Part III. Administrative, Procedural, and Miscellaneous

Production Tax Credit for Refined Coal

Notice 2010–54

SECTION 1. PURPOSE

This notice sets forth interim guidance pending the issuance of regulations relating to the tax credit under § 45 of the Internal Revenue Code (Code) for refined coal. This notice supersedes Notice 2009–90, 2009–51 I.R.B. 859, which also sets forth interim guidance regarding the tax credit under § 45 of the Code for refined coal by republishing the guidance contained in that notice with the following modifications: (1) the definition of refined coal is revised; (2) certain processing of utility-grade coal is permitted to be taken into account in determining whether a qualified emission reduction has been achieved; and (3) the testing protocols for determining emissions reductions are revised. The Service will continue its no rule policy concerning the placed in service date for a facility.

SECTION 2. BACKGROUND

Sections 45(c)(7), (d)(8), and (e)(8) of the Code provide definitions and rules relating to the tax credit for refined coal (the refined coal credit). Section 45(e)(8) provides that the refined coal credit increases a taxpayer's credit determined under the other provisions of § 45. The credit is allowed for qualified refined coal (1) produced by the taxpayer at a refined coal production facility during the ten-year period beginning on the date the facility is originally placed in service, and (2) sold by the taxpayer to an unrelated person during that ten-year period.

Sections 45(c)(7), (d)(8), and (e)(8) were added to the Code by sections 710(a), (b)(1), and (b)(2), respectively, of the American Jobs Creation Act of 2004, Pub. L. No. 108–357. These provisions were amended by sections 403(t) and 412(j)(1) and (2) of the Gulf Opportunity Zone Act of 2005, Pub. L. No. 109–135, and by sections 101 and 108 of the Energy Improvement and Extension Act of 2008, Division B of Pub. L. No. 110–343.

SECTION 3. DEFINITIONS, ETC.

The following definitions apply for purposes of this notice:

.01 *Refined Coal*.

(1) *In General*. Except as otherwise provided in this section 3.01, the term "refined coal" means fuel that—

(a) is a liquid, gaseous, or solid fuel (including feedstock coal mixed with an additive or additives) produced from coal (including lignite) or high carbon fly ash, including (except to the extent inconsistent with section 3.01(1)(b) of this notice) such fuel used as a feedstock;

(b) is sold by the taxpayer (producer), to an unrelated person, with the reasonable expectation that it will be used for the purpose of producing steam; and

(c) is certified by the taxpayer as resulting (when used in the production of steam) in a qualified emission reduction.

(2) *Steel Industry Fuel*. Refined coal includes steel industry fuel (as defined in § 45(c)(7)(C)) that is produced and sold after September 30, 2008.

(3) *Pre-2009 Facilities*. Refined coal does not include fuel (other than steel industry fuel) that is produced and sold from a facility placed in service before January 1, 2009, unless such fuel is produced in such a manner as to result in an increase of at least 50 percent in the market value of the fuel (excluding any increase caused by materials combined or added during the production process) as compared to the feedstock coal.

.02 *Coal*. The term "coal" means anthracite, bituminous coal, subbituminous coal, and lignite. Coal includes waste coal (that is, usable material that is a byproduct of the previous processing of anthracite, bituminous coal, subbituminous coal, or lignite). 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.

.03 *Comparable Coal*. The term "comparable coal" means, with respect to any feedstock coal, coal that is of the same rank as the feedstock coal and that has an emissions profile comparable to the emissions profile of the feedstock coal.

.04 *Qualified Emissions Reduction*. The term "qualified emissions reduction" means—

(1) in the case of refined coal produced at a facility placed in service after December 31, 2008, a reduction of at least 20 percent of the emissions of nitrogen oxide (NOx) and at least 40 percent of the emissions of either sulfur dioxide (SO_2) or mercury (Hg) released when burning the refined coal (excluding any dilution caused by materials combined or added during the production process), as compared to the emissions released when burning the feedstock coal or comparable coal predominantly available in the marketplace as of January 1, 2003; and

(2) in the case of production at a facility placed in service before January 1, 2009, a reduction of at least 20 percent of the emissions of NOx and at least 20 percent of the emissions of either SO_2 or Hg released when burning the refined coal (excluding any dilution caused by materials combined or added during the production process), as compared to the emissions released when burning the feedstock coal or comparable coal predominantly available in the marketplace as of January 1, 2003.

.05 *Refined Coal Production Facility*. The term "refined coal production facility" means—

(a) for purposes of the refined coal credit allowable with respect to steel industry fuel, any facility (or any modification to a facility) which is placed in service before January 1, 2010, and

(b) for purposes of the refined coal credit allowable with respect to refined coal other than steel industry fuel, any facility placed in service after the date of the enactment of the American Jobs Creation Act of 2004 and before January 1, 2010, other than a facility producing fuel for which a credit under § 45K (or under § 29, as in effect on the day before the date of enactment of the Energy Tax Incentives Act of 2005) was allowed for the taxable year or any prior taxable year.

.06 *Related Persons*. Persons are treated as related to each other if they would be treated as a single employer under the regulations prescribed under § 52(b). A corporation that is a member of an affiliated group filing a consolidated

return is treated as selling coal to an unrelated person if the coal is sold to an unrelated person by another member of the affiliated group.

.07 *Placed in Service*. The year in which property is placed in service is determined under the principles of § 1.46–3(d).

SECTION 4. COMPUTATION OF CREDIT

.01 *In General*. The refined coal credit for a taxable year is the tentative credit for the year determined under this section 4.01, reduced to the extent provided in sections 4.02 and 4.04 of this notice. If the taxable year is a calendar year, the tentative credit for the taxable year is the tentative credit for the calendar year. If the taxable year includes parts of two calendar years, the tentative credit for the taxable year is the sum of the tentative credits for each partial calendar year included in the taxable year. The tentative credit for any calendar year (or partial calendar year) is the applicable amount per ton of qualified refined coal (1) produced by the taxpayer at a refined coal production facility during the ten-year period beginning on the date the facility is originally placed in service, and (2) sold by the taxpayer to an unrelated person during that ten-year period and during the calendar year (or partial calendar year). The applicable amount for sales of refined coal during a calendar year is $4.375 multiplied by the inflation adjustment factor for the calendar year to adjust for inflation since 1992.

.02 *Limitation of the Credit*.

(1) *In General*. The tentative credit with respect to sales of refined coal during a calendar year is reduced by an amount that bears the same ratio to the tentative credit as the excess reference price for the calendar year bears to $8.75.

(2) *Excess Reference Price*. The excess reference price for a calendar year is the amount by which (a) the reference price for the calendar year of fuel used as a feedstock exceeds (b) an amount equal to 1.7 multiplied by $31.90 and further multiplied by the inflation adjustment factor for the calendar year.

.03 *Reference Price and Inflation Adjustment Factor*. The reference price and inflation adjustment factor for a calendar year are provided by notice published in the Internal Revenue Bulletin. See, for example, Notice 2010–37, 2010–18 I.R.B. 654.

.04 *Reduction for Grants, Tax-Exempt Bonds, Subsidized Energy Financing and Other Credits.* The tentative credit, after the reduction, if any, under section 4.02 of this notice, is reduced by a prescribed percentage if the project received government grants, subsidies, or other credits. The reduction percentage for a tax year is the lesser of 50 percent or the percentage that is determined by dividing the sum for the taxable year and all earlier taxable years of the four items listed below by the aggregate additions to the capital account attributable to the project for the taxable year and all earlier taxable years. Those four items are (1) governmental grants received for the project; (2) proceeds from tax-exempt state or local government bonds used to finance the project; (3) directly and indirectly provided subsidized energy financing under a federal, state or local program in connection with the project and (4) any other credit allowable with respect to any property that is part of the project.

SECTION 5. RULES RELATING TO THE AVAILABILITY OF THE REFINED COAL CREDIT

.01 *Leased Refined Coal Production Facility*. The refined coal credit is allowed for qualified refined coal produced and sold to an unrelated person by the taxpayer, without regard to whether the taxpayer owns the refined coal production facility in which the refined coal is produced. Accordingly, a taxpayer that leases or operates a facility owned by another person may claim the credit for refined coal that the taxpayer produces in the facility.

.02 *Addition or Improvement to an Existing Facility*. A refined coal production facility will not be treated as placed in service after October 22, 2004, if more than 20 percent of the facility's total value (the cost of the new property plus the value of the used property) is attributable to property placed in service on or before October 22, 2004. The Service will not issue private letter rulings relating to when a refined coal production facility has been placed in service.

SECTION 6. RULES RELATING TO EMISSION REDUCTION

.01 *Emission Reductions Attributable to Mining Processes Disregarded*.

(1) *In General*. A qualified emission reduction does not include any reduction attributable to mining processes or processes that would be treated as mining if performed by the mine owner or operator. Accordingly, the feedstock coal for purposes of comparing the emissions released when burning the refined coal to the emissions released when burning the feedstock coal is the product resulting from processes that are treated as mining under section 6.01(2) of this notice and are actually applied by a taxpayer in any part of the taxpayer's process of producing refined coal from coal.

(2) *Processes Treated as Mining*. Any process described in § 613(c)(2), (3), (4)(A), (4)(C), or (4)(I), or that would be described in those provisions if performed by the mine owner or operator, shall be treated as a mining process for purposes of this notice. Section 613(c)(2) provides that the term 'mining' includes not merely the extraction of the ores or minerals from the ground but also the treatment processes considered as mining described in § 613(c)(4) (and the treatment processes necessary or incidental thereto). Section 613(c)(3) provides that extraction of ores or minerals from the ground includes the extraction by mine owners or operators of ores or minerals from the waste or residue of prior mining. Section 613(c)(4)(A) provides, in the case of coal, that cleaning, breaking, sizing, dust allaying, treating to prevent freezing and loading for shipment by a mine owner or operator shall be considered as mining. Section 613(c)(4)(C) provides, in the case of minerals that are customarily sold in the form of a crude mineral product, that sorting, concentrating, sintering, and substantially equivalent processes to bring to shipping grade and form (see § 1.613–4(f)(3)(i)) shall be considered as mining. Section 613(c)(4)(I) provides that the Secretary may prescribe certain treatment processes that will be treated as mining; this authority has been used, for example, to provide that drying to remove free water, provided that such drying does not change the physical or chemical identity or composition of the mineral, is treated as mining (see

§ 1.613–4(f)(5)). Section 613(c)(5) describes treatment processes that are not considered as mining unless they are provided for in § 613(c)(4) or are necessary or incidental to a process provided for in § 613(c)(4). Any cleaning process, such as a process that uses ash separation, dewatering, scrubbing through a centrifugal pump, spiral concentration, gravity concentration, flotation, application of liquid hydrocarbons or alcohol to the surface of the fuel particles or to the feed slurry, provided such cleaning does not change the physical or chemical structure of the coal, and drying to remove free water, provided such drying does not change the physical or chemical identity of the coal, will be considered as mining.

(3) *Exception for Processing Waste Coal*.

(a) *In General*. A cleaning process shall not be treated as a mining process for purposes of applying this section 6.01 to refined coal produced from waste coal at a facility placed in service before January 1, 2010, for the primary purpose of producing refined coal from waste coal. For purposes of this section 6.01(3), waste coal means the waste materials that are separated through ordinary mining processes during the process of producing a merchantable product from the coal extracted from a natural deposit. This section 6.01(3) does not apply with respect to the refined coal produced at a facility during a taxable year unless a verification of waste coal supply, as described in section 6.01(3)(b), is available for such facility.

(b) *Verification of Waste Coal Supply*. The verification of the waste coal supply for a facility required under this section 6.01(3) must contain the following:

(i) The name, address, and telephone number of the qualified individual.

(ii) A statement that the person providing the verification of the waste coal supply is a qualified individual.

(iii) A statement that the coal to be processed by the facility is "waste coal" within the meaning of section 6.01(3)(a).

(iv) A declaration, signed by the qualified individual, in the following form: "Under penalties of perjury, I declare that I have examined this verification statement and, to the best of my knowledge and belief, it is true, correct, and complete."

(c) *Qualified Individual*. A qualified individual for purposes of this section 6.01(3) is an individual that—

(i) is not related (within the meaning of § 45(e)(4)) to the taxpayer claiming the refined coal credit;

(ii) is properly licensed as a professional engineer; and

(iii) has the requisite qualifications to provide the verification required under this section 6.01(3).

(4) *Exception for Certain Processing of Utility-Grade Coal.*

(a) *In General*. Mining processes do not include a process that satisfies all of the following requirements:

(i) The process modifies utility-grade coal.

(ii) The process consists predominantly of operations that are not ordinarily performed on similar coal by a mine owner or operator.

(iii) The process goes beyond those necessary for the production of utility-grade coal from similar coal.

(b) *Utility-Grade Coal.* Utility-grade coal is coal that, without further processing, satisfies commonly applicable utility specifications for similar coal.

(c) *Similar Coal*. Coals are similar if they are of the same rank, are extracted in the same geographic area, and are customarily sold in the same geographic area (which may differ from the area where they are extracted).

.02 *Basis for Determining Emission Reduction*.

(1) *In General*. Emission reductions are determined by comparing the emissions that result when feedstock coal and refined coal are used to produce the same amounts of useful thermal energy.

(2) *Emissions Resulting from Production Process*. Emissions that result from the process of producing refined coal from feedstock coal are treated for purposes of this section 6.02 as emissions that result when the refined coal is used to produce useful thermal energy. In any case in which waste heat from an activity other than the production of refined coal is used in the process of producing refined coal from feedstock coal, the emissions associated with the waste heat are not treated as emissions that result from such process. The emissions that result when refined coal is produced from feedstock coal must be determined using a method that accurately measures such emissions.

(3) *Adjustment for Additives*. In any case in which additives are used to produce the refined coal, appropriate adjustment must be made in determining the useful thermal energy produced by the refined coal.

.03 *Emission Reduction Testing Methods*.

(1) *CEMS Field Testing*.

(a) *In General*. The emissions reduction may be determined using continuous emission monitoring system (CEMS) field testing. CEMS field testing is testing that meets all the following requirements:

(i) The boiler used to conduct the test is coal-fired and steam-producing and is of a size and type commonly used in commercial operations.

(ii) Emissions are measured using a CEMS.

(iii) If EPA has promulgated a performance standard that applies at the time of the test to the pollutant emission being measured, the CEMS must conform to that standard.

(iv) Emissions for both the feedstock coal and the refined coal are measured at the same operating conditions and over a period of at least 3 hours during which the boiler is operating at a steady state and at least 90 percent of full load. Operating changes to power plant components that are directly attributable to changing from the feedstock coal to refined coal, such as adjustment to primary and secondary air are not treated as a change in operating conditions for this purpose.

(v) Emissions of SO_2 are measured upstream of any SO_2 scrubber.

(vi) Emissions of Hg are measured upstream of any SO_2 scrubber or Hg control device (such as activated carbon injection).

(vii) Emissions of NOx are measured upstream of any NOx controls.

(viii) A qualified individual verifies the test results in a manner that satisfies the requirements of section 6.03(1)(b) of this notice.

(b) *Downstream CEMS Testing Permitted.* CEMS testing for emissions of SO_2 downstream of an SO_2 scrubber, of Hg downstream of an SO_2 scrubber or Hg control device, or of NOx downstream of any NOx controls is permitted if such testing satisfies the requirements of section 6.03(1)(a)(i) through (iv) of this notice

and emissions are measured in accordance with section 6.03(1)(b)(i) or (if applicable) (ii) of this notice.

(i) Except as provided in section 6.03(1)(b)(ii) of this notice, the emissions must be measured in accordance with section 6.03(1)(a)(iv) and the taxpayer must provide verification that any scrubber or control device was operated under the same operating conditions during the test period. Such verification should include, depending on the nature and type of the control device, important control device operating parameters such as, for a scrubber, continuous pressure drop, liquid flow rate, and gas flow rate, and for an electrostatic precipitator, continuous secondary voltage and current and number of fields in operation.

(ii) If, during the 5-year period immediately preceding the date that the plant began burning the refined coal, the plant burned, throughout any 24-consecutive-month period selected by the taxpayer (the base period), feedstock coal from the same source and of the same rank as the feedstock coal used to produce the refined coal, emissions of SO_2 or NOx may be measured by treating the average emissions at which the plant actually emitted the pollutant during the base period as the emissions for the feedstock coal and the average emissions at which the plant actually emitted the pollutant during a 6-month period in which the plant burned the refined coal as emissions for the refined coal. Emissions must be determined for purposes of this section 6.03(1)(b)(ii) without regard to any reduction attributable to physical improvements or replacements of pollution control devices or other physical changes to the plant made after the beginning of the base period.

(c) *Verification of Test Results*. A verification of test results for purposes of this section 6.03(1) must contain the following:

(i) The name, address, and telephone number of the qualified individual.

(ii) A statement that the person providing the verification of test results is a qualified individual.

(iii) A statement that the testing satisfied all the requirements specified in either section 6.03(1)(a)(i) through (vii) or (if applicable) section 6.03(1)(a)(i) through (iv) and (b) of this notice.

(iv) In the case of any changes to operating conditions permitted under section 6.03(1)(a)(iv) of this notice, a statement that such operating changes are directly attributable to the change in fuel and are consistent with good air pollution control practices.

(v) A statement that the amount of the emissions reduction was determined in accordance with the provisions of section 6.01 and section 6.02 of this notice.

(vi) A declaration, signed by the qualified individual, in the following form: "Under penalties of perjury, I declare that I have examined this verification statement and, to the best of my knowledge and belief, it is true, correct, and complete."

(d) *Qualified Individual*. A qualified individual for purposes of this section 6.03(1) is an individual that—

(i) is not related (within the meaning of § 45(e)(4)) to the taxpayer claiming the refined coal credit;

(ii) is properly licensed as a professional engineer; and

(iii) has the requisite qualifications to provide the verification required under this section 6.03(1).

(e) *Reliance Permitted*. If CEMS field testing is used to determine the emissions reduction, the Service will not, on examination, require any additional proof of the emission reduction achieved. The Service may, however, require the taxpayer to establish that the testing used qualifies as CEMS field testing.

(2) *Other Testing Methods.* Methods other than CEMS field testing may be used to determine the emissions reduction. If a method other than CEMS field testing is used, the Service may require the taxpayer to provide additional proof that the emission reduction has been achieved. Permissible methods include the following:

(a) *Demonstration Pilot-Scale Combustion Furnace.* A testing method using a demonstration pilot-scale combustion furnace if it is established that the method accurately measures the emissions reduction that would be achieved in a boiler described in section 6.03(1)(a)(i) of this notice and a qualified individual verifies the test results in a manner that satisfies the requirements of section 6.03(1)(c)(i), (ii), (v), and (vi) of this notice.

(b) *Laboratory Analysis of the Feedstock Coal and the Refined Coal.* A laboratory analysis that complies with a currently applicable EPA or ASTM standard and is permitted under section 6.03(2)(b)(i) or (ii) of this notice.

(i) Laboratory analysis may be used to establish that the requisite emissions reduction for SO_2 or Hg will be achieved if the analysis shows that the sulfur(S) or Hg content of the amount of refined coal necessary to produce an amount of useful energy has been reduced by at least 20 percent (40 percent, in the case of facilities placed in service after December 31, 2008) in comparison to the S or Hg content of the amount of feedstock coal necessary to produce the same amount of useful energy, excluding any dilution caused by materials combined or added during the production process.

(ii) Laboratory analysis, including proximate and ultimate analysis, if combined with appropriate analytical methods, including Computational Fluid Dynamics (CFD) modeling, may be used to show that the requisite reduction in NOx will be achieved when the refined coal is burned. Such analytical methods must be based on sufficient combustion emission data to permit a qualified individual, as defined in section 6.03(1) of this notice, to reliably conclude that the emission reduction will be achieved.

(3) *In General.* A taxpayer may show qualified emission reduction of any pollutant by any of the testing methods that is described as a permissible method of testing the emission reduction of that pollutant in this section 6.03.

.04 *Frequency of Testing*.

(1) *In General*. A taxpayer may establish that a qualified emissions reduction determined under section 6.03 of this notice applies to production from a facility by a determination or redetermination that is valid at the time the production occurs. A determination or redetermination is valid for the period beginning on the date of the determination or redetermination and ending with the occurrence of the earliest of the following events: (i) The lapse of six months from the date of such determination or redetermination.

(ii) A change in the source or rank of feedstock coal that occurs after the date of such determination or redetermination.

(iii) A change in the process of producing refined coal from the feedstock coal that occurs after the date of such determination or redetermination.

(2) *Redetermination Methods*. In the case of a redetermination required because of a change in the process of producing refined coal from the feedstock coal, the redetermination required under this section 6.04 must use a method that meets the requirements of section 6.03 of this notice. In any other case, the redetermination requirement may be satisfied by laboratory analysis establishing that—

(a) The S or Hg content of the amount of refined coal necessary to produce an amount of useful energy has been reduced by at least 20 percent (40 percent, in the case of facilities placed in service after December 31, 2008) in comparison to the S or Hg content of the amount of feedstock coal necessary to produce the same amount of useful energy, excluding any dilution caused by materials combined or added during the production process; or

(b) The S and Hg content of both the feedstock coal and the refined coal do not vary by more than ten percent from the S and Hg content of the feedstock coal and refined coal used in the most recent determination that meets the requirements of section 6.03 of this notice.

.05 *Certification of Emissions Reduction*. The certification requirement of section 3.01(1)(c) of this notice is satisfied with respect to fuel for which the refined coal credit is claimed only if the taxpayer attaches to its tax return on which the credit is claimed a certification that contains the following:

(1) A statement that the fuel will result in a qualified emissions reduction when used in the production of steam.

(2) A statement indicating whether CEMS field testing was used to determine the emissions reduction.

(3) If CEMS field testing was not used to determine the emissions reduction, a description of the method used.

(4) A statement that the emissions reduction was determined or redetermined within the six months preceding the production of the fuel and that there have been no changes in the source or rank of feedstock coal used or in the process of producing refined coal from the feedstock coal since the emissions reduction was determined or was most recently redetermined.

(5) A declaration signed by the taxpayer in the following form: "Under penalties of perjury, I declare that I have examined this certification and to the best of my knowledge and belief, it is true, correct, and complete."

SECTION 7. RECORDKEEPING

Section 6001 provides that every person liable for any tax imposed by the Code, or for the collection thereof, must keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. The books and records required by § 6001 must be kept at all times available for inspection by authorized internal revenue officers or employees, and must be retained so long as the contents thereof may become material in the administration of any internal revenue law. In order to satisfy the recordkeeping requirements of § 6001 and the regulations thereunder, a taxpayer that claims the refined coal credit must retain adequate books and records so that, for any taxable year, it can be verified from those books and records that the property with respect to which the credit is claimed satisfies the applicable requirements of § 45 and this notice.

SECTION 8. REQUEST FOR COMMENTS

The IRS and the Treasury Department invite comments concerning section 6.03 of this notice relating to emission reduction testing methods. Comments should refer to Notice 2010–54 and be submitted to:

Internal Revenue Service
CC:PA:LPD:PR (Notice 2010–54)
Room 5203
P. O. Box 7604
Ben Franklin Station
Washington, DC 20044

Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to:

Courier's Desk
Internal Revenue Service
1111 Constitution Ave., N.W.
Washington, DC 20224
Attn: CC:PA:LPD:PR
(Notice 2010–54)

Alternatively, taxpayers may submit comments electronically to *notice.comments@irscounsel.treas.gov*. Please include "Notice 2010–54" in the subject line of any electronic communications.

All comments will be available for public inspection and copying.

SECTION 9. EFFECTIVE DATE

This notice is effective for refined coal produced after September 16, 2010. Taxpayers may apply the provisions of this notice with respect to refined coal produced on or before September 16, 2010.

SECTION 10. PAPERWORK REDUCTION ACT

The collection of information contained in this notice has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545–2158.

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 collection of information in this notice is in section 6 of this notice. This information will be used by the Service to verify that the taxpayer is eligible for the production tax credit for refined coal. The collection of information is required to obtain a benefit. The likely respondents are businesses or other for-profit institutions.

The estimated total annual reporting burden is 1500 hours.

The estimated annual burden per respondent varies from 10 to 20 hours, depending on individual circumstances, with an estimated average of 15 hours. The estimated number of respondents is 100.

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 return information are confidential, as required by 26 U.S.C. § 6103.

SECTION 11. DRAFTING AND CONTACT INFORMATION

The principal author of this notice is Philip Tiegerman of the Office of Associate Chief Counsel (Passthroughs and

Special Industries). However, other personnel from the IRS and Treasury participated in its development. For further information regarding this notice, contact Mr. Tiegerman at (202) 622–3110.

Update for Weighted Average Interest Rates, Yield Curves, and Segment Rates

Notice 2010–61

This notice provides guidance as to the corporate bond weighted average interest rate and the permissible range of interest rates specified under § 412(b)(5)(B)(ii)(II) of the Internal Revenue Code as in effect for plan years beginning before 2008. It also provides guidance on the corporate bond monthly yield curve (and the corresponding spot segment rates), the 24-month average segment rates, and the funding transitional segment rates under § 430(h)(2). In addition, this notice provides guidance as to the interest rate on 30-year Treasury securities under § 417(e)(3)(A)(ii)(II) as in effect for plan years beginning before 2008, the 30-year Treasury weighted average rate under § 431(c)(6)(E)(ii)(I), and the minimum present value segment rates under § 417(e)(3)(D) as in effect for plan years beginning after 2007.

CORPORATE BOND WEIGHTED AVERAGE INTEREST RATE

Sections 412(b)(5)(B)(ii) and 412(l)(7)(C)(i), as amended by the Pension Funding Equity Act of 2004 and by the Pension Protection Act of 2006 (PPA), provide that the interest rates used to calculate current liability and to determine the required contribution under § 412(l) for plan years beginning in 2004 through 2007 must be within a permissible range based on the weighted average of the rates of interest on amounts invested conservatively in long term investment grade corporate bonds during the 4-year period ending on the last day before the beginning of the plan year.

Notice 2004–34, 2004–1 C.B. 848, provides guidelines for determining the corporate bond weighted average interest rate and the resulting permissible range of interest rates used to calculate current liability. That notice establishes that the corporate bond weighted average is based on the monthly composite corporate bond rate derived from designated corporate bond indices. The methodology for determining the monthly composite corporate bond rate as set forth in Notice 2004–34 continues to apply in determining that rate. See Notice 2006–75, 2006–2 C.B. 366.

The composite corporate bond rate for August 2010 is 5.16 percent. Pursuant to Notice 2004–34, the Service has determined this rate as the average of the monthly yields for the included corporate bond indices for that month.

The following corporate bond weighted average interest rate was determined for plan years beginning in the month shown below.

For Plan Years Beginning in		Corporate Bond Weighted Average	Permissible Range		
Month	*Year*		90%	to	100%
September	2010	6.24	5.62		6.24

YIELD CURVE AND SEGMENT RATES

Generally for plan years beginning after 2007 (except for delayed effective dates for certain plans under sections 104, 105, and 106 of PPA), § 430 of the Code specifies the minimum funding requirements that apply to single employer plans pursuant to § 412. Section 430(h)(2) specifies the interest rates that must be used to determine a plan's target normal cost and funding target. Under this provision, present value is generally determined using three 24-month average interest rates ("segment rates"), each of which applies to cash flows during specified periods. However, an election may be made under § 430(h)(2)(D)(ii) to use the monthly yield curve in place of the segment rates. For plan years beginning in 2008 and 2009, a transitional rule under § 430(h)(2)(G) provides that the segment rates are blended with the corporate bond weighted average as specified above. An election may be made under § 430(h)(2)(G)(iv) to use the segment rates without applying the transitional rule.

Notice 2007–81, 2007–2 C.B. 899, provides guidelines for determining the monthly corporate bond yield curve, the 24-month average corporate bond segment rates, and the funding transitional segment rates used to compute the target normal cost and the funding target. Pursuant to Notice 2007–81, the monthly corporate bond yield curve derived from August 2010 data is in Table I at the end of this notice. The spot first, second, and third segment rates for the month of August 2010 are, respectively, 1.81, 4.81, and 5.88. The three 24-month average corporate bond segment rates applicable for September 2010 under the election of § 430(h)(2)(G)(iv) are as follows:

First Segment	Second Segment	Third Segment
3.78	6.31	6.57