

Renewable Electricity, Refined Coal, and Indian Coal Production Credit

Department of the Treasury
Internal Revenue Service

▶ Attach to your tax return.

Attachment
Sequence No. **95**

Name(s) shown on return

Identifying number

Part I Electricity Produced at Qualified Facilities Placed in Service Prior to October 23, 2004

1	Kilowatt-hours produced and sold (see instructions)	.....	×	0.021	1	
2	Phaseout adjustment (see instructions)	\$	×		2	
3	Credit before reduction. Subtract line 2 from line 1				3	
Reduction for government grants, subsidized financing, and other credits:						
4	Total of government grants, proceeds of tax-exempt government obligations, subsidized energy financing, and any federal tax credits allowed for the project for this and all prior tax years (see instructions)				4	
5	Total of additions to the capital account for the project for this and all prior tax years				5	
6	Divide line 4 by line 5. Show as a decimal carried to at least 4 places				6	
7	Multiply line 3 by line 6				7	
8	Subtract line 7 from line 3				8	
9	Section A renewable electricity production credit from partnerships, S corporations, cooperatives, estates, and trusts				9	
10	Add lines 8 and 9. Cooperatives, estates, and trusts, go to line 11; partnerships and S corporations, report this amount on Schedule K; all others, report this amount on Form 3800, line 1f				10	
11	Amount allocated to patrons of the cooperative or beneficiaries of the estate or trust (see instructions)				11	
12	Cooperatives, estates, and trusts. Subtract line 11 from line 10. Report the credit on Form 3800, line 1f				12	

this amount

Condense text on line 12 to roll up to one line

Part II Electricity and Refined Coal Produced at Qualified Facilities Placed in Service After October 22, 2004, and Indian Coal Produced at Facilities Placed in Service After August 8, 2005

Electricity produced at qualified facilities using wind, closed-loop biomass, geothermal, and solar (after October 2, 2008, for electricity produced from marine and hydrokinetic renewables)						
13	Kilowatt-hours produced and sold (see instructions)	.....	×	0.021	13	
Electricity produced at qualified facilities using open-loop biomass, small irrigation power, landfill gas, trash combustion, and hydropower , and for electricity produced and sold after October 3, 2008, from marine and hydrokinetic renewables						
14	Kilowatt-hours produced and sold (see instructions)	.....	×		14	
15	Add lines 13 and 14				15	
16	Phaseout adjustment (see instructions)	\$	×		16	
17	Subtract line 16 from line 15				17	
Refined coal produced at a qualified refined coal production facility						
18	Tons produced and sold (see instructions)	.....	×	\$6.061	18	
19	Phaseout adjustment (see instructions)	\$	×		19	
20	Subtract line 19 from line 18				20	
Indian Coal produced at a qualified Indian coal production facility						
21	Tons produced and sold (see instructions)	.....	×	\$1.589	21	
22	Credit before reduction. Add lines 17, 20, and 21				22	
Reduction for government grants, subsidized financing, and other credits:						
23	Total of government grants, proceeds of tax-exempt government obligations, subsidized energy financing, and any federal tax credits allowed for the project for this and all prior tax years (see instructions)				23	
24	Total of a capital account for the project for this and all prior tax years				24	
25	Divide line 23 by line 24. Show as a decimal carried to at least 4 places				25	
26	Multiply line 22 by the lesser of 1/2 or line 25				26	
27	Subtract line 26 from line 22				27	
28	Part II renewable electricity, refined coal, and Indian coal production credit from partnerships, S corporations, cooperatives, estates, and trusts				28	
29	Add lines 27 and 28. Partnerships and S corporations, report this amount on Schedule K; all others continue to line 30				29	
30	Renewable electricity, refined coal, and Indian coal production credit included on line 29 from passive activities (see instructions)				30	
31	Subtract line 30 from line 29				31	

Move each number up one and make 32 the last number. Move lines 31 & 32 from page 1 to page 2.

32

For Paperwork Reduction Act Notice, see instructions.

Cat. No. 14954R

Form **8835** (2008)

Steel industry fuel produced at a qualified refined coal production facility

21 Barrel-of-oil equivalents produced and sold after September 30, 2008 X \$2.00 21 _____

Steel industry fuel is a fuel that is produced through a process of liquifying coal waste sludge (as defined by section 45(c)(7)(C)(ii)) and distributing it on coal and is used as a feedstock for the manufacture of coke.

32 Renewable electricity, refined coal, and Indian coal production credit allowed for 2008 from a passive activity (see instructions)

33 Carryforward of renewable electricity, refined coal, and Indian coal production credit to 2008.

34 Carryback of renewable electricity, refined coal, and Indian coal production credit from 2009 (see instructions) **32 35**

35 Add lines **31** through **34**. Cooperatives, estates, and trusts, go to line **36**; all others, report this amount on Form 3800, line 29e **37 36**

36 Amount allocated to patrons of the cooperative or beneficiaries of the estate or trust (see instructions)

37 **Cooperatives, estates, and trusts.** Subtract line **36** from line **35**. Report this amount on (1) 3800, line 29e

32
33
34
35
36
37

move each number up one and make 38 the last number

, or (2) steel industry fuel (defined below).

38

General Instructions

Section references are to the Internal Revenue Code.

INSERT A

Purpose of Form

Use Form 8835 to claim the renewable electricity, refined coal, and Indian coal production credit. The credit is allowed only for the sale of electricity, refined coal, or Indian coal produced in the United States or U.S. possessions from qualified energy resources at a qualified facility (see Definitions on page 3).

below

Generally, if you are a taxpayer that is not a partnership or S corporation, and your only source of this credit is from a partnership, S corporation, estate, trust, or cooperative, you are not required to complete Part I of this form. Instead, you can report this credit directly on line 1f of Form 3800. The following exceptions apply.

- You are an estate or trust and the source credit can be allocated to beneficiaries. For more details, see the Instructions for Form 1041, Schedule K-1, box 13.
- You are a cooperative and the source credit can or must be allocated to patrons. For more details, see the Instructions for Form 1120-C, Schedule J, line 5c.

How To Figure the Credit

Generally, the credit is 1.5 cents per kilowatt-hour (kWh) for the sale of electricity produced by the taxpayer from qualified energy resources at a qualified facility during the credit period (see Definitions on page 3). The 1.5 cents credit amount is reduced by 1/2 cent for open-loop biomass, gas, trash combustion, and marine and hydrokinetic facilities. The credit is \$1.50 for the sale of refined coal produced at a qualified facility during the credit period (section 45(e)(9)(A)). The credit is \$1.50 per ton for the sale of Indian coal produced at a qualified facility during the credit period.

Replace text with INSERT A1

The credit for electricity produced is proportionately phased out over a 3-cent range when the reference price exceeds the 8-cent threshold price. The refined coal credit is proportionately phased out over an \$8.75 range when the reference price of fuel used as feedstock exceeds 1.7 times the 2002 reference price. The 1.5-cent credit rate, the 8-cent threshold price, the \$4.375 refined coal rate, and the reference price of fuel used as a feedstock are adjusted for inflation. The reference price and the inflation adjustment factor (IAF) for each calendar year are published during the year in the Federal Register. If the reference price is less than the threshold price (adjusted by the IAF), there is

, the \$2 steel industry fuel rate, and the \$1.50 Indian coal rate

no reduction. For electricity produced, if the reference price is more than 3 cents over the adjusted threshold price, there is no credit; if the reference price is more than the threshold price, but not more than 3 cents over the adjusted threshold price, there is a phaseout adjustment on line 2 or line 4. For refined coal produced, if the reference price is more than \$8.75 over the threshold price, there is no credit; if the reference price is more than the threshold price, but not more than \$8.75 over the threshold price, there is a phaseout adjustment on line 2 or line 4. For refined coal produced, if the reference price is more than \$8.75 over the threshold price, there is no credit. For refined coal produced, if the reference price is more than \$8.75 over the threshold price, there is no credit. For refined coal produced, if the reference price is more than \$8.75 over the threshold price, there is no credit.

This does not include any facility for which any qualified small wind energy property expenditure (as defined in section 25D(d)(4)) is used in determining the residential energy efficient property credit.

Section A example. If the reference price of electricity is 10.0¢ and the adjusted threshold price is 9.0¢, reduce the credit by 1/3 ((10.0¢ - 9.0¢) ÷ 3¢ = .3333). Enter the line 1 credit in the first entry space on line 2, .3333 in the second entry space, and multiply to figure the reduction.

marine and hydrokinetic renewables,

Definitions

Resources means wind, closed-loop biomass, poultry waste, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, hydropower production, refined coal, and Indian coal.

Closed-loop biomass is any organic material from a plant that is planted exclusively for use at a qualified facility to produce electricity.

Poultry waste is poultry manure and litter, including wood shavings, straw, rice hulls, and other bedding material for the disposition of manure.

Open-loop biomass is solid, nonhazardous, cellulosic waste material; lignin material; or agricultural livestock waste nutrients as defined in section 45(c)(3). See Notice 2006-88, 2006-42 I.R.B. 686, for rules related to open-loop biomass, including an expanded definition of a qualified facility and rules related to sales.

Geothermal energy is energy derived from a geothermal deposit as defined by section 613(e)(2).

Small irrigation power is power generated without any dam or impoundment of water. See section 45(c)(5).

Municipal solid waste is solid waste as defined under paragraph 27 of 42 U.S.C. 6903.

2008-60, 2008-30 I.R.B. 178

Refined coal is a liquid, gaseous, or solid fuel produced from coal or high carbon fly ash meeting the requirements of section 45(c)(7).

Hydropower production means the incremental hydropower production for the tax year from any hydroelectric dam placed in service on or before 8/8/2005 and the hydropower production from any nonhydroelectric dam described in section 45(c)(8)(C).

INSERT B

Indian coal means coal which is produced from coal reserves which on 6/14/05 were owned by an Indian tribe or held in trust by the United States for the benefit of an Indian tribe or its members.

Qualified facility is any of the following facilities owned by the taxpayer and used to produce electricity or, in the case of coal production facilities, refined and Indian coal. The facilities are broken down by form section.

shown

- Part I**
- Poultry waste facility placed in service after 12/31/99 and before 1/1/05.
 - Wind facility placed in service after 12/31/93 and before 10/23/04.
 - Closed-loop biomass facility placed in service after 12/31/92 and before 10/23/04.

- Part II**
- Wind facility placed in service after 10/22/04 and before 1/1/09.
 - Closed-loop biomass facility placed in service after 10/22/04 and before 1/1/09.
 - Closed-loop biomass facility modified to co-fire with coal or other biomass (or both), placed in service before 1/1/09. See section 45(d)(2).
 - Open-loop biomass facility using cellulosic waste placed in service before 1/1/09.
 - Open-loop biomass facility using agricultural livestock waste placed in service after 10/22/04 and before 1/1/09 and the nameplate capacity rating is not less than 150 kilowatts.
 - Geothermal energy facility placed in service after 10/22/04 and before 1/1/09.
 - Solar energy facility placed in service after 10/22/04 and before 1/1/06.
 - Small irrigation power facility placed in service after 10/22/04 and before 10/3/2008.
 - Landfill gas or trash combustion facility using municipal solid waste placed in service after 10/22/04 and before 1/01/11.
 - A refined coal production facility originally placed in service after 10/22/04 and before 1/1/09.

1/01/10

1/01/11

D

1/01/10 or a facility producing steel industry fuel (or any modification to such a facility) placed in service before 1/01/10.

o Closed-loop biomass facility that is a new unit placed in service after 10/3/2008 in connection with a facility described in section 45(d)(2)(A)(i), but only to the extent of the increased amount of electricity produced at the facility by reason of the new unit.

o Open-loop biomass facility that is a new unit placed in service after 10/3/2008 in connection with a facility described in section 45(d)(3)(A), but only to the extent of the increased amount of electricity produced at the facility by reason of the new unit.

Hydropower facility producing incremental hydroelectric production attributable to efficiency improvements or additions to capacity described in section 45(c)(8)(B) placed in service after 8/8/05 and before 1/1/09 and any other facility producing qualified hydroelectric production described in section 45(c)(8) placed in service after 8/8/05 and before 1/1/09.

1/01/11

Indian coal production facility placed in service before 1/1/09.

A qualified facility does not include a refined coal production facility or landfill gas facility using municipal solid waste to produce electricity, if the production from that facility is allowed as a credit under section 45K.

Credit period is:

- 10 years for a wind, poultry waste, closed-loop biomass (not modified for co-fire purposes), or refined coal production facility, beginning on the date the facility was placed in service.
10 years for a closed-loop biomass facility modified to co-fire with coal, other biomass (or both), beginning on the date the facility was placed in service, but not earlier than 10/22/04.
10 years for a hydropower facility, beginning on the date the efficiency improvements or additions to capacity are placed in service.

This does not apply to a refined coal facility producing steel industry fuel.

7 years for an Indian coal production facility, beginning on the date the facility was placed in service, but not before 1/1/2006.

5 years for an open-loop biomass facility using agricultural livestock waste, geothermal, solar energy, small irrigation power, landfill gas, or trash combustion facility, beginning on the date the facility was placed in service, if placed in service during the period after 10/22/04 and before 8/9/05. The credit period is 10 years if placed in service after 8/8/05.

5 years for an open-loop biomass facility using cellulosic waste, beginning on the date the facility was placed in service, but not earlier than 1/1/05.

INSERT E

United States and U.S. possessions include the seabed and subsoil of those submarine areas that are adjacent to the territorial waters over which the United States has exclusive rights according to international law.

Who Can Take the Credit

Generally, the owner of the facility is allowed the credit. In the case of closed-loop biomass facilities modified to co-fire with coal, other biomass, or both and open-loop biomass facilities, if the owner is not the producer of the electricity, the lessee or the operator of the facility is eligible for the credit.

Specific Instructions for Part I and Part II

Figure any renewable electricity, refined coal, and Indian coal production credit from your trade or business on lines 1 through 8 or lines 13 through 27. Skip lines 1 through 8 or lines 13 through 27 if you are only claiming a credit that was allocated to you from an S corporation, partnership, cooperative, estate, or trust.

21, or 22

Fiscal year taxpayers. If you have sales in 2008 and 2009 and the credit rate on lines 1, 13, 14, 18, or 21 or the phaseout adjustment on lines 2, 16, or 19 is different for 2009, make separate computations for each line. Use the respective sales, credit rate, and phaseout

parentheses

adjustment for each calendar year. Enter the total of the two computations on the credit rate line(s)—lines 1, 13, 14, 18, or 21—or the phaseout adjustment line(s)—lines 2, 16, or 19. Attach the computations to Form 8835 and write "FY" in the margin.

21, or 22

Line 1 and Line 13

Enter the kilowatt-hours of electricity produced at qualified facilities and multiply by \$.021. Fiscal year filers with 2009 sales may have to refigure line 1 as explained under Fiscal year taxpayers above and before tax year 2007.

If you claimed the credit for a closed-loop biomass facility modified to co-fire with coal, other biomass, or both after October 21, 2004, you should file an amended return to refigure your credit. Use Form 8835 for the applicable tax year to refigure your credit. The additional limitation, based on the thermal content of closed-loop biomass used in the facility and the thermal content of all fuels used in the facility, that applied to these facilities no longer applies. As a result, the credit related to these facilities is figured on line 13.

Line 14

Enter the kilowatt-hours of electricity produced and sold at qualified facilities and multiply by \$.01. Fiscal filers with 2009 sales must figure line 14 as explained under Fiscal year taxpayers above.

Line 2 or Line 16

Calendar year filers enter zero on line 2 or line 16. Fiscal year filers with sales in 2009 also enter zero if the published 2009 reference price is equal to or less than the 2009 adjusted threshold price. See How To Figure the Credit on page 2 to figure the adjustment.

(other than steel industry fuel)

Line 18

Enter the tons of refined coal produced and sold during 2008 from a qualified refined coal production facility and multiply by \$6.061. Fiscal filers with 2009 sales must figure line 18 as explained under Fiscal year taxpayers above.

18

Line 19

Calendar year filers enter zero on line 19. Fiscal year filers with sales in 2009 also enter zero if the published 2009 reference price is equal to or less than 1.7 times the 2002 reference price. See How To Figure the Credit on page 2 to figure the adjustment.

Line 21 22

Enter the tons of Indian coal produced and sold from a qualified Indian coal facility and multiply by \$1.589.

Line 4 or Line 23 24

Enter the sum, for this and all prior tax years, of:

- Grants provided by the United States, a state, or political subdivision of a state for the project;
Proceeds of a tax-exempt issue of state or local government obligations used to provide financing for the project;

Line 21

Enter the barrel-of-oil equivalents of steel industry fuel produced and sold after September 30, 2008 from a qualified refined coal facility and multiply by \$2.00.

- Total of subsidized energy financing provided directly or indirectly under a federal, state, or local program provided for the project; and
The amount of any federal tax credit allowable for any property that is part of the project.

Line 10 or Line 29

Partnerships that own and produce electricity from qualified wind facilities should see Rev. Proc. 2007-65, 2007-45 I.R.B. 967, for information on how to allocate the credit. Rev. Proc. 2007-65 is available at www.irs.gov/irb/2007-45_IRB/ar18.html.

30

Line 30 31

Enter the amount included on line 29 that is from a passive activity. Generally, a passive activity is a trade or business in which you did not materially participate. Rental activities are generally considered passive activities, whether or not you materially participate. For details, see Form 8582-CR, Passive Activity Credit Limitations (for individuals, trusts, and estates), or 8810, Corporate Passive Activity Loss and Credit Limitations (for corporations).

Line 32 33

Enter the passive activity credit allowed for the 2008 renewable electricity, refined coal, and Indian coal production credit from Form 8582-CR or Form 8810.

Line 34 35

Use only if you amend your 2008 return to carry back an unused renewable electricity, refined coal, and Indian coal production credit from 2009.

Line 11 or Line 36

Cooperative election to allocate credit to patrons. A cooperative described in section 1381(a) can elect to allocate any part of the renewable electricity, refined coal, and Indian coal production credit among the patrons of the cooperative. The credit is allocated among the patrons eligible to share in patronage dividends on the basis of the quantity or value of business done with or for such patrons for the tax year.

The cooperative is deemed to have made the election by completing line 11 or line 36, as applicable. However, the election is not effective unless (a) made on a timely filed return (including extensions) and (b) the organization designates the apportionment in a written notice mailed to its patrons during the payment period described in section 1382(d).

37

If you timely file your return without making an election, you can still make the election by filing an amended return within 6 months of the due date of the return (excluding extensions). Enter "Filed pursuant to section 301.9100-2" on the amended return.

Once made, the election cannot be revoked.

Estates and trusts. Allocate the credit on line 10 or line 36 between the estate or trust and the beneficiaries in the same proportion as income was allocated and enter the beneficiaries' share on line 11 or line 36.

Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated burden for individual taxpayers filing this form is approved under OMB control number 1545-0074 and is included in the estimates shown in the instructions for their individual income tax return. The estimated burden for all other taxpayers who file this form is shown below.

Recordkeeping 11 hr 57 min.
Learning about the law or the form 1 hr., 5 min.
Preparing and sending the form to the IRS 1 hr 19 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. See the instructions for the tax return with which this form is filed.

INSERT E

o The period beginning on the later of the date the facility was placed in service, the date the modifications (described in section 45(e)(8)(D)(iii)) were placed in service, or October 1, 2008, and ending on the later of December 31, 2009, or 1 year after the date the facility or modifications (described in section 45(e)(8)(D)(iii)) were placed in service for steel industry fuel.

INSERT A

What's New

- Marine and hydrokinetic renewable energy is a new qualifying resource for the production of electricity.
- Steel industry fuel is a new qualifying resource for refined coal.

INSERT A1

Generally, the credit for electricity, refined coal and Indian coal produced from qualified energy resources at a qualified facility during the credit period (see Definitions(ital) below) is:

- o 1.5 cents per kilowatt-hour (kWh) for the sale of electricity produced by the taxpayer;
- o 1/2 of 1.5 cents for open-loop biomass, small irrigation, landfill gas, trash, hydropower, and marine and hydrokinetic renewable facilities;
- o \$4.375 per ton for the sale of refined coal produced, see section 45(e)(8)(A);
- o \$2 per barrel-of-oil equivalent for the sale of steel industry fuel, see section 45(e)(8)(A); or
- o \$1.50 per ton for the sale of Indian coal produced.

INSERT B

Marine and hydrokinetic renewable energy means energy derived from waves, tides, and currents in oceans, estuaries, and tidal areas; free flowing water in rivers, lakes, and streams; free flowing water in an irrigation system, canal, or other man-made channel, including projects that utilize nonmechanical structures to accelerate the flow of water for electric power production purposes; or differentials in ocean temperature (ocean thermal energy conversion). See section 45(c)(10) for exceptions.