOE") will rank a certified project relative to other certified projects in each pool and credits will be allocated to projects based on the DOE ranking. The modified allocation method will substantially favor projects that capture and sequester carbon dioxide emissions and will favor to a lesser extent projects optimized for future carbon dioxide capture.

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

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

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

.05 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. As originally enacted, § 48A(f) required that a unit be designed to achieve 99-percent removal of sulfur dioxide. Section 203(a) of the Tax Relief and Health Care Act of 2006, Pub. L. 109-432, 120 Stat. 2922 (December 20, 2006), modified this test for units designed for the use of feedstock substantially all of which is subbituminous coal. Such a unit satisfies the modified test if it achieves 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.

.06 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.

.07 Section 48A(d)(1) provides that the Secretary, in consultation with the Secretary of Energy, shall establish a qualifying advanced coal project program for the deployment of advanced coal-based generation technologies. The Treasury Department and the Internal Revenue Service established this program in Notice 2006-24, 2006-11 I.R.B. 595.

.08 This notice modifies the qualifying advanced coal project program established in Notice 2006-24 in a number of respects. The significant changes made by this notice include the following:

- (1) The Large and Mid-Size Business Division (LMSB) of the Service will allocate the advanced coal project credits and issue the certification under § 48A(d)(2). The filing instructions in section 5.04 provide LMSB addresses to reflect this change.
- (2) Section 3 defines certain terms for purposes of § 48A.
- (3) The method of allocation is modified for allocation rounds after 2006. Under the modified method of allocation, the DOE will rank a certified project relative to other certified projects in each pool and credits will be allocated to projects based on the DOE ranking. The modified allocation method will substantially favor projects that capture and sequester carbon dioxide emissions and will favor to a lesser extent projects optimized for future carbon dioxide capture. Sections 4.02(3) and (4) reflect this change in the method by which credits under § 48A are allocated to projects.

(4) Section 4.02(8) provides that the period for submitting the application for § 48A certification (i) ends on March 3, 2008, for the 2007-08 allocation round and (ii) begins on March 4, 2008, and ends on March 2, 2009, for the 2008-09 allocation round. Changes also are made to the dates in sections 4.02(10) and (11) for accepting or rejecting a taxpayer's application for § 48A certification and for executing closing agreements.

(5) Section 4.02(9) provides that the due date for the application for DOE certification is October 31, that DOE will rank certified projects, and that the due date for the DOE certification and ranking is March 1. Section 4.02(9) also clarifies that the DOE certification and ranking (for projects determined to be feasible) are provided to the Service.

(6) Section 4.02(11) provides that a 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.

(7) The information required to be included in the application for DOE certification is modified. Section 5.02 requires submission of additional information regarding the number and types of turbines to be used in the project and with respect to the sulfur dioxide removal. Appendix B provides additional information regarding program policy factors. Applicants will no longer be required to submit independent financial reports.

(8) Section 5.02(13) defines the term "substantially all" for purposes of determining whether a project's subbituminous coal usage qualifies it for the modified sulfur dioxide removal test provided in § 48A(f)(1).

(9) Section 5.03 requests that a taxpayer 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 credits. The form of the declaration is set forth in Appendix C.

(10) Sections 5.03(1) and 5.04 require that a taxpayer submit one paper copy and one electronic version on a floppy disc or a CD of the application for § 48A certification (including the application for DOE certification).

(11) Section 7.02 provides more details on who may sign the penalties of perjury statement.

(12) Section 7.03 provides that the Service and the DOE 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, and also provides the consequences of any significant change to the plans set forth in the applications.

(13) Section 7.06 provides that the DOE will offer debriefings to applicants that submitted an application for DOE certification.

(14) Section 10 provides guidance regarding Freedom of Information Act requests for records relating to the qualifying advanced coal project program.

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.

SECTION 4. QUALIFYING ADVANCED COAL PROJECT PROGRAM

.01 *In General.* The Service will consider a project under the qualifying advanced coal project program only if the DOE provides a certification ("DOE certification") and ranking (if any) for the project. Accordingly, a taxpayer must submit, for each qualifying advanced coal project: (1) an application for certification by the DOE ("application for DOE certification"), and (2) an application for certification under § 48A(d)(2) by the Service ("application for § 48A certification"). Both applications may be submitted only during the 3-year period beginning on February 21, 2006. Certifications will be issued and credits will be allocated to projects in annual allocation rounds. The initial allocation round was conducted in 2006. Additional allocation rounds will be conducted in 2007-08 and, if necessary, in 2008-09.

.02 *Program Specifications.*

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

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

(a) Projects using an advanced coal-based generation technology other than IGCC. The aggregate amount of qualifying advanced coal project credit for this pool is \$500 million. The maximum amount of credits that will be allocated to a project is \$125 million. In the 2006 allocation round, \$250 million of credits was allocated from this pool. Therefore, \$250 million of credits is available for allocation from this pool in 2007-08.

(b) IGCC projects using bituminous coal as a primary feedstock. The aggregate amount of qualifying advanced coal project credit for this pool is \$267 million. The maximum amount of credits that will be allocated to a project is \$133.5 million. In the 2006 allocation round, \$267 million of credits (the entire amount available) was allocated from this pool. Accordingly, no allocation round for this pool will be conducted in 2007-08.

(c) IGCC projects using subbituminous coal as a primary feedstock. The aggregate amount of qualifying advanced coal project credit for this pool is \$267 million. The maximum amount of credits that will be allocated to a project is \$133.5 million. In the 2006 allocation round, no credits were allocated from this pool. Therefore, \$267 million of credits is available for allocation from this pool in 2007-08.

(d) IGCC projects using lignite as a primary feedstock. The aggregate amount of qualifying advanced coal project credit for this pool is \$266 million. The maximum amount of credits that will be allocated to a project is \$133 million. In the 2006 allocation round, \$133 million of credits was allocated from this pool. Accordingly, \$133 million of credits is available for allocation from this pool in 2007-08.

(3) For projects using an advanced coal-based generation technology other than IGCC, DOE will rank the certified projects in descending order (that is, first, second, third, etc.) and the \$250 million available for allocation will be allocated as follows in the allocation round in 2007-08:

(a) If the requested allocation of credits for projects that DOE has certified for this pool 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 credits for projects that DOE has certified for this pool 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 credits and allocations to such projects will similarly reduce the remainder of the amount available for allocation until the amount available for allocation from the pool is exhausted.

(4) For each IGCC pool described in section 4.02(2)(c) or (d) of this notice, DOE will rank the certified projects in descending order (that is, first, second, third, etc.) and the amount available for allocation from the pool will be allocated as follows in the allocation round in 2007-08:

(a) If the requested allocation of credits for projects that DOE has certified for an IGCC pool described in section 4.02(2)(c) or (d) 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 an IGCC pool described in section 4.02(2)(c) or (d) 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 2007-08 allocation round, a similar allocation round will be conducted in 2008-09. Generally, the results of each year will be announced. See section 5.03(2) of this notice for further information about this announcement.

(6) If the same project would otherwise be allocated credits under both the qualifying advanced coal project program under this notice and the qualifying gasification project program under Notice 2007-53, 2007-26 I.R.B., 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 § 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.

(8) For the allocation round conducted in 2007-08, the application period begins on October 3, 2006, and ends on March 3, 2008, and any completed application for § 48A certification received by the Service after October 2, 2006, and before March 4, 2008, will be deemed to be submitted by the taxpayer on March 3, 2008. For the allocation round to be conducted in 2008-09, the application period begins on March 4, 2008, and ends on March 2, 2009, and any completed application for § 48A certification received by the Service after March 3, 2008, and before March 3, 2009, will be deemed to be submitted by the taxpayer on March 2, 2009. For purposes of this notice, an application that is submitted by U.S. mail will be treated as received by the Service on the date of the postmark and an application submitted by a private delivery service will be treated as received by the Service on the date recorded or the date marked in accordance with § 7502(f)(2)(C).

(9) See section 5.02 of this notice and Appendix B to this notice for the information to be submitted to the DOE in an application for DOE certification. Appendix B to this notice also provides the instructions and address for filing the application for DOE certification. The DOE will determine the feasibility of the project and, 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. 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 year following that calendar year.

(10) 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(8) of this notice), the Service will accept or reject the taxpayer's application for § 48A certification and will notify the taxpayer, by letter, of its decision.

(11) If the taxpayer's application for § 48A certification is accepted, the acceptance letter will state the amount of the credit allocated to the project. If a credit is allocated to a taxpayer's project, the taxpayer will be required to execute a closing agreement in the form set forth in Appendix A to this notice. By June 30 of the calendar year in which an application for § 48A certification is accepted, 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 will be fully forfeited (and rules similar to the recapture rules of § 50(a) apply with respect to qualified progress expenditures); and

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

SECTION 5. APPLICATIONS FOR CERTIFICATIONS

.01 In General. An application for § 48A certification and a separate application for DOE certification must be submitted for each qualifying advanced coal project. If an application for DOE certification does not include all of the information required by section 5.02 of this notice and meet the requirements in sections 7.01 and 7.02 of this notice, the DOE may decline to accept the application. If an application for § 48A certification does not include all of the information listed in section 5.03(1) 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) In the case of an IGCC project, a statement specifying the type of coal (bituminous coal, subbituminous coal, or lignite) that will be the primary feedstock. An application for DOE certification with respect to an IGCC project will not be considered unless one of these types of coal is the primary feedstock. For purposes of § 48A(e)(3)(A), a type of coal is the primary feedstock only if at all times more than 50 percent of the cumulative total fuel input (coal and any other fuel input) 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. The amount requested must not exceed the maximum amount provided in section 4.02(2) of this notice.
- (8) If the taxpayer is or will be requesting an amount of the qualifying gasification project credit under § 48B for the same project, a statement specifying the 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) In the case of an IGCC project, a statement specifying whether the project is entitled to priority for greenhouse gas capture capability (as defined in § 48A(c)(5)) or increased by-product utilization and, if entitled to priority, a statement identifying which of these priorities apply to the IGCC 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.

- (1) *Information required in the application for § 48A certification.* Pursuant to § 48A(d)(2)(B), an application for § 48A certification must include all of the following:
 - (a) 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.
 - (b) 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*.
 - (c) 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.
- (2) *Consent to disclosure of allocation.* In order to provide the public with information on how the qualifying advanced coal project credits authorized by Congress have been allocated and facilitate oversight of the qualifying advanced coal project program, the Service intends to publish the results of the allocation process. The Service expects that a list identifying the taxpayers and projects to which credits are allocated and specifying the amount of credit allocated to each would be of particular interest to the public. Pursuant to § 6103, consent is required in order to disclose any return information with respect to taxpayers awarded an allocation. Therefore, the Service requests that each taxpayer submit with the application for § 48A certification a declaration, consenting to the disclosure by the Service of the following return information in the event a qualifying advanced coal project credit is allocated to the taxpayer's project: (a) the name of the taxpayer; (b) if the taxpayer is a member of an affiliated group filing consolidated returns, the name of the common parent of the group; (c) the type and location of the project to which the application relates; and (d) the amount of the qualifying advanced coal project credit allocated to the project. To provide a valid consent, the declaration must be in the form set forth in Appendix C. A taxpayer is not required to consent to disclosure of this information in order to receive an allocation of the qualifying advanced coal project credit, and neither the presence nor the absence of such a consent will be taken into account in the evaluation of a taxpayer's application. The Service will not publish any return information relating to a taxpayer if the taxpayer does not consent to disclosure of this information or does not receive an allocation of the qualifying 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

SECTION 6. ISSUANCE OF CERTIFICATION

.01 *In General.* Section 48A(d)(2)(D) provides that a taxpayer shall have 2 years from the date of acceptance of the § 48A application during which to provide evidence that the criteria set forth in § 48A(e)(2) have been met. Pursuant to § 48A(e)(2), a project shall be eligible for certification only if (A) the taxpayer has received all federal and state environmental authorizations or reviews necessary to commence construction of the project, and (B) the taxpayer, except in the case of a retrofit or repower of an existing generation unit, has purchased or entered into a binding contract for the purchase of the main steam turbine or turbines for the project, except that this contract may be contingent upon receipt of a certification under § 48A(d)(2). Section 48A(d)(2)(E) provides that a taxpayer that receives a certification has 5 years from the date of issuance of the certification to place the project in service and that the certification is void if the project is not placed in service by the end of that five-year period.

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

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

SECTION 7. OTHER REQUIREMENTS

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

.02 *Penalties of Perjury Statement.*

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

(2) The declaration must be signed and dated by the taxpayer. The person signing for the taxpayer must have personal knowledge of the facts. 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 and DOE 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. Any significant change to the plans set forth in the applications will have the following effects:

(1) The Service will disregard any certification or ranking provided by DOE unless DOE is informed of the change before the date on which DOE provides the certification or ranking (that is, the Service will not consider the project unless DOE provides a new, timely certification and ranking (if any) on or after the date on which DOE is informed of the change); 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(10) of this notice.

.04 *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.

.05 *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.

.06 *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(10) 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.

SECTION 8. REVIEW AND REDISTRIBUTION

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

.02 *Review and Redistribution of Credits.*

(1) *In general.* If, after the allocation round in 2008-09, the entire credit for a pool is not fully subscribed (that is, the aggregate credit for the pool has not been fully allocated), the remaining credits from that pool will be reallocated to pools that have been fully subscribed. Credits from pools not fully subscribed will be reallocated to fully subscribed pools in proportion to the aggregate amounts of credit specified for the fully subscribed pools in section 4.02(2) of this notice. Future guidance will prescribe the procedures applicable to applications for certification with respect to the reallocated credits.

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

The amount of any reduction or forfeiture of the allocated credits will be returned to the appropriate allocation pool and included in the aggregate credit remaining to be allocated in the allocation round following the reduction or forfeiture. If the reduction or forfeiture occurs after the allocation round in 2008-09, future guidance will prescribe procedures applicable to applications for certification with respect to the returned credits.

SECTION 9. QUALIFIED PROGRESS EXPENDITURES

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

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

.03 To claim the qualifying advanced coal project credit on the qualified progress expenditures paid or incurred by a taxpayer during the taxable year for construction of a qualifying advanced coal project, the taxpayer must make an election under the rules set forth in § 1.46-5(o) of the Income Tax Regulations. A taxpayer may not make the qualified progress expenditures election for a qualifying advanced coal project until the taxpayer has received an acceptance letter for the project under section 4.02(10) of this notice.

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

- (1) Failure to satisfy any of the certification requirements in § 48A(e)(2) within 2 years from the date that the Service accepted the taxpayer's application for § 48A certification for the project under section 4.02(10) of this notice;
- (2) Failure to receive a certification for the project in accordance with section 6.03 of this notice;
- (3) Failure to place the project in service within 5 years from the date of issuance of the certification under section 6.03 of this notice; or
- (4) 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.

SECTION 10. DISCLOSURE OF INFORMATION

.01 *In general.* Any information contained in the application for DOE certification, the application for § 48A certification, or the documentation submitted by the taxpayer pursuant to section 6.02 of this notice is subject to § 6103 and to any other applicable exemption set forth in the Freedom of Information Act (the FOIA). Examples of FOIA exemptions include the FOIA trade secrets and commercial or financial information exemption of 5 U.S.C. 552(b)(4) and the FOIA personal privacy exemption of 5 U.S.C. 552(b)(6)).

.02 *FOIA requests.* Anyone interested in submitting a request for records under the FOIA with respect to the qualifying advanced coal project program under § 48A (including a request for records relating to the application for DOE certification) 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 2006-24 is clarified, modified, amplified, and superseded.

SECTION 12. EFFECTIVE DATE

This notice is effective June 7, 2007.

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 Ruba Nasrallah of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this notice, contact Jaime Park of the Office of Associate Chief Counsel (Passthroughs & Special Industries) 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 Kimberly Edwards, Executive Assistant, Office of the Industry Director, Natural Resources and Construction, at (713) 209-3615 (not a toll-free number).

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