

1. [2006 IRB LEXIS 95](#)

**Client/Matter:** -None-

**Search Terms:** Notice 2006-24

**Search Type:** Natural Language

# Notice 2006-24; 2006-1 C.B. 595; 2006 IRB LEXIS 95; 2006-11 I.R.B. 595

US Internal Revenue Service

February 21, 2006

## Reporter

2006 IRB LEXIS 95 \*; Notice 2006-24; 2006-1 C.B. 595; 2006-11 I.R.B. 595

## Notice 2006-24

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## Subject Matter

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Qualifying Advanced Coal Project Program

[\*1]

## Core Terms

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certificate, coal, notice, insert, pool, technology, finance, gasification, closing agreement, aggregate, energy, feedstock, electric, site, project program, expenditure, feasibility, progress, financial analyst, coal-based, recapture, investment credit, provide evidence, taxable year, estimate, forfeit, cycle, name plate, calendar, input

## Text

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### SECTION 1. PURPOSE

This notice establishes the qualifying advanced coal project program under [§ 48A\(d\) of the Internal Revenue Code](#). The purpose of the program is the deployment of advanced coal-based generation technologies.

### SECTION 2. BACKGROUND

.01 *Section 46* provides that the amount of the investment credit for any taxable year is the sum of the credits listed in *§ 46*. *Section 1307(a)* of the Energy Policy Act of 2005, Pub. L. 109-58, 119 Stat. 594 (August 8, 2005) (the "Act"), amended *§ 46* to add two new credits to that list: the qualifying advanced coal project credit and the qualifying gasification project credit.

.02 The qualifying advanced coal project credit is provided under [§ 48A](#), as added by *§ 1307(b)* of the Act. [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 [\*2] 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 The at-risk rules in [§ 49](#) and the recapture and other special rules in [§ 50](#) apply to the qualifying advanced coal project credit. Further, **[\*3]** 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 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.

### SECTION 3. QUALIFYING ADVANCED COAL PROJECT PROGRAM

[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 are establishing this program under the rules set forth in sections 4 through 9 of this notice.

### SECTION 4. ESTABLISHMENT OF QUALIFYING ADVANCED COAL PROJECT PROGRAM

.01 In General. The Service will consider a project under the qualifying advanced coal project program only if the U.S. Department of Energy ("DOE") provides a certification of feasibility and consistency with energy policy goals ("DOE certification") for the project. Accordingly, a taxpayer must submit, for each qualifying **[\*4]** 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 will be conducted in 2006. If necessary, additional allocation rounds will be conducted in 2007 and 2008.

.02 Program Specifications.

(1) The Service will determine 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 will be separated into the following four pools:

(a) Projects using an advanced coal-based **[\*5]** 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.

(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.

(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.

(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.

(3) For projects using an advanced coal-based generation technology other than IGCC, the aggregate credit of \$ 500 million for this pool as described in section 4.02(2)(a) of this notice will be allocated in the initial round of allocations to projects providing **[\*6]** the highest ratio of total nameplate generating capacity to requested allocation of credits.

(4) For each IGCC pool described in section 4.02(2)(b), (c), and (d) of this notice, the aggregate credit for that pool will be allocated as follows in the initial round of allocations:

(a) The aggregate credit will be allocated first to the projects entitled to priority under [§ 48A\(e\)\(3\)\(B\)](#) for greenhouse gas capture capability or increased by-product utilization.

(b) If the requested allocation of credits for these priority projects exceeds the aggregate credit for the pool, the credit for that pool will be allocated to the priority projects providing the highest ratio of total nameplate generating capacity to requested allocation of credits.

(c) If the requested allocation of credits for the priority projects in a pool does not exceed the aggregate credit for the pool, the remaining amount of the credit will be allocated to the nonpriority projects providing the highest ratio of total nameplate generating capacity to requested allocation of credits.

(5) If the aggregate credit for a pool is not fully allocated in the initial round of allocations in 2006, similar allocation rounds will be conducted **[\*7]** in 2007 and 2008 until the aggregate credit is fully allocated. Generally, the results of each year will be announced.

(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 2006-25, 2006-11 I.R.B. \\_\\_\\_\\_](#), the following rules apply:

(a) If the project is allocated the full amount of the qualifying advanced coal project credit requested by the taxpayer, no qualifying gasification project credit will be allocated to the project;

(b) If the project is allocated the full amount of the qualifying gasification project credit requested by the taxpayer, no qualifying advanced coal project credit will be allocated to the project;

(c) If the project is allocated less than the full amount of the qualifying advanced coal project credit requested by the taxpayer, 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](#); and

(d) If the project is allocated less than the full amount of the qualifying gasification project **[\*8]** credit requested by the taxpayer, the qualifying advanced coal project credit may be allocated to the project with respect to the qualified investment under [§ 48A](#) for which a qualifying gasification project credit is not allowed under [§ 48B](#).

(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 for the project before the end of the application period.

(8) For the initial allocation round conducted in 2006, the application period begins on February 21, 2006, and ends on October 2, 2006. Any completed application for [§ 48A](#) certification received by the Service before October 3, 2006, will be deemed to be submitted by the taxpayer on October 2, 2006. For 2007, the application period begins on October 3, 2006, and ends on October 1, 2007, and any completed application for [§ 48A](#) certification received by the Service after October 2, 2006, and before October 2, 2007, will be deemed **[\*9]** to be submitted by the taxpayer on October 1, 2007. For 2008, the application period begins on October 2, 2007, and ends on October 1, 2008, and any completed application for [§ 48A](#) certification received by the Service after October 1, 2007, and before October 2, 2008, will be deemed to be submitted by the taxpayer on October 1, 2008. 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 its consistency with energy policy goals and, if the project is determined to be feasible and consistent with energy policy goals, will provide a DOE certification for the project to the Service. If an application **[\*10]** for DOE certification is postmarked on or before June 30 of a calendar year, the DOE will determine the feasibility of the project and its consistency with energy policy goals and (for projects determined to be feasible and consistent) provide the DOE certification by October 1 of that calendar year.

(10) By November 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 January 31 of the following year, 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 **[\*11]** and return the closing agreement to the taxpayer by March 31 of such following 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. 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 **[\*12]** by section 5.02 of this notice and meet the requirements in sections 7.01 and 7.02 of this notice, the DOE may decline to accept the application. If an application for [§ 48A](#) certification does not include all of the information listed in section 5.03 of this notice and meet the requirements in sections 7.01 and 7.02 of this notice, the application will not be accepted by the Service.

.02 Information Required in the Application for DOE Certification. An application for DOE certification must include all of the information requested in Appendix B to this notice and all of the following:

- (1) The name, address, and taxpayer identification number of the taxpayer;
- (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 [\*13] 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) for 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 credit the taxpayer prefers to receive;
- (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; and
- (10) The exact total nameplate generating capacity of the project.

.03 Information Required in the Application for [§ 48A](#) Certification. [\*14] Pursuant to [§ 48A\(d\)\(2\)\(B\)](#), an application for [§ 48A](#) certification must include all of the following:

- (1) The name, address, and taxpayer identification number of the taxpayer;
- (2) The name and telephone number of a contact person. If necessary, attach any required power of attorney, preferably on Form 2848, Power of Attorney and Declaration of Representative; and
- (3) A paper copy of the completed application for DOE certification submitted with respect to the project in accordance with section 5.02 of this notice.

.04 Instructions and Address for Filing [§ 48A](#) Application. 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  
Attn: CC:PSI:6, Room 5313  
P.O. Box 7604  
Ben Franklin Station  
Washington, DC 20044

Applications submitted by a private delivery service must be sent to:

Internal Revenue Service  
Attn: CC:PSI:6, Room 5313  
1111 Constitution Ave., N.W.  
Washington, DC 20224

(2) Applications may also be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to:

Courier's Desk  
Internal Revenue Service  
  
Attn: CC:PSI:6, [\*15] Room 5313  
1111 Constitution Avenue N.W.  
Washington, DC 20224

## 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 [\*16] 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 [\*17] 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. A stamped signature or faxed signature is not permitted.

.03 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..04 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 **[\*18]** certify the project) to an Associate Chief Counsel or any other official of the Service.

## 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, the entire credit for a pool is not fully subscribed (i.e., 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 **[\*19]** 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, future guidance will prescribe procedures applicable to applications for certification with respect to the returned credits.

## SECTION 9. **[\*20]** QUALIFIED PROGRESS EXPENDITURES

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

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

.03 To claim the qualifying advanced [\*21] 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 [\*22] in service within 5 years from the date of issuance of the certification under section 6.03 of this notice; or
- (4) In the case of an IGCC project that was entitled to priority under [§ 48A\(e\)\(3\)\(B\)](#), failure to provide the priority benefit on the date the project is placed in service.

#### SECTION 10. EFFECTIVE DATE

This notice is effective February 21, 2006.

#### SECTION 11. 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 [\*23] 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 12. DRAFTING INFORMATION

The principal author of this notice is Douglas H. Kim of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice contact Mr. Kim at (202) 622-3110 (not a toll-free call).

ATTACHMENT

APPENDIX A

CLOSING AGREEMENT

Under [§ 7121 of the Internal Revenue Code](#), [insert taxpayer's name, address, and identifying number] ("Taxpayer") and the Commissioner of Internal Revenue ("Commissioner") make the following closing agreement:**WHEREAS:**

1. On or before October [insert date and **[\*24]** year], Taxpayer submitted to the Internal Revenue Service ("IRS"), an application for certification under the qualifying advanced coal project program described in [Notice 2006-24](#) ("Application for [§ 48A](#) Certification");

2. Taxpayer's Application for [§ 48A](#) Certification is for the qualifying advanced coal project (the "Project") described below--

(1) The Project will use [insert either "an integrated gasification combined cycle (as defined in [§ 48A\(c\)\(7\)](#))" or "an advanced coal-based technology (as defined in [§ 48A\(c\)\(2\)](#) and [\(f\)](#)) other than an integrated gasification combined cycle");

(2) The Project will be located at [insert address or other identifying designation];

(3) The Project is [insert either: "a new electric generation unit (as defined in [§ 48A\(c\)\(6\)](#))"; "a retrofit of an existing electric generation unit (as defined in [§ 48A\(c\)\(6\)](#)"); or "a repower of an existing electric generation unit (as defined in [§ 48A\(c\)\(6\)](#))"]; and

(4) The Project will have a total nameplate generating capacity of [insert number] megawatts;

**If the Project is an integrated gasification combined cycle project, insert:**

(5) At all times more than 50 percent of the cumulative total fuel input (coal and any other fuel **[\*25]** input) for the Project will be [insert either: "bituminous coal"; "subbituminous coal"; or "lignite"]; and

(6) The Project is entitled to priority under [§ 48A\(e\)\(3\)\(B\)](#) for [insert either: "greenhouse gas capture capability (as defined in [§ 48A\(c\)\(5\)](#))"; "increased by-product utilization"; or "both greenhouse gas capture capability (as defined in [§ 48A\(c\)\(5\)](#)) and increased by-product utilization"]; and

3. On or before November 30, [insert year], the IRS accepted Taxpayer's Application for [§ 48A](#) Certification for the Project and allocated a qualifying advanced coal project credit under [§ 48A](#) in the amount of [insert number] to the Project.

**NOW IT IS HEREBY DETERMINED AND AGREED FOR FEDERAL INCOME TAX PURPOSES THAT:**

1. The total amount of the qualifying advanced coal project credit to be claimed for the Project under [§ 48A\(a\)](#) must not exceed [insert the number in WHEREAS clause # 3].

2. If Taxpayer fails to satisfy any of the certification requirements in [§ 48A\(e\)\(2\)](#) within 2 years of [insert date of acceptance letter issued under section 4.02(10) of [Notice 2006-24](#)], or if the IRS does not issue a certification for

the Project under [Notice 2006-24](#), the qualifying advanced coal project credit [**\*26**] in the amount of [insert the number in WHEREAS clause # 3] allocated to the Project is fully forfeited.

3. If the Project is not placed in service by Taxpayer within 5 years of the date of issuance of the certification as determined under section 6.03 of [Notice 2006-24](#), the qualifying advanced coal project credit in the amount of [insert the number in WHEREAS clause # 3] allocated to the Project is fully forfeited.

4. If the Project does not have a total nameplate generating capacity of [insert the number in WHEREAS clause # 2(4)] megawatts on the date the Project is placed in service, the qualifying advanced coal project credit in the amount of [insert the number in WHEREAS clause # 3] allocated to the Project is reduced proportionately.

**If the Project is not an integrated gasification combined cycle project, insert:]**

5. If the Project fails to satisfy any of the requirements in [§ 48A\(e\)\(1\)](#) for a qualifying advanced coal project--

(1) at the time the Project is placed in service, the qualifying advanced coal project credit in the amount of [insert the number in WHEREAS clause # 3] allocated to the Project is fully forfeited; and

(2) after the Project is placed in service (and after satisfying [**\*27**] all such requirements at the time the Project is placed in service), the Project ceases to be investment credit property and the recapture rules of [§ 50\(a\)](#) apply.]

**If the Project is an integrated gasification combined cycle project, insert:]**

5. (1) If the Project fails to satisfy any of the requirements in [§ 48A\(e\)\(1\)](#) for a qualifying advanced coal project--

(a) at the time the Project is placed in service, the qualifying advanced coal project credit in the amount of [insert the number in WHEREAS clause # 3] allocated to the Project is fully forfeited; and

(b) after the Project is placed in service (and after satisfying all such requirements at the time the Project is placed in service), the Project ceases to be investment credit property and the recapture rules of [§ 50\(a\)](#) apply.

(2) If at any time more than 50 percent of the cumulative total fuel input (coal and any other fuel input) for the Project is not [insert the primary feedstock in WHEREAS clause # 2(5)], the Project ceases to be investment credit property and the recapture rules of [§ 50\(a\)](#) apply.

(3) If the Project fails to provide [insert priority benefits in WHEREAS clause # 2(6)] at the time the Project is placed in service, [**\*28**] the qualifying advanced coal project credit in the amount of [insert the number in WHEREAS clause # 3] allocated to the Project is fully forfeited.]

6. Taxpayer will not claim the qualifying gasification project credit under [§ 48B](#) for any qualified investment for which the qualifying advanced coal project credit is allowed under [§ 48A](#).

7. If Taxpayer elects to claim the qualifying advanced coal project credit on the qualified progress expenditures paid or incurred by Taxpayer during the taxable year for construction of a qualifying advanced coal project, rules similar to the recapture rules in [§ 50\(a\)\(2\)\(A\) through \(D\)](#) apply.

8. This agreement applies only to Taxpayer. Any successor in interest must execute a new closing agreement with the IRS. If the interest is acquired at or before the time the Project is placed in service and the successor in interest fails to execute a new closing agreement, the qualifying advanced coal project credit in the amount of [insert the number in WHEREAS clause # 3] allocated to the Project is fully forfeited. If the interest is acquired after the time the Project is placed in service and the successor in interest fails to execute a new closing agreement, [**\*29**] the Project ceases to be investment credit property and the recapture rules of [§ 50\(a\)](#) apply.

**THIS AGREEMENT IS FINAL AND CONCLUSIVE EXCEPT:**

1. The matter it relates to may be reopened in the event of fraud, malfeasance, or misrepresentation of a material fact;
2. It is subject to the Internal Revenue Code sections that expressly provide that effect be given to their provisions (including any stated exception for [§ 7122](#)) notwithstanding any law or rule of law; and
3. If it relates to a tax period ending after the date of this Closing Agreement, it is subject to any law enacted after such date, which applies to the tax period. By signing, the parties certify that they have read and agreed to the terms of this Closing Agreement.

**Taxpayer: insert name and identifying number**

By:

Date Signed:

Title:

**Commissioner of Internal Revenue**

By:

Date Signed:

Title: Associate Chief Counsel, Passthroughs and Special Industries, CC:PSI

**I have examined the specific matters involved and recommend the acceptance of the proposed agreement.**

(Receiving Officer)

(Title)

Date Signed

**I have reviewed the specific matters involved and recommend the acceptance of the proposed agreement.**

(Reviewing Officer)

(Title) [\*30]

Date Signed

## APPENDIX B

## APPLICATION FOR DOE CERTIFICATION

**REQUEST FOR SUPPLEMENTAL APPLICATION INFORMATION FOR DOE**

Pursuant to [Notice 2006-24](#) establishing the Qualifying Advanced Coal Project Program, the Internal Revenue Service ("IRS") will allocate a credit under [§ 48A of the Internal Revenue Code](#) to a project only if, among other things, the IRS receives from the Department of Energy ("DOE") a certification of feasibility and consistency with energy policy goals ("DOE certification") for the project. This DOE certification shall assure that the applications selected meet the requirements of [§ 48A](#) and the intent of [§ 48A](#) to provide credits to projects that are both technically and economically feasible.

The IRS and DOE seek to certify applications that demonstrate a high likelihood of being successfully implemented by the applicants. To qualify, projects must be economically feasible and use the appropriate clean coal technology.

This request for submission of supplemental application information:

1. Describes the information to be provided by the applicant seeking a DOE certification, and
2. Lists the evaluation criteria, and Program Policy Factors to be used by DOE in the evaluation [\*31] of applications.

In conducting this evaluation, the DOE may utilize assistance and advice from qualified personnel from other Federal agencies and/or non-conflicted contractors. DOE will obtain assurances in advance from all evaluators that application information shall be kept confidential and used only for evaluation purposes. DOE reserves the right to request clarifications and/or supplemental information from some or all applicants through written submissions and/or oral presentations.

Notice is given that DOE may determine whether or not to provide a DOE certification to the IRS at any time after the application has been received, without further exchanges or discussions. Therefore, all applicants are advised to submit their most complete and responsive application.

Applications will not be returned.

## SUBMISSION INFORMATION FOR DOE CERTIFICATION APPLICATION

**A.General**

This request, together with the information in sections 5.02, 7.01, and 7.02 of [Notice 2006-24](#) includes all the information needed to complete an application for DOE certification. All applications shall be prepared in accordance with this request in order to provide a standard basis for evaluation and to ensure that each [\*32] application will be uniform as to format and sequence.

Each application should clearly demonstrate the applicant's capability, knowledge, and experience in regard to the requirements described herein.

Applicants should fully address the requirements of [Notice 2006-24](#) and this request and **not** rely on the presumed background knowledge of reviewers. DOE may reject an application that does not follow the instructions regarding the organization and content of the application when the nature of the deviation and/or omission precludes meaningful review of the application.

### **B.Unnecessarily Elaborate Applications**

Unnecessarily elaborate brochures or other presentations beyond those sufficient to present a complete and effective application are not desired. Elaborate art work, graphics and pictures are neither required nor encouraged.

### **C.Application Submission for DOE Certification**

The application submission to DOE must include the information and documentation required by sections 5.02, 7.01, and 7.02 of [Notice 2006-24](#).

A project will not be considered in the allocation round conducted in a calendar year unless the application for DOE certification of the project is postmarked by June 30 of that calendar **[\*33]** year. Two paper copies and one electronic version on a floppy disc or a CD of the Application must be submitted to:

Melissa Robe  
National Energy Technology Laboratory  
3610 Collins Ferry Road  
Morgantown, WV 26507

Note that under section 5 of [Notice 2006-24](#), one paper copy must be sent to the IRS as part of the application for IRS certification. The project will not be considered in the allocation round conducted in a calendar year unless the application is submitted to the IRS by the date specified for that calendar year in section 4.02(8) of [Notice 2006-24](#).

### **THE INFORMATION REQUIRED BY THIS REQUEST MUST BE SUBMITTED USING THE FORMAT AND THE HEADINGS OF THE "PROJECT INFORMATION MEMORANDUM" AS DESCRIBED BELOW.**

To aid in evaluation, applications shall be clearly and concisely written and logically assembled. All pages of each part shall be appropriately numbered and identified with the name of the applicant and the date.

The application, including the Project Information Memorandum, **MUST** be formatted in one of the following software applications:

Microsoft Wordtm 2002 or later edition  
Microsoft Exceltm 2002 or later edition  
Adobe Acrobat PDF 6.0 or later edition

Financial models should be submitted **[\*34]** using the Excel[tm] spreadsheet and must include calculation formulas and assumptions.

The applicant is responsible for the integrity and structure of the electronic files. The DOE will not be responsible for reformatting, restructuring or converting any files submitted under this announcement.

The Project Information Memorandum, excluding Appendices, shall not exceed seventy-five (75) pages. Pages in excess of the page limitation will not be considered for evaluation. All text shall be typed, single spaced, using 12 point font, 1 inch margins, and unreduced 8-1/2-inch by 11-inch pages.

Illustrations and charts shall be legible with all text in legible font. Pages shall be sequentially numbered. Except as otherwise noted herein the page guidelines previously set forth constitute a limitation on the total amount of material that may be submitted for evaluation. No material may be incorporated in any application by reference as a means to circumvent the page limitation.

## **D. Form of Project Information Memorandum**

### PROJECT INFORMATION MEMORANDUM

#### I. SUMMARY AND INTRODUCTION

- . Description of the Project
- . Financing and Ownership Structure
- . Describe the main parties to the project, including background, [\*35] ownership and related experience
- . Current Project Status and Schedule to Beginning of Construction

#### II. TECHNOLOGY AND TECHNICAL INFORMATION

Provide a description of the proposed technology, including sufficient supporting information (such as process flow diagrams, equipment descriptions, information on each major process unit and the total plant, compositions of major streams, and the technical plan for achieving the goals proposed for the project) as would be needed to allow DOE to confirm that the technical requirements of [§ 48A](#) could, in principle, be met. Specifically the applicant should:

- . Provide evidence sufficient to demonstrate that the proposed technology meets the definition of "Advanced Coal-Based Generation Technology," either as integrated gasification combined cycle (IGCC) technology, or other advanced coal-based electric generation technology meeting the heat rate requirement of 8530 Btu/kWh
- . The applicant must provide actual heat rate and heat rate corrected to conditions specified in [§ 48A\(f\)\(2\)](#)
- . For projects including existing units, the applicant must provide information sufficient to justify that the proposed technology meets heat rate requirements specified in [§ 48A\(f\)\(3\)](#)
- . [\*36] Provide evidence sufficient to ensure that the proposed project is designed to meet the following performance requirements:
  - . SO<sub>2</sub> percent removal.....99 percent

. NOx emissions.....0.07 lbs / MMBTU

. PM emissions.....0.015 lbs / MMBTU

. Hg percent removal.....90 percent

. Provide evidence sufficient to demonstrate that the project meets the requirements for qualifying advanced coal projects as specified under [§ 48A\(e\)\(1\)](#) including:

. The project will power a new electric generation unit or retrofit/repower an existing electric generation unit. At least 50% of the useful output of the project is electrical power.

. The fuel for the project is at least 75% coal (as defined in [§ 48A\(c\)\(4\)](#)), on an energy input basis.

. The project is located at one site and has a total nameplate electric power generating capacity of at least 400 MW.

. Provide information and data, including examples of prior similar projects completed by applicant, EPC contractor, and suppliers of major subsystems or equipment which support the capabilities of the applicant to construct and operate the facility.

. Include the project status and relevant information from ongoing engineering activities. **[\*37]** Also include in an appendix any engineering report or reports used by the applicant to develop the project and to estimate costs and operating performance.

### III. PRIORITY FOR INTEGRATED GASIFICATION COMBINED CYCLE PROJECTS

For IGCC Projects, the applicant must submit information sufficient for categorization and prioritization of projects for certification, including:

. Identification of the primary feedstock (as defined in section 5.02(5) of [Notice 2006-24](#)), and all other feedstocks.

. If applicable, evidence demonstrating that the project will be capable of adding components that can capture, separate and permanently sequester greenhouse gases.

. A plan showing how project by-products will be marketed and utilized.

. Other benefits, if any.

### IV. SITE CONTROL AND OWNERSHIP

. Provide evidence that the applicant owns or controls a site in the United States of sufficient size to allow the proposed project to be constructed and operated on a long-term basis.

. Describe the current infrastructure at the site available to meet the needs of the project.

. Provide information supporting applicant's conclusion that the proposed site can fully meet all environmental, coal supply, water supply, transmission **[\*38]** interconnect, and public policy requirements.

## V. UTILIZATION OF PROJECT OUTPUT

- . A projection of the anticipated costs of electricity and other marketable by-products produced by the plant.
- . Provide evidence that a majority of the output of the plant is reasonably expected to be acquired or utilized.
- . Describe any energy sales arrangements that exist or that may be contemplated, e.g., Power Purchase Agreement or Energy Sales Agreement, and summaries of their key terms and conditions.
- . Include as an appendix any independent Energy Price Market Study that has been done in connection with this project, or if no independent market study has been completed, provide a copy of the applicant-prepared market study.
- . Identify and describe any firm arrangements to sell non-power output, and provide any evidence of such arrangements. If the project produces a product in addition to power, include as an appendix any related market study of price and volume of sales expected for that product.

## VI. PROJECT ECONOMICS

Describe the project economics and provide satisfactory evidence of economic feasibility as demonstrated through the financial forecast and the underlying project assumptions.

Discuss the market [\*39] potential for the proposed technology beyond the project proposed by the applicant.

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

## VII. PROJECT DEVELOPMENT AND FINANCIAL PLAN

Provide the total project budget and major plant costs, e.g., development, operating, capital, construction, and financing costs. Describe the overall approach to project development and financing sufficient to demonstrate project viability. Provide a complete explanation of the source and amount of project equity. Provide a complete explanation of the source and amount of project debt. Provide the audited financial statements for the applicant for the most recently ended three fiscal years, and the unaudited quarterly interim financial statements for the current fiscal year.

For internally financed projects, provide evidence that the applicant has sufficient assets to fund the project with its own resources. Identify any internal approvals required to commit such assets. Include in an appendix copies of any board resolution or other approval authorizing the applicant to commit funds and proceed with the project.

For projects financed through debt instruments either unsecured or [\*40] secured by assets other than the project, provide evidence that the applicant has sufficient creditworthiness to obtain such financing along with a discussion of the status of such instruments. Identify any internal approvals required to commit the applicant to pursue such financing. Include in an appendix, copies of any board resolution or other approval authorizing the applicant to commit to such financing.

For projects financed through investor equity contributions, discuss the source and status of each contribution. Discuss each investor's financial capability to meet its commitments. Include in an appendix, copies of any executed investment agreements.

If financing through a public offering or private placement of either debt or equity is planned for the project, provide the expected debt rating for the issue and an explanation of applicant's justification for the rating. Describe the status of any discussions with prospective investment bankers or other financial advisors.

For projects employing nonrecourse debt financing, provide a complete discussion of the approach to, and status of, such financing.

In an appendix, provide (1) an Excel based financial model of the project, with [\*41] formulas, so that review of the model calculations and assumptions may be facilitated; provide pro-forma project financial, economic, capital cost, and operating assumptions, including detail of all project capital costs, development costs, interest during construction, transmission interconnection costs, other operating expenses, and all other costs and expenses, and (2) a report of an independent financial analyst in accordance with the instructions in Section G of this Appendix B.

### VIII. PROJECT CONTRACT STRUCTURE

Describe the current status of each of the agreements set forth below. Include as an appendix copies of the contracts or summaries of the key provisions of each of the following agreements:

- . Power Purchase Agreement (if not fully explained in Section IV)
- . Coal Supply: describe the source and price of coal supply for the project. Include as an appendix any studies of coal supply price and amount that have been prepared. Include a summary of the coal supply contract and a copy of the contract.
- . Coal transportation: explain the arrangements for transporting coal, including costs.
- . Operations & Maintenance Agreement: include a summary of the terms and conditions of the contract [\*42] and a copy of the contract.
- . Shareholders Agreement: summarize key terms and include the agreement as an appendix.
- . Engineering, Procurement and Construction Agreement: describe the key terms of the existing or expected EPC contract arrangement, including firm price, liquidated damages, hold-backs, performance guarantees, etc.
- . Water Supply Agreement: confirm the amount, source, and cost of water supply.
- . Transmission interconnection agreement: explain the requirements to connect to the system and the current status of negotiations in this respect.

### IX. PERMITS INCLUDING ENVIRONMENTAL AUTHORIZATIONS

- . Provide a complete list of all federal, state, and local permits, including environmental authorizations or reviews, necessary to commence construction of the project.
- . Explain what actions have been taken to date to satisfy the required authorizations and reviews, and the status of each.
- . Provide a description of the applicant's plan to obtain and complete all necessary permits, and environmental authorizations and reviews.

## X. STEAM TURBINE PURCHASE

. If applicant plans to purchase a steam turbine or turbines for the project, indicate the prospective vendors for the turbine and explain the [\*43] current status of purchase negotiations, and provide a timeline for negotiation and purchase with expected purchase date.

## XI. PROJECT SCHEDULE

. Provide an overall project schedule which includes technical, business, financial, permitting and other factors to substantiate that the project will meet the 2 year project certification and 5 year placed-in-service requirement.

## APPENDICES

. Independent Financial Report.

. Copy of internal or external engineering reports.

. Copy of site plan, together with evidence that applicant owns or controls a site. Examples of evidence would include a deed, or an executed contract to purchase or lease the site.

. Information supporting applicant's conclusion that the site is fully acceptable as the project site with respect to environment, coal supply, water supply, transmission interconnect, and public policy reasons.

. Power Purchase or Energy Sales Agreement.

. Energy Market Study.

. Market Study for non-power output.

. Financial Model of project.

. Audited financial statements for the applicant for the most recently ended three fiscal years, and the unaudited quarterly interim financial statements for the current fiscal year.

. For each project contract, if [\*44] no contract currently exists, provide a summary of the expected terms and conditions.

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

. If an appendix listed above is not provided, include in its place a complete explanation of the reasons for the omission.

## E.Evaluation Criteria

Advanced coal projects: will be evaluated on whether they meet all the requirements of [§ 48A](#).

Technical: will be evaluated on whether the applicant has demonstrated the capability to accomplish the technical objectives.

Site: will be evaluated on the basis that the site requirement for ownership or control has been met, and that the site is suitable for the proposed project.

Economic: will be evaluated on whether the project has demonstrated economic feasibility, taking into consideration the submitted financial and project development and structural information and financial plan.

Schedule: will be evaluated on the applicant's ability to meet the 2 year project certification and the 5 year placed-in-service requirement.

**F. Program Policy Factors to be used by DOE in the evaluation of applications and a description of how they will [\*45] be applied.**

These factors, while not indicators of the applicant's merit, e.g., technical excellence, cost, applicant's ability, etc., may be essential to the process of selecting the applications that, individually or collectively, will best achieve the objectives the authorizing legislation. Such factors are often beyond the control of the applicant. Applicants should recognize that some very good applications may not receive selection for certification because they do not fit within a mix of projects and technologies that maximize the probability of achieving the overall objective of deployment of advanced coal-based generation technology. Therefore, the following Program Policy Factors may be used individually or collectively by DOE following application of evaluation criteria to determine which of the applications shall receive certification by DOE.

- . Diversity of technology approaches and methods
- . Geographic distribution of potential markets
- . Presentation of unique environmental, economic, or performance benefits

**G. Instructions for independent financial reports**

The applicant shall provide an independent report by a qualified Independent Financial Analyst (such as a bank, investment [\*46] bank, or other independent financial advisory firm). In the report, the Independent Financial Analyst shall describe qualifications and experience that establish the Analyst's competence to evaluate project financing for projects similar in scope and size to the Applicant's project. The Independent Financial Analyst shall provide a thorough, independent review of the Applicant's approach to project financing. The report shall include the opinion of the Independent Financial Analyst as to the Applicant's likelihood to achieve financial closure in accordance with the Applicant's financing plan.

**Required Certification by Independent Financial Analyst:**

**The report shall be certified by the Independent Financial Analyst, who shall (a) acknowledge that the report has been prepared for submission to the Department of Energy as a part of an application by applicant for an investment credit, and (b) certify that the Independent Financial Analyst has no obligation to the applicant and has acted to the best of its ability as an independent expert.**

**At a minimum, the Independent Financial Analyst shall:**

- . Review the financial model.
  
- . Review the project financial assumptions, including economic, capital [\*47] costs, operating assumptions, and all project development costs.
  
- . Review the financial calculations, including rates of return and coverage ratios.
  
- . Confirm the calculation of the amount of the tax credit applied for.
  
- . Review the project development cost budget.
  
- . Review and comment on the source of funding and evidence of funding.
  
- . Review and comment on project debt and equity sources.
  
- . Confirm that the application includes the required financial reports and debt ratings.
  
- . Describe and comment on the capabilities of the applicant to provide the required financing for the project, and the likelihood of obtaining financing from a source other than the applicant, if such financing is required by the project.

**Load Date:** 2006-03-28

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