

2010 Instructions for Form 8835, Renewable Electricity, Refined Coal, and Indian Coal Production Credit

Purpose: This is the first circulated draft of the 2010 Instructions for Form 8835 for your review and comments. See below for a discussion on the major changes.

TPCC Meeting: None, but one may be arranged if requested.

Prior Version: The 2009 Instructions for Form 8835 is available at: <http://www.irs.gov/pub/irs-pdf/f8835.pdf>.

Form: The 2010 Form 8835 was circulated earlier at: http://linprod1.publish.no.irs.gov/tfpcirc/circ/2010/circ_10f8835_20100707130736.pdf.

Other Products: Circulations of draft tax forms, instructions, notices, and publications are posted at: <http://taxforms.web.irs.gov/Circulations/index.htm>.

Comments: Please email, call, or mail any comments by **September 24, 2010**. Comments submitted by telephone must be followed up in writing to be considered. Send a copy of any email comments to the form's reviewer, Sharon A. Dewsbury, at Sharon.A.Dewsbury@irs.gov.

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Major Changes to the 2010 Instructions for Form 8835

- We updated tax years and dates where appropriate.
- We updated page references where appropriate.
- We separated the instructions from the form.

Page 1

First Column

We added section titled *What's New* which notifies the reader that lines 13 and 14 have been redesigned. The redesigned lines 13 and 14 are based on an analysis and impact of numerous expiring tax provisions was made by the Office of Research, Analysis, and Statistics and the Joint Committee on Taxation.

Second Column

- In the fourth bullet under the section titled *How To Figure the Credit* (began in the first column), the phrase "section 45(e)(8)(A)" now reads "section 45(e)(8)(D)." This is

based the discussion pertaining to base credit rate for steel industry fuel is discussed in subparagraph (D) of Code section 45(e)(8).

- Under the section titled *Note*, the following changes are made.
 - The phrase “steel industry fuel” was added immediately after “refined coal.”
 - The credit rate for electricity of “2.1 cents per kWh” now reads “2.2 cents per kWh.”
 - The credit rate for refined coal of “\$6.20 per ton” now reads “\$6.27 per ton.”
 - We added the credit rate of “\$2.87 per ton” for steel industry fuel.
 - The credit rate for Indian coal of “\$1.625 per ton” now reads “\$2.20 per ton.”These changes are based on Notice 2010-37.
- In the paragraph that begins with “Refined coal,” we added a second sentence concerning Notice 2009-90, Production Tax Credit for Refined Coal. This notice provides interim guidance for the tax credit for refined coal under Code section 45.

Page 2

First Column

In the twelfth bullet item under the section titled *Part II*, we added a second sentence concerning Notice 2009-90. The notice provides additional information on refined coal facilities and modifications to those facilities.

Second Column

- We deleted the section that begins with the phrase “Credit period is” and the seven bullet items that followed and replaced these items with a table. This change is made to provide an easy to read overview for each eligible electricity production activity.
- In the second sentence under the section titled *Who Can Take the Credit*, the phrase “or both, and open-loop biomass facilities” now reads “or both, open-loop biomass facilities, and refined coal facilities.” This change is made for clarification purposes.

Page 3

First Column

- Under the section titled *Line 1 and Line 13*, the following changes are made.
 - In the first sentence, we inserted the phrase “the applicable” after the phrase “of electricity produced at.” This change is made for clarification purposes.
 - In the first sentence, the amount of “\$.021” now reads “\$.022.” This is based on Notice 2010-37.
 - We deleted the second paragraph as it is no longer required.
- In the section titled *Line 14*, the following changes are made.
 - We inserted the phrase “the applicable” after the phrase “electricity produced and sold at.” This change is made for clarification purposes.
 - We inserted “year” after the word “Fiscal” at the beginning of the second sentence. This change is made for clarification purposes.
- In the section titled *Line 18*, the following changes are made.
 - In the first sentence, the amount of “\$6.20” now reads “\$6.27.” This is based on Notice 2010-37.
 - We inserted “year” after the word “Fiscal” at the beginning of the second sentence. This change is made for clarification purposes.

- Under the section titled *Line 21*, the amount of “\$2.00” now reads “\$2.87.” This is based on Notice 2010-37.
- Under the section titled *Line 22*, the amount of “\$1.625” now reads “\$2.20.” This is based on Notice 2010-37.
- Under the section titled *Line 10 and Line 30*, the following changes are made.
 - In the first sentence, the phrase “I.R.B. 967, for” now reads “I.R.B. 967, as modified by Announcement 2009-68, 2009-40 I.R.B. 475, for.”
 - The end of the second sentence now reads “and Announcement 2009-69 is available at www.irs.gov/irb/2009-40_IRB/ar16.html.”

Announcement 2009-69 modifies Revenue Procedure 2007-65 and needed to be added to provide all reference material needed for this section of the instructions.



Instructions for Form 8835

Renewable Electricity, Refined Coal, and Indian Coal Production Credit

Section references are to the Internal Revenue Code unless otherwise noted.

What's New

Lines 13 and 14 have been redesigned to list each qualified facility on its own line. See *Line 1 and Line 13* and *Line 14* for more details.

General Instructions

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* 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.

Election To Treat a Qualified Facility as Energy Property

Section 48(a)(5) provides an irrevocable election to treat qualified property (described in section 48(a)(5)(D)) that is part of a qualified investment credit facility (described in section 48(a)(5)(C)) as energy property eligible for the investment credit (reported on Form 3468, Investment Credit) in lieu of a production credit reportable on this form. This election applies to a facility placed in service after December 31, 2008, and before January 1, 2014, (before January 1, 2013 for a wind facility). See Notice 2009-52 and Form 3468, for information on making the election. Notice 2009-52 is available at www.irs.gov/irb/2009-25_IRB/ar09.html.

Coordination with Department of Treasury Grants

If a grant is paid under the American Recovery and Reinvestment Act of 2009 (the Act), section 1603, for placing into service specified energy property (described in Act section 1603(d)), no production credit under section 45, or investment credit under section 48, is allowed for the property for the current tax year or any subsequent tax year. See section 48(d) for more information.

How To Figure the Credit

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* below) is:

- 1.5 cents per kilowatt-hour (kWh) for the sale of electricity produced by the taxpayer;

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

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, the reference price of fuel used as a feedstock, the \$2 steel industry fuel rate, and the \$1.50 Indian coal rate 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 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 16. For refined coal produced, if the reference price is more than \$8.75 over the adjusted threshold price, there is no credit; if the reference price is more than the threshold price, but not more than \$8.75 over the adjusted threshold price, there is a phaseout adjustment on line 19.

Note. For calendar year 2010, the effective credit rate for electricity, refined coal, steel industry fuel, and Indian coal produced and sold is, respectively, 2.2 cents per kWh, \$6.27 per ton, \$2.87 per ton, and \$2.20 per ton; there is no phaseout adjustment.

Example. If the reference price of electricity is 10.0¢ and the adjusted threshold price is 9.0¢, reduce the credit by 1/3 $((10.0¢ - 9.0¢) \div 3¢ = .3333)$. 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.

Definitions

Resources means wind, closed-loop biomass, poultry waste, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, hydropower production, marine and hydrokinetic renewables, 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 2008-60, 2008-30 I.R.B. 178, 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.

Refined coal is (1) a liquid, gaseous, or solid fuel produced from coal or high carbon fly ash meeting the requirements of section 45(c)(7), or (2) steel industry fuel (defined below). See Notice 2009-90 for additional information on refined coal facilities. Notice 2009-90 is available at www.irs.gov/irb/2009-51_IRB/ar09.html.

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.

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

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)(B) for exceptions.

Indian coal means coal which is produced from coal reserves which on June 14, 2005, 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 shown by form section.

Part I

- Poultry waste facility placed in service after December 31, 1999, and before January 1, 2005.
- Wind facility placed in service after December 31, 1993, and before October 23, 2004.
- Closed-loop biomass facility placed in service after December 31, 1992, and before October 23, 2004.

Part II

- Wind facility placed in service after October 22, 2004, and before January 1, 2013. 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.
- Closed-loop biomass facility placed in service after October 22, 2004, and before January 1, 2014.
- Closed-loop biomass facility modified to co-fire with coal or other biomass (or both), placed in service before January 1, 2014. See section 45(d)(2).
- Closed-loop biomass facility that is a new unit placed in service after October 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.
- Open-loop biomass facility using cellulosic waste placed in service before January 1, 2014.
- Open-loop biomass facility using agricultural livestock waste placed in service after October 22, 2004, and before January 1, 2014, and the nameplate capacity rating is not less than 150 kilowatts.
- Open-loop biomass facility that is a new unit placed in service after October 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.
- Geothermal energy facility placed in service after October 22, 2004, and before January 1, 2014.
- Solar energy facility placed in service after October 22, 2004, and before January 1, 2006.

- Small irrigation power facility placed in service after October 22, 2004, and before October 3, 2008.
- Landfill gas or trash facility using municipal solid waste placed in service after October 22, 2004, and before January 1, 2014.
- A refined coal production facility originally placed in service after October 22, 2004, and before January 1, 2010, or a facility producing steel industry fuel (or any modification to such a facility) placed in service before January 1, 2010. See Notice 2009-90 for more information on refined coal facilities and modifications to those facilities.
- 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 August 8, 2005, and before January 1, 2014, and any other facility producing qualified hydroelectric production described in section 45(c)(8) placed in service after August 8, 2005, and before January 1, 2014.
- Indian coal production facility placed in service before January 1, 2009.
- Marine and hydrokinetic renewable energy facility placed in service after October 2, 2008, and before January 1, 2014.

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

Credit Period.

Eligible electricity production activity:	Credit period for facilities placed in service before August 9, 2005 (years from placed-in-service date):	Credit period for facilities placed in service after August 8, 2005 (years from placed-in-service date):
Wind	10	10
Closed-loop biomass	10	10
Open-loop biomass (including agricultural livestock waste nutrient facilities)	5 ¹	10
Geothermal	5	10
Solar (pre-2006 facilities only)	5	10
Small irrigation power	5	10
Municipal solid waste (including landfill gas facilities and trash combustion facilities)	5	10
Qualified hydropower	N/A	10
Marine and hydrokinetic	N/A	10
Indian coal	N/A	7
Refined coal	10	10
Steel industry fuel	N/A	1

¹ The 5-year credit period for qualified open-loop biomass facilities (other than a facility described in section 45(d)(3)(A)(i) that uses agricultural livestock waste nutrients) placed in service before October 22, 2004, begins on January 1, 2005.

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, open-loop biomass facilities, and refined coal 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 28. Skip lines 1 through 8 or lines 13 through 28 if you are only claiming a credit that was allocated to you from an S corporation, partnership, cooperative, estate, or trust.

Fiscal year taxpayers. If you have sales in 2010 and 2011 and the credit rate on lines 1, 13, 14, 18, 21, or 22 (or the phaseout adjustment on lines 2, 16, or 19) is different for 2011, make separate computations for each line. Use the respective sales, credit rate, and phaseout adjustment for each calendar year. Enter the total of the two computations on the credit rate line(s) (lines 1, 13, 14, 18, 21, or 22) or the phaseout adjustment line(s) (lines 2, 16, or 19). Attach the computations to Form 8835 and write "FY" in the margin.

Line 1 and Line 13

Enter the kilowatt-hours of electricity produced at the applicable qualified facilities and multiply by \$.022. Fiscal year filers with 2011 sales may have to refigure lines 1 and 13 as explained under *Fiscal year taxpayers* above.

Line 14

Enter the kilowatt-hours of electricity produced and sold at the applicable qualified facilities and multiply by \$.011. Fiscal year filers with 2011 sales must figure line 14 as explained under *Fiscal year taxpayers* above.

Line 2 and Line 16

Calendar year filers enter zero on line 2 or line 16. Fiscal year filers with sales in 2011 also enter zero if the published 2011 reference price is equal to or less than the 2011 adjusted threshold price. See *How To Figure the Credit* on page 1 to figure the adjustment.

Line 18

Enter the tons of refined coal (other than steel industry fuel) produced and sold during 2010 from a qualified refined coal production facility and multiply by \$6.27. Fiscal year filers with 2011 sales must figure line 18 as explained under *Fiscal year taxpayers* above.

Line 19

Calendar year filers enter zero on line 19. Fiscal year filers with sales in 2011 also enter zero if the published 2011 reference price is equal to or less than 1.7 times the 2002 reference price. See *How To Figure the Credit* on page 1 to figure the adjustment.

Line 21

Enter the barrel-of-oil equivalents of steel industry fuel produced and sold from a qualified refined coal facility and multiply by \$2.87.

Line 22

Enter the tons of Indian coal produced and sold from a qualified Indian coal facility and multiply by \$2.20.

Line 4 and Line 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;
- 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 and Line 30

Partnerships that own and produce electricity from qualified wind facilities should see Rev. Proc. 2007-65, 2007-45 I.R.B. 967, as modified by Announcement 2009-69, 2009-40 I.R.B. 475, for information on how to allocate the credit. Rev. Proc. 2007-65 is available at www.irs.gov/irb/2007-45_IRB/ar18.html and Announcement 2009-69 is available at www.irs.gov/irb/2009-40_IRB/ar16.html.

Line 31

Enter the amount included on line 30 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 Form 8810, Corporate Passive Activity Loss and Credit Limitations (for corporations).

Line 33

Enter the passive activity credit allowed for the 2010 renewable electricity, refined coal, and Indian coal production credit from Form 8582-CR or Form 8810.

Line 35

Use only if you amend your 2010 return to carry back an unused renewable electricity, refined coal, and Indian coal production credit from 2011.

Line 11 and Line 37

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 37, 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).

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 37.

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	XX hr., XX min.
Learning about the law or the form . .	X hr., X min.
Preparing, copying, assembling, and sending the form to the IRS	X hr., XX 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.
