

Reallocation of Section 48A Credits under the Qualifying Advanced Coal Project Program

Notice 2012-51

SECTION 1. PURPOSE

Section 48A of the Internal Revenue Code, as originally enacted, provided for the first phase of the qualifying advanced coal project program and authorized \$1.3 billion of credits (“the § 48A Phase I program” and “the § 48A Phase I credit”). Section 48A, as amended by section 111 of the Energy Improvement and Extension Act of 2008, Pub. L. 110-343, 122 Stat. 3765 (October 3, 2008), provided for a second phase of the qualifying advanced coal project program and authorized an additional \$1.25 billion of credits (“the § 48A Phase II program” and “the § 48A Phase II credit”).

This notice reports the results of the § 48A Phase I program, and as provided by § 48A(d)(4), establishes a third phase of the qualifying advanced coal project program (“the § 48A Phase III program”) to distribute the § 48A Phase I credits that are available for allocation after the conclusion of the § 48A Phase I program (“the § 48A Phase III credits”). The procedures in this notice apply only to § 48A Phase I credits that are available for reallocation after the last allocation under the § 48A Phase I program.

To be considered in the § 48A Phase III program 2012-2013 allocation round (2012-2013 round), applications must be submitted to the Department of Energy (“DOE”) on or before October 15, 2012, and to the Internal Revenue Service (“Service”) on or before February 15, 2013.

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. That list includes the qualifying advanced coal project credit under § 48A.

.02 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 Service, in consultation with the Secretary of Energy, established the § 48A Phase I program in Notice 2006-24, 2006-1 C.B. 595, as modified and updated by Notice 2007-52, 2007-1 C.B. 1456.

.03 Under the § 48A Phase I program, the qualifying advanced coal project credit for a taxable year was an amount equal to (i) 20 percent of the qualified investment for that taxable year in qualifying projects that use an integrated gasification combined cycle (“IGCC”) and (ii) 15 percent of the qualified investment for that taxable year in qualifying projects that use other advanced coal-based generation technologies.

.04 Pursuant to § 48A(d)(3)(B), the § 48A Phase I program provided for (i) \$800 million of credits to be allocated to IGCC projects and (ii) \$500 million of credits to other advanced coal projects. The Service allocated credits through annual allocation rounds in 2006, 2007-08, and 2008-09, and a special allocation round in 2008.

.05 Pursuant to § 48A(d)(3)(B)(iii), the § 48A Phase II program provides for additional \$1.25 billion of credits for advanced coal-based generation technology projects. The § 48A Phase II credit for a taxable year is 30 percent of the qualified

investment for that taxable year in advanced coal-based generation technology projects.

.06 Section 48A(d)(4) requires the Secretary to review the allocation of § 48A Phase I credits as of the date that is 6 years after the date of enactment of § 48A. The Secretary has broad authority to establish an additional program to distribute the § 48A Phase I credits that are available for reallocation if the Secretary determines that:

(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 because the project subject to the certification has been delayed as a result of third-party opposition or litigation.

.07 The Service has completed this review and has determined that § 48A Phase I credits in the total amount of \$658,500,000 are available for reallocation under the § 48A Phase III program.

.08 The § 48A Phase III program, like the § 48A Phase II program, requires a qualifying project to include equipment that separates and sequesters a percentage of such project's total carbon dioxide (CO₂) emissions (at least 65 percent under the Phase II program and at least 70 percent under the Phase III program). The § 48A Phase I program did not include a similar requirement. Accordingly, the qualifying advanced coal project credit under the § 48A Phase III program will be computed using the rules applicable to the § 48A Phase II program rather than those applicable to the § 48A Phase I program. Thus, the credit for a taxable year under the § 48A Phase III program is an amount equal to 30 percent of the qualified investment (as defined in § 48A(b)) for that taxable year in a qualifying advanced coal project (as defined in

§ 48A(c)(1) and § 48A(e)). The 30 percent credit rate will apply to both facilities that use IGCC (as defined in § 48A(c)(7)) and those that use other advanced coal-based generation technologies.

.09 Section 48A(f) prescribes the requirements that must be satisfied to qualify as an advanced coal-based generation technology. These include requirements that the unit be designed to attain specified standards for emissions or removal of certain pollutants.

.10 Section 48A(e)(3)(A) provides for credit allocation by reference to the coal used as a primary feedstock. Section 48A(e)(3)(B) establishes priority for certain projects under the § 48A Phase I and Phase II programs. Section 48A(e)(3)(B) provides that high priority must be given to projects that include (i) greenhouse gas capture capability (as defined in § 48A(c)(5)), (ii) increased by-product utilization, (iii) applicant participants that have a research partnership with an eligible educational institution (as defined in § 529(e)(5)), and (iv) other benefits. Section 48A(e)(3)(C) provides that the highest priority is given to projects with the greatest separation and sequestration percentage of total CO₂ emissions. The § 48A Phase III program adopts priorities similar to those specified in § 48A(e)(3)(B) and (C), but does not adopt the feedstock rules of § 48A(e)(3)(A).

.11 Section 48A(d)(5) provides that the Secretary shall, upon making a certification under § 48A(d), publicly disclose the identity of the applicant and the amount of the credit certified with respect to such applicant.

.12 Section 48A(h) directs the Secretary to modify the terms of any competitive

certification award to permit a change of coal project site if such change (i) is consistent with the objectives of § 48A, (ii) is requested by the recipient, and (iii) involves moving the project site to improve the potential to capture and sequester CO₂ emissions, reduce costs of transporting feedstock, and serve a broader customer base. This directive does not apply if the Secretary determines that the dollar amount of tax credits available to the taxpayer under § 48A would increase as a result of the modification or such modification would result in such project not being originally certified. In addition, the Secretary is required to consult with other relevant Federal agencies, including the Department of Energy, in considering any modification under § 48A(h).

.13 The at-risk rules in § 49 and the recapture and other special rules in § 50 apply to the qualifying advanced coal project credit.

SECTION 3. DEFINITIONS

The following definitions apply for purposes of § 48A and this notice:

.01 Coal. Section 48A(c)(4) defines the term “coal” as meaning anthracite, bituminous coal, subbituminous coal, lignite, and peat. Coal includes waste coal (that is, usable material that is a byproduct of the previous processing of anthracite, bituminous coal, subbituminous coal, lignite, or peat). Examples of waste coal include fine coal of any of the listed ranks, coal of any of the listed ranks obtained from a refuse bank or slurry dam, anthracite culm, bituminous gob, and lignite waste.

.02 Total Nameplate Generating Capacity.

(1) Except as provided in section 3.02(2) of this notice, the total nameplate generating capacity of a project under § 48A(e)(1)(C) is the aggregate of the numbers

(in megawatts) stamped on the nameplate of each generator to be used in the project.

(2) If the number stamped on the nameplate of a generator is not determined at the International Standard Organization (ISO) optimal conditions of 59 degrees Fahrenheit, 60 percent relative humidity, and 14.7 psia at sea level, the number stamped on the nameplate is disregarded and the generator's capacity (in megawatts) determined at such optimal conditions is used in its place.

.03 Fuel Input.

(1) In general. Section 48A(e)(1)(B) provides that the fuel input for the project, when completed, must be at least 75 percent coal. The term "fuel input" means, with respect to any type of fuel, the amount of such fuel used during normal plant operations. The amounts of the fuel used are measured (i) in British thermal units (Btus) on an energy input basis, and (ii) pursuant to applicable standards prescribed by the American Society for Testing and Materials (ASTM). Thus, the requirement of § 48A(e)(1)(B) is satisfied if, after completion and during normal plant operations, coal provides at least 75-percent of the project's fuel measured in Btus on an energy input basis and pursuant to applicable ASTM standards.

(2) Only normal plant operations taken into account. Only fuel used during normal plant operations is taken into account for purposes of § 48A and sections 5.02(5) and 5.02(14) of this notice. Normal plant operations are operations other than during periods of initial plant certification, plant startup, plant shutdown, integrated gasifier shutdown for gasification system maintenance, or interruption of the coal supply to the project resulting from an event of force majeure (including an act of God, war,

strike, or other similar event beyond the control of the taxpayer). For example, the fuel input during the initial plant certification may consist entirely of natural gas or other non-coal fuels because fuel used during initial plant certification is disregarded in determining whether the 75 percent coal usage requirement of § 48A(e)(1)(B) is satisfied.

.04 Placed In Service. For purposes of § 48A, property is placed in service in the taxable year in which the property is placed in a condition or state of readiness and availability for a specifically assigned function. See § 1.46-3(d)(1)(ii) of the Income Tax Regulations. Thus, a qualifying advanced coal project or eligible property (as defined in § 48A(c)(3)) that is a part of the project is placed in service in the taxable year in which the project is placed in a condition or state of readiness and availability for producing electricity from coal as required under § 48A(e).

.05 Separation and Sequestration. The term "separation and sequestration" refers to the separation and capture of a project's CO₂ emissions and the placement of the captured CO₂ into a repository in which the CO₂ will remain permanently sequestered.

SECTION 4. SECTION 48A PHASE III PROGRAM

.01 In General. The Service will consider a project under the § 48A Phase III program only if DOE provides a certification ("DOE certification") and ranking (if any) for the project. Accordingly, a taxpayer must submit, for each project: (i) an application for certification by DOE that the project is technically and economically feasible ("application for DOE certification"), and (ii) an application for certification under

§ 48A(d)(4) by the Service (“application for § 48A certification”).

.02 Program Specifications.

(1) The Service determines the amount of the § 48A Phase III credits allocated to a project at the time the Service accepts the application for § 48A certification for that project in accordance with 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) Section 48A Phase III credits in the amount of \$658,500,000 are available for allocation in the 2012-2013 round. The credits will not be separated into pools based on the type of projects or the type of primary feedstock.

(3) The § 48A Phase III credit for a taxable year is an amount equal to 30 percent of the qualified investment (as defined in § 48A(b)) for that taxable year in a qualifying advanced coal project (as defined in § 48A(c)(1) and § 48A(e)). This rule applies to both facilities that use an IGCC (as defined in § 48A(c)(7)) and those that use other advanced coal-based generation technologies (as defined in § 48A(f)).

(4) A taxpayer that was allocated § 48A Phase I credits or § 48A Phase II credits for a project may submit an application for § 48A Phase III credits for the same project if the project meets the additional requirement for a qualifying project under the § 48A Phase III program that the project separate and sequester at least 70 percent of the project’s total CO₂ emissions.

(a) The § 48A Phase III credit will be allowed with respect to the taxpayer’s qualified investment in the project only to the extent such investment exceeds the

qualified investment with respect to which the § 48A Phase I credit or § 48A Phase II credit was awarded.

(b) Section 48A Phase III credits allocated to a project will be forfeited if the taxpayer fails to satisfy the certification requirements in § 48A(e)(2) within two years from the date of acceptance of the application under this notice, or fails to place the project in service within 5 years of the date of issuance of the certification (as determined under section 6.03 of this notice). The allocation of the § 48A Phase III credits to a project does not delay the taxpayer's certification and placed-in-service obligations with respect to any § 48A Phase I credits or § 48A Phase II credits previously allocated to the project. Accordingly, the § 48A Phase I credits or the § 48A Phase II credits allocated to the project will be forfeited if the taxpayer fails to satisfy the certification requirements within two years from the date of acceptance under the § 48A Phase I program or the § 48A Phase II program (whichever is applicable), or fails to place the project in service within 5 years of the date of issuance of the certification under the applicable program.

(5) For § 48A Phase III credits, DOE will rank the certified projects in descending order (that is, first, second, third, etc.) based on the Program Policy Factors specified in Appendix B, and allocate the credit as follows:

(a) If the requested allocation of credits for projects that DOE has certified does not exceed the amount available for allocation, each certified project will be allocated the full amount of credit requested.

(b) If the requested allocation of credits for projects that DOE has certified

exceeds the amount available for allocation, the amount available for allocation will be allocated as follows:

(i) The project receiving the highest ranking (that is, first) will be allocated the full amount of credit requested (but not exceeding the amount available for allocation) before any credit is allocated to a lower-ranked project. The amount available for allocation is reduced by the amount of credit so allocated and only the remainder is available for allocation to a lower-ranked project.

(ii) Second and lower-ranked projects will be entitled to similar priority in the allocation of credits and allocations to such projects will similarly reduce the remainder of the amount available for allocation until the amount available for allocation is exhausted.

(6) For the 2012-2013 round under this notice, the application period for § 48A certification begins on August 13, 2012, and ends on February 15, 2013, and any completed application for § 48A certification received by the Service after August 12, 2012, and before February 16, 2013, will be deemed to be submitted by the taxpayer on February 15, 2013.

(7) 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).

(8) See section 5.02 of this notice and Appendix B to this notice for the information to be submitted to 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. DOE will determine the technical and economic feasibility of the project and, if the project is determined to be feasible, will provide a DOE certification for the project to the Service. If DOE certifies two or more projects, DOE also will rank each of the projects it certifies (for example, first, second, third, etc.) relative to other certified projects and credits will be allocated to projects based on DOE ranking. If an application for DOE certification is postmarked on or before October 15, 2012, DOE will determine the feasibility of the project and (for projects determined to be feasible) provide DOE certification and DOE ranking (if any) to the Service by February 15, 2013.

(9) By May 15, 2013, the Service will accept or reject the taxpayer's application for § 48A certification and will notify the taxpayer, by letter, of its decision.

(10) 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 July 15, 2013, the taxpayer must execute and return the closing agreement to the Service at the appropriate address listed in section 5.04 of this notice. The Service will execute and return the closing agreement to the taxpayer by September 16, 2013. The executed closing agreement applies only to the accepted taxpayer. The taxpayer must notify the Service within 90 days of the acquisition of the project by any other person (a successor in interest). A successor in interest that plans to claim the § 48A credit allocated to the project must request permission to execute a new closing agreement with the Service.

If the request is granted, the new closing agreement must be executed no later than the due date (including extensions) of the successor in interest's Federal income tax return for the taxable year in which the transfer occurs. If the successor in interest does not execute a new closing agreement, the following rules apply:

(a) In the case of an interest acquired at or before the time the qualifying advanced coal project is placed in service, any credit allocated to the project will be fully forfeited (and rules similar to the recapture rules of § 50(a) apply with respect to qualified progress expenditures); and

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

(11) The site of the qualifying advanced coal project relating to a credit allocation may be changed only if the change is consistent with the objectives of the qualifying advanced coal project program, is requested by the taxpayer that received the credit allocation, and involves moving the project site to improve the potential to capture and sequester CO₂ emissions, reduce costs of transporting feedstock, and serve a broader customer base. The Service will not agree to a project site change if the dollar amount of tax credits allocated to the taxpayer under § 48A would increase as a result of the site change or if the project would not have been originally certified had such modification been included in the taxpayer's application. In considering such modification, the Service will consult with DOE and any other relevant Federal agency.

(12) The § 48A Phase III credit allocated to the project will be forfeited if the taxpayer fails to satisfy the certification requirements in § 48A(e)(2) within 2 years from the date of acceptance of the application under this notice, or fails to place the project in service within 5 years of the date of issuance of the certification (as determined under section 6.03 of the notice).

(13) The taxpayer must notify the Service by letter of the date the project is placed in service within 90 days of that date.

SECTION 5. APPLICATIONS FOR CERTIFICATIONS

.01 In General. An application for § 48A certification and a separate application for DOE certification must be submitted for each qualifying advanced coal project. If an application for DOE certification does not include all of the information required by section 5.02 of this notice, 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, the Service may decline to accept the application.

.02 Information Required in the Application for DOE Certification. An application for DOE certification must be sent to the address specified in Section C of Appendix B. The application must include all of the information requested in Appendix B to this notice and all of the following:

(1) The name, address, and taxpayer identification number of the taxpayer. If the taxpayer is a member of an affiliated group filing consolidated returns, also provide the name, address, and taxpayer identification number of the common parent of the group.

(2) The name and telephone number of a contact person.

(3) The name and address (or other unique identifying designation) of the qualifying advanced coal project.

(4) A statement specifying whether the project is an IGCC project or a project that uses another advanced coal-based technology.

(5) A statement specifying that the fuel input for the project is at least 75 percent coal (as defined in section 3.01 of the notice).

(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.

(8) A statement specifying the amount of credit the taxpayer is or will be requesting under § 48B for the project, if any.

(9) A statement specifying whether the project is a new electric generation unit (as defined in § 48A(c)(6)), a retrofit of an existing electric generation unit, or a repower of an existing electric generation unit.

(10) A statement specifying whether the project is entitled to priority for increased by-product utilization or a research partnership with an eligible educational institution (as defined in § 529(e)(5)) and, if entitled to priority, a statement identifying which of these priorities apply to the project. If priority results from a research partnership with an eligible educational institution, state the name(s) of the eligible institution.

(11) A statement specifying the percentage of total CO₂ emissions that the project will separate and sequester.

(12) A statement specifying the number and types of generators to be used in the project (for example, two combustion turbine generators and one steam turbine generator).

(13) The exact total nameplate generating capacity (as defined in section 3.02 of this notice) of the project.

(14) In the case of a project that will not achieve 99-percent removal of sulfur dioxide, a statement that the project is designed for the use of a feedstock substantially all of which is subbituminous coal and will achieve an emission level of not more than 0.04 pounds of sulfur dioxide per million Btu, determined on a 30-day average. For this purpose, a project is designed for the use of feedstock substantially all of which is subbituminous coal if at all times 80 percent or more of the cumulative total fuel input (coal and any other fuel input) used in normal plant operations (as defined in section 3.03(2) of this notice) of the project will be subbituminous coal. Such a project meets the requirements in § 48A(f)(1) by achieving either 99-percent removal of sulfur dioxide or an emission level of not more than 0.04 pounds of sulfur dioxide per million Btu, determined on a 30-day average. All other qualifying advanced coal projects must achieve 99-percent removal of sulfur dioxide.

(15) The following declaration: "Under penalties of perjury, I declare that I have examined this submission, including accompanying documents, and, to the best of my knowledge and belief, all of the facts contained herein are true, correct and complete."

(16) The taxpayer's signature. The taxpayer must sign and date the application, including the perjury declaration. A stamped, faxed or electronic signature will not be accepted. The person signing for the taxpayer must have personal knowledge of the facts. Further, the application, including the perjury declaration, must be signed by an officer on behalf of a corporation, a general partner on behalf of a state-law partnership, a member-manager on behalf of a limited liability company, a trustee on behalf of a trust, and the proprietor in the case of a sole proprietorship. If the taxpayer is a member of an affiliated group filing consolidated returns, the application, including the perjury declaration, must be signed by a duly authorized officer of the common parent of the group.

.03 Information To Be Included in the Application for § 48A Certification. An application for § 48A certification must include all of the following:

(1) The name, address, and taxpayer identification number of the taxpayer. If the taxpayer is a member of an affiliated group filing consolidated returns, also provide the name, address, and taxpayer identification number of the common parent of the group.

(2) The name and/or number of the IRS form that the taxpayer uses to file its Federal income tax return (e.g., Forms 1120, 1065, etc.) and the ending month of the taxpayer's tax year.

(3) The name, telephone number, and fax number of a contact person. For such person, attach a properly executed power of attorney, preferably on Form 2848, Power of Attorney and Declaration of Representative.

(4) One electronic version on a USB flash drive or a CD of the completed application for DOE certification submitted with respect to the project in accordance with section 5.02 of this notice.

(5) If § 48A Phase I credits or § 48A Phase II credits were allocated to the project, the estimated total cost and estimated total qualified investment of the project as represented in the application for the § 48A Phase I credits or § 48A Phase II credits, and the amount of the allocated § 48A Phase I credits or § 48A Phase II credits.

(6) The following declaration: “Under penalties of perjury, I declare that I have examined this submission, including accompanying documents, and, to the best of my knowledge and belief, all of the facts contained herein are true, correct and complete.”

(7) The taxpayer’s signature. The taxpayer must sign and date the application, including the perjury declaration. A stamped, faxed or electronic signature will not be accepted. The person signing for the taxpayer must have personal knowledge of the facts. Further, the application, including the perjury declaration, must be signed by an officer on behalf of a corporation, a general partner on behalf of a state-law partnership, a member-manager on behalf of a limited liability company, a trustee on behalf of a trust, and the proprietor in the case of a sole proprietorship. If the taxpayer is a member of an affiliated group filing consolidated returns, the application, including the perjury declaration, must be signed by a duly authorized officer of the common parent of the group.

.04 Instructions and Address for Filing § 48A Application. There is no user fee for these applications. The application for § 48A certification meeting the requirements

of section 5.03 of this notice should be marked: "SECTION 48A APPLICATION FOR CERTIFICATION." A taxpayer may submit the application by U.S. mail, private delivery service, or hand delivery service to:

Internal Revenue Service
Industry Director, Natural Resources and Construction
Attn: Executive Assistant (Technical)
1919 Smith Street, Floor P2
Stop 1000-HOU
Houston, TX 77002

The application may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. central time.

SECTION 6. ISSUANCE OF CERTIFICATION

.01 In General. A taxpayer shall have 2 years from the date of acceptance of the § 48A application during which to provide evidence to the Service that the criteria set forth in § 48A(e)(2) have been met. If such evidence is not timely received, the allocated Phase III credits are forfeited. A project shall be eligible for certification only if (i) the taxpayer has received all Federal and State environmental authorizations or reviews necessary to commence construction of the project, and (ii) 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 5-year period. If evidence that the project was placed in service is not timely received, the allocated Phase III credits are forfeited.

.02 Requirements for Certification. Within 2 years from the date that the Service accepts the taxpayer's application for § 48A certification under this notice, the taxpayer must submit to the Service an electronic version on a USB flash drive or a CD of the documentation establishing that the certification requirements of section 6.01 of this notice are satisfied. The documentation must be formatted in one of the following software applications: Microsoft Wordtm 2007 or later edition; Microsoft Exceltm 2007 or later edition; or Adobe Acrobattm PDF 7.0 or later edition. The taxpayer should mark the package "SECTION 48A CERTIFICATION REQUIREMENTS" and send it to the address listed in section 5.04 of this notice.

(1) The documentation establishing that the certification requirements of section 6.01 of this notice are satisfied must be accompanied by the following written 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 taxpayer's submission (the documentation and the perjury declaration) must be signed and dated by the taxpayer. A stamped, faxed or electronic signature will not be accepted. The person signing for the taxpayer must have personal knowledge of the facts. Further, the submission must be signed by an officer on behalf of a corporation, a person authorized under state law to bind the entity on behalf of an entity treated as a partnership for federal tax purposes (for example, a general partner

in a state-law partnership), a trustee on behalf of a trust, and the proprietor in the case of a sole proprietorship. If the taxpayer is a member of an affiliated group filing consolidated returns, the submission also must be signed by a duly authorized officer of the common parent of the group.

.03 Service's Action on Certification. After receiving the material described 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 Significant Change in Plans. The Service must be informed if the plans for the project change in any significant respect from the plans set forth in the applications for § 48A and DOE certification. Except as otherwise provided under § 48A(h), any significant change to the plans set forth in the applications will have the following effects if the Service is informed of the change after the date on which the applications for DOE certification were due for the allocation round under section 4.02(8) of this notice:

- (1) The Service will give no further consideration to the project; and
- (2) Any acceptance provided by the Service and any allocation or certification based on that acceptance will be void.

.02 Recapture of the § 48A Phase III credits. Section 48A Phase III credits are subject to the recapture rules of § 50. Section 50(a)(1) provides, generally, for recapture of the investment credit if, during any taxable year, investment tax credit property is disposed of or otherwise ceases to be investment credit property with

respect to the taxpayer before the close of the recapture period. The recapture period under § 50(a) is the 5-year period beginning on the date the property is placed in service.

(1) The recapture rules under § 50 will apply for all events that trigger recapture of the credits allowed under § 48A, including a failure to attain or maintain the separation and sequestration requirements of § 48A(e)(1)(G).

(2) For purposes of determining whether a project meets the requirements of § 48A(e)(1)(G), the amount of the project's total CO₂ emissions and the amount of CO₂ separated and sequestered will be measured on an annual basis during normal plant operations (as defined in section 3.03(2) of this notice). An annual period other than the taxpayer's taxable year may be used for these purposes if the same period is consistently used. If a period other than the taxable year is used, any failure to meet the requirements of § 48A(e)(1)(G) will be treated as occurring in the taxable year that includes the last day of the annual period in which the failure occurs.

.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, 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, or a right of appeal with respect to, any decision made under this notice (including the acceptance or rejection of the application for DOE or § 48A

certification, the amount of credit allocated to a project, or whether or not to certify a project) to any official of the Service.

.05 DOE Debriefings. Although a taxpayer does not have a right to a conference relating to any matters under this notice, DOE will offer debriefings to all applicants that submitted an application for DOE certification. This debriefing will be held by DOE after the Service has accepted the applications for § 48A certification (as determined under this notice). The sole purpose of the debriefing is to enable applicants to develop better proposals in future allocation rounds, if any, by providing DOE's review of the strengths and weaknesses of their applications for DOE certification. All requests for debriefings must be submitted to DOE within 30 days of receipt of the Service's decision to accept or reject the application.

SECTION 8. REDUCTION OR FORFEITURE OF ALLOCATED CREDITS

Under the provisions of this notice and the closing agreement set forth in Appendix A to this notice, the § 48A Phase III credits allocated in the 2012-2013 round 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 required 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.

SECTION 9. QUALIFIED PROGRESS EXPENDITURES

.01 Section 48A(b)(3) provides that rules similar to the rules of § 46(c)(4) and (d) (as in effect on the day before the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of § 48A. Former §§ 46(c)(4) and 46(d) provided the

rules for claiming the investment credit on qualified progress expenditures (as defined in former § 46(d)(3)) made by a taxpayer during the taxable year for the construction of progress expenditure property (as defined in former § 46(d)(2)).

.02 In the case of self-constructed property (as defined in former § 46(d)(5)(A)), former § 46(d)(3)(A) defined qualified progress expenditures to mean the amount that is properly chargeable (during the taxable year) to capital account with respect to that property. With respect to a qualifying advanced coal project that is self-constructed property, amounts paid or incurred are chargeable to capital account at the time and to the extent they are properly 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 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 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 this notice;

(2) Failure to receive a certification for the project in accordance with section 6.03 of this notice;

(3) Failure to place the project in service within 5 years from the date of issuance of the certification under section 6.03 of this notice;

(4) A significant change to the plans for the project as set forth in the applications for § 48A and DOE certification if, under section 7.01 of this notice, the Service's acceptance of the project is void as a result of the change; or

(5) Failure of the project, at any time during the recapture period (as provided in § 50(a)), to attain or maintain the separation and sequestration of CO₂ emissions required by § 48A(e)(1)(G).

SECTION 10. DISCLOSURE OF INFORMATION

.01 Announcement. Section 48A(d)(5) provides that the Secretary shall, upon making a certification under § 48A(d), publicly disclose the identity of the applicant and the amount of the credit certified with respect to such applicant. Accordingly, the Service intends to publish the results of the allocation process, and disclose the following information in the event a qualifying advanced coal project credit is allocated to the taxpayer's project: (i) the name of the taxpayer and (ii) the amount of the qualifying advanced coal project credit allocated to the project.

.02 In general. An application for DOE certification, an application for § 48A certification, any other documentation submitted by the taxpayer pursuant to section

6.02 of this notice, and any documentation generated by the Service or DOE as part of this process are return information subject to § 6103. Except for the items of information that § 48A(d)(5) requires the Service to make available to the public, the other material remains the applicant's confidential return information, which is exempt under 5 USC § 552(b)(3) and Code § 6103 from disclosure under the Freedom of Information Act ("FOIA"). Other FOIA exemptions may also apply. For example, FOIA includes exemptions for trade secrets and commercial or financial information (5 USC § 552(b)(4)), as well as personal information (5 USC § 552(b)(6)).

.03 FOIA requests. Anyone interested in submitting a request for records under the FOIA with respect to the qualifying advanced coal project program under § 48A should direct a request that conforms to the Service's FOIA regulations, found at 26 C.F.R. § 601.702, to the following address:

IRS FOIA Request
Baltimore Disclosure Office
Room 940
31 Hopkins Plaza
Baltimore, MD 21201

SECTION 11. EFFECT ON OTHER DOCUMENTS

Notice 2009-24, 2009-1 C.B. 817, is amplified.

SECTION 12. EFFECTIVE DATE

This notice is effective upon publication in the Internal Revenue Bulletin.

SECTION 13. PAPERWORK REDUCTION ACT

The collection of information contained in this notice has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork

Reduction Act (44 U.S.C. § 3507) under control number 1545-2003.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information in this notice are in sections 4, 5, 6, 7, 8, and Appendix B of this notice. This information is required to obtain an allocation of qualifying advanced coal project credits. This information will be used by the Service to verify that the taxpayer is eligible for the qualifying advanced coal project credits. The collection of information is required to obtain a benefit. The likely respondents are business or other for-profit institutions.

The estimated total annual reporting burden is 550 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 5.

The estimated annual frequency of responses is on occasion.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. § 6103.

SECTION 14. DRAFTING INFORMATION

The principal author of this notice is Jennifer Bernardini of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding

this notice contact Ms. Bernardini on (202) 622-3110 (not a toll-free call).

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 February 15, 2013, Taxpayer submitted to the Internal Revenue Service ("Service"), an application for certification under the § 48A Phase III program 2012-2013 allocation round (2012-2013 round) described in Notice 2012-51 ("Application for § 48A Certification").

2. Taxpayer's Application for § 48A Certification in the 2012-2013 round is for the project described below (the "Project"):

(a) The Project will use an advanced coal-based generation technology (as defined in § 48A(c)(2) and (f)).

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

(c) The Project site in subsection (b) above may be changed only if the change is consistent with the objectives of the qualifying advanced coal project program, is requested by the taxpayer that received the credit allocation, and involves moving the Project site to improve the potential to capture and sequester CO₂ emissions, reduce costs of transporting feedstock, and serve a broader customer base. The Service will not agree to a project site change if the dollar amount of tax credits allocated to the taxpayer under § 48A would increase as a result of the site change or if the Project

would not have been originally certified had such modification been included in the taxpayer's application.

(d) 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))."]

(e) The Project will have a total nameplate generating capacity (as defined in section 3.02 of Notice 2012-51) of at least [insert number] megawatts.

(f) At all times at least 75 percent of the cumulative total fuel input (as defined in section 3.03(1) of Notice 2012-51) used during normal plant operations (as defined in section 3.03(2) of Notice 2012-51) for the Project will be coal (as defined in section 3.01 of Notice 2012-51).

3. On [insert date of acceptance letter issued under Notice 2012-51], the Service accepted Taxpayer's Application for § 48A Certification for the Project and allocated qualifying advanced coal project credit under § 48A in the amount of \$[insert number] to the Project.

4. Taxpayer understands that if Taxpayer fails to satisfy any of the certification requirements in § 48A(e)(2) within the time specified in § 48A(d)(2)(D) (2 years from [insert the date in WHEREAS clause #3]), or if the Service does not issue a certification for the Project under Notice 2012-51, the § 48A Phase III credit in the amount of \$[insert the number in WHEREAS clause #3] allocated to the Project in the 2012-2013 round is fully forfeited.

5. Taxpayer understands that if the Project fails to attain or maintain the separation and sequestration of CO₂ emissions required by § 48A(e)(1)(G), the § 48A Phase III credit in the amount of \$[insert the number in WHEREAS clause #3] allocated to the Project in the 2012-2013 round will be recaptured pursuant to § 50.

6. Taxpayer understands that 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 2012-51, the § 48A Phase III credit in the amount of \$[insert the number in WHEREAS clause #3] allocated to the Project in the 2012-2013 round is fully forfeited. Taxpayer must provide evidence to the Service that the Project has been timely placed in service.

7. Taxpayer understands that if the plans for the Project change in any significant respect from the plans set forth in the application for DOE certification (as defined in section 5.02 of Notice 2012-51) and the Application for § 48A Certification (as defined in section 5.03 of Notice 2012-51) and, under section 7.01 of Notice 2012-51, the acceptance of Taxpayer's Application for § 48A Certification on [insert the date in WHEREAS clause #3] is void, the § 48A Phase III credit in the amount of \$[insert the number in WHEREAS clause #3] allocated to the Project in the 2012-2013 round is fully forfeited.

8. Taxpayer understands that if the Project fails to satisfy any of the requirements in § 48A(e)(1)(A), (C), (D), (E), and (F) for a qualifying advanced coal project or, during normal plant operations (as defined in section 3.03(2) of Notice 2012-51), fails to satisfy the requirement in § 48A(e)(1)(B) for a qualifying advanced coal project--

(a) at the time the Project is placed in service, § 48A Phase III credit in the amount of \$[insert the number in WHEREAS clause #3] allocated to the Project in the 2012-2013 round 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.

9. Taxpayer understands that if at any time more than 25 percent of the cumulative total fuel input (as defined in section 3.03(1) of Notice 2012-51) used during normal plant operations (as defined in section 3.03(2) of Notice 2012-51) is not coal (as defined in section 3.01 of Notice 2012-51), the Project ceases to be investment credit property and the recapture rules of § 50(a) apply.

10. Taxpayer cannot claim the qualifying gasification project credit under § 48B for any qualified investment for which the qualifying advanced coal project credit is allowed under §48A.

11. Taxpayer understands that 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(s) during which the Project is under construction and the Project ceases to be a qualifying advanced coal project (whether before, at the time, or after the Project is placed in service), rules similar to the recapture rules in § 50(a)(2)(A) through (D) apply.

12. This agreement applies only to Taxpayer. Taxpayer must notify the Service within 90 days of the acquisition of the Project by any other person (a successor in

interest). A successor in interest that plans to claim the § 48A credit allocated to the Project must request permission to execute a new closing agreement with the Service. If the request is granted, the new closing agreement must be executed no later than the due date (including extensions) of the successor in interest's Federal income tax return for the taxable year in which the transfer occurs. If the 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 § 48A Phase III credit in the amount of \$[insert the number in WHEREAS clause #3] allocated to the Project in the 2012-2013 round 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, the Project ceases to be investment credit property and the recapture rules of § 50(a) apply.

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

1. The total amount of the § 48A Phase III credit that Taxpayer will claim for the Project under this agreement on account of the acceptance of Taxpayer's Application for § 48A Certification in the 2012-2013 round cannot exceed \$[insert the number in WHEREAS clause #3].
2. This Agreement does not express whether the Taxpayer has met the certification requirements under § 48A(e)(2) or other future requirements to receive tax credits under § 48A.
3. This agreement is limited and applies only to Taxpayer. A successor in interest that plans to claim the § 48A credit allocated to the Project must request

permission to execute a new closing agreement with the Service.

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:** _____
[insert name]

Title: [insert title]
[insert taxpayer's name]

Commissioner of Internal Revenue

By: _____ **Date Signed:** _____
[insert name]

Title: [insert title]

APPENDIX B**APPLICATION FOR DOE CERTIFICATION****REQUEST FOR SUPPLEMENTAL APPLICATION INFORMATION FOR DOE**

The Internal Revenue Service (“Service”) and the Department of Energy (“DOE”) seek to certify applications that demonstrate a high likelihood of being successfully implemented by the applicants. To qualify, projects must be technically and economically feasible and use the appropriate clean coal technology.

This request for submission of supplemental application information:

- Describes the information to be provided by the applicant seeking a certification of feasibility from DOE, and
- Lists the evaluation criteria and Program Policy Factors to be used by DOE in the evaluation of applications.

If after review by DOE a project is determined to be feasible, DOE will provide a DOE certification of feasibility to the Service. The Service will then accept or reject the taxpayer’s application for certification of tax credit.

In conducting this evaluation 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 certification to the Service 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.

A. General

This request, together with the information in relevant sections of Notice 2012-51 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 application will be uniform as to

format and sequence.

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

Applicants should fully address the requirements of Notice 2012-51 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 relevant sections of Notice 2012-51.

An application to DOE will not be considered in the 2012-2013 allocation round unless it is postmarked by October 15, 2012. One electronic version on a USB flash drive or a CD of the application must be submitted to:

Cheri Hall
National Energy Technology Laboratory
3610 Collins Ferry Road
Morgantown, WV 26507

Note that under section 5.03(4) of Notice 2012-51, one electronic version of the application for DOE certification must be sent to the Service as part of the application for §48A certification. The application for §48A certification will not be considered in the 2012-2013 allocation round under this notice unless it is submitted to the Service by February 15, 2013.

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 Word™ 2007 or later edition
- Microsoft Excel™ 2007 or later edition
- Adobe Acrobat™ PDF 7.0 or later edition

Financial models should be submitted using the Excel™ spreadsheet and must include calculation formulas and assumptions.

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

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. Project Information Memorandum

1. Summary and Introduction

- a. Description of the Project
- b. Financing and Ownership Structure
- c. Description of the main parties to the project, including background, ownership and related experience
- d. Current Project Status and Schedule to Beginning of Construction

2. Technology and Technical Information

Provide a description of the proposed technology, including sufficient supporting information (such as vendor guarantees, 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

are 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.
- For advanced coal-based electric generation:
 - The applicant must provide evidence sufficient to justify the actual heat rate and heat rate corrected to conditions specified in § 48A(f)(2).
 - For projects including existing units, the applicant must provide evidence sufficient to justify that the proposed technology meets heat rate requirements specified in § 48A(f)(3).
- Provide evidence sufficient to justify that the proposed project is designed to meet the following performance requirements:
 - SO₂ (subbituminous coal is 80 percent or more of fuel input).....99 percent removal or emissions not more than 0.04 lbs/MMBTU
 - SO₂ (subbituminous coal is not more than 80 percent of fuel input)... ..99 percent removal
 - SO₂ (for all projects other than subbituminous coal projects).....99 percent removal
 - NO_x 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) and section 3.01 of Notice 2012-51), on an energy input basis.
 - The project is located at one site and has a total nameplate electric power generating capacity (as defined in section 3.02 of Notice 2012-51) of at least 400 MW.
 - The project includes equipment that separates and sequesters at least 70 percent of such project’s total carbon dioxide (“CO₂”) emissions. The CO₂ separation, capture, sequestration, and emission values shall be reported on metric tons per hour and metric tons per year basis under normal plant operating conditions. The CO₂ separation and sequestration percentages shall be

calculated based on the total CO₂ that would otherwise be released into the atmosphere as industrial emission of greenhouse gas.

3. Applicant's Capability to Accomplish the Technical Objectives

Provide a narrative supporting the Applicant's capability to accomplish the technical objectives of the proposed project, including supporting documentation demonstrating that the applicant has assembled a team that is formally committed to participate in the proposed project.

Provide information to support that the applicant has assembled a team with the skills and resources needed to implement the project as proposed. Provide signed agreements or letters from team members demonstrating that the proposed team members are fully committed to the project.

Provide information, including examples of prior similar projects completed by applicant, engineering-procurement-construction ("EPC") contractor, and suppliers of major subsystems or equipment, which support the capabilities of the applicant and its team members to design, construct, permit, and operate the facility. The applicant should demonstrate that the team members have a corporate history of successful completion of similar projects.

Provide information to support that key personnel of the applicant and its team members have knowledge, experience, and adequate degree of involvement to successfully implement the project.

Include the project status and relevant information from ongoing engineering activities. 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. Include copies of any signed agreements to support project status claims regarding preliminary design studies, front-end engineering design ("FEED"), and EPC-type agreements.

4. Priority for Qualifying Advanced Coal Projects

The applicant must submit information sufficient for categorization and prioritization of projects for certification, including documentation pertaining to the following:

- High priority project factors:
 - Increased by-product utilization, if applicable.
 - Research partnership with an eligible educational institution as defined in §48A(e)(3)(B)(iii), if applicable.

- Highest priority factor: Separation and sequestration percentage of total CO₂ emissions.

5. Site Control and Ownership

Provide evidence that demonstrates the overall feasibility of implementing the project at the proposed site.

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. Documentation such as a deed demonstrating the applicant owns the project site, a signed option to purchase the site from the site owner, or a letter of intent signed by the site owner and stating the site owner's intent to sell the site to the applicant should be provided.

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

Provide documentation supporting applicant's conclusion that the proposed site can fully meet all environmental, coal supply, water supply, transmission interconnect, and public policy requirements. Such documentation may include signed agreements, letters of intent, or term sheets relating to coal supply, water supply, and product (e.g. CO₂) transportation etc., and regulatory approvals supporting the key claims.

Provide detailed plans, schedules and status updates, particularly for sites with pre-existing conditions that could impact the proposed project. Pre-existing conditions may include, but are not limited to, sites with mandated environmental remediation efforts; brown-field sites that will require building demolition; or sites requiring substantial rerouting of existing roads, railroads, transmission lines or pipelines prior to the start of the project.

Applicants must select one "proposed site." However, projects with key physical or logistical elements that require close integration with another system for the project to succeed should provide information on all integrated systems regardless of where they are located. Example 1: a power plant designed to operate exclusively on coal from a to-be-opened mine should provide supporting documentation for the new mine. Example 2: an oxygen-blown IGCC plant planning to purchase oxygen from a third party who will construct a plant exclusively for this project should provide documentation for the oxygen supplier. Example 3: an IGCC plant planning to sell CO₂ for enhanced oil recovery ("EOR") should provide an agreement for such a transaction indicating the annual CO₂ purchase quantity, expected project lifetime sales, CO₂ capacity of the site for EOR, and EOR site ownership.

6. Utilization of Project Output

Provide evidence that demonstrates that a majority of the project output is reasonably expected to be acquired or utilized.

Provide a projection of the anticipated costs of electricity and other marketable by-products produced by the plant.

Provide documentation establishing that a majority of the output of the plant is reasonably expected to be acquired or utilized. Such documentation should be signed by authorizing officials of both the buyer and seller, and may include: Sales Agreements, Letters of Intent, Memoranda of Understanding, Option Agreements, and Power Purchase Agreements.

Describe any energy sales arrangements that exist or that may be contemplated (e.g., a Power Purchase Agreement or Energy Sales Agreement) and summarize 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, such as CO₂, 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.

7. Project Economics

Describe the project economics and provide satisfactory evidence of economic feasibility as demonstrated through the financial forecast and the underlying project assumptions. The project economic and financial assumptions should be clearly stated and explained.

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

8. Project Development and Financial Plan

Provide the total project budget and major plant costs (e.g., development, operating, capital, construction, and financing costs). Provide the estimated annual budget for and source of project development costs from the time of the application until the beginning of construction, including legal, engineering, financial, environmental, overhead, and other development 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 most recently ended three fiscal years and quarterly interim financial statements for the current fiscal year (a) for the applicant, (b) for any of the project parties providing funding, and (c) for any third party funding source. If the applicant or another party does not have audited financial statements, the applicant or the party should provide equivalent financial statements prepared by the applicant or the party, in accordance with Generally Accepted Accounting Principles, and certified as to accuracy and completeness by the Chief Financial Officer of the party providing the statements.

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 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, describe 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.

Include as an appendix copies of any existing funding commitments or expressions of interest from funding sources for the project.

For projects employing nonrecourse or limited recourse debt financing, provide a complete discussion of the approach to, and status of, such financing. In an appendix: (1) provide an Excel based financial model of the project, with formulas, so that review of the model calculations and assumptions may be facilitated; and (2) 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.

9. 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 6 above)
- 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 signed 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 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.
- If CO₂ is to be sold to a third party for sequestration, provide a Sales Agreement and provide specifics, such as CO₂ sales (metric tons per year), expected project lifetime sales (metric tons), potential CO₂ capacity of the site for sequestration (metric tons), technology and site suitability for sequestration, and sequestration site ownership and operation.

10. 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.

11. 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 current status of purchase negotiations, and provide a timeline for negotiation and purchase with expected purchase date.

12. 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.

The project schedule should be comprehensive and provide sufficient detail to demonstrate how applicant will meet the certification and placed-in-service requirements. The schedule should demonstrate that the applicant understands the required tasks, and has allowed realistic times for accomplishing the technical and financial tasks. The schedule should include the milestone accomplishments needed to obtain the financing for the project.

Applicants should document their progress toward meeting the 2-year completion of permitting deadline. Existing permits and permit applications must be specific to the project proposed. If existing permits are not specific for the proposed coal-based project (e.g. the permits are for oil-fired or natural-gas-based units), specific plans, procedures and schedules for reapplying, modifying and/or renegotiating permits should be provided. Any local, State or Federal permitting schedules that may impact the overall project schedule should be included.

Applicant should document their progress toward obtaining engineering design information (i.e., FEED) to initiate permitting activities and to finalize the turbine generator purchase specification within the 2-year window. Most often, this requires final site, technology, and process selection. Signed FEED and/or EPC-type agreements, if available, should be provided.

13. Appendices

- a. Copy of internal or external engineering reports.
- b. 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.
- c. 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.
- d. Power Purchase or Energy Sales Agreement.
- e. Energy Market Study.
- f. Market Study for non-power output.
- g. Financial Model of project.
- h. Financial statements for the applicant and other project funding sources for the most recently ended three fiscal years, and the unaudited quarterly interim financial statements for the current fiscal year.
- i. Expressions of interest or commitment letters from funding sources.
- j. For each project contract, if no contract currently exists, provide a summary of the expected terms and conditions.
- k. List of all Federal, State, and local permits, including environmental authorizations or reviews, necessary to commence construction.

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

Section 48A identifies minimum requirements for consideration for the qualifying advanced coal project credit, including the project's technical feasibility, cost, and applicant's ability. In the event that there are more qualified (certifiable) applications than there are available amount of tax credit, DOE will apply additional factors to rank eligible Advanced Coal Projects based on their ability to advance coal technology beyond its current state.

If there are more certified applications than available amount of § 48A Phase III credits in the 2012-2013 allocation round, DOE will rank the certified projects based on evaluation of the following Program Policy Factors. In ranking certified projects, highest priority will be given to the Primary Ranking Factor. Secondary and Tertiary Ranking Factors will be taken into account to rank projects that are not clearly differentiated on the basis of the Primary Ranking Factor, with higher priority given to Secondary Ranking Factors than to Tertiary Ranking Factors.

Primary Ranking Factor:

- Capture and sequestration of more than 70 percent CO₂ emissions. Only projects that capture and sequester 70 percent or more of the plant's CO₂ emissions will be considered for DOE certification. Among the certified projects, highest rankings will be given to projects with the greatest separation and sequestration percentages of total CO₂ emissions.

Secondary Ranking Factors:

- Increased by-product utilization.
- Research partnership with an eligible educational institution as defined in §48A(e)(3)(B)(iii).

Tertiary Ranking Factors:

- Presentation of other environmental, economic, or performance benefits
- Higher plant efficiency.
- Geographic distribution of potential markets.
- The ratio of total nameplate generating capacity (as defined in section 3.02 of Notice 2012-51) to requested tax credit.
- Diversity of technology approaches and methods.

G. Supplemental Technical and Financial Guidance for Project Information Memorandum

Technology and Technical Information

It is important that the applicant select a specific gasification system for the project. Without that decision, it is difficult to provide the necessary specific design information needed for DOE to evaluate the project feasibility with respect to performance, emissions, outputs of major streams as well as capital and operating costs.

The Applicant's capability to meet the legislated heat rate and/or environmental targets should be supported with design information, and/or vendor guarantees that are project, site and coal specific.

Project Economics

Applicants should demonstrate the project's economic feasibility and financial viability by providing a clear statement and explanation of the economic and financial assumptions made by the applicant, and a financial forecast for the project. The financial forecast should flow logically from the applicant's assumptions and be consistent with them. Applicants should include assumptions regarding financial and economic issues that may not be included in the project costs but have a direct impact on the project. The examples given in the "Site Control and Ownership" section are relevant here and their impact on the project economics should be discussed here.

Project Development and Financial Plan

The information provided by the applicant in this section should demonstrate that the applicant's financial plan for developing the project is feasible and that the applicant will have access to necessary financing. The applicant should explain the source and timing for obtaining all financing, including the project development costs. It is important that the applicant explain and provide evidence that it has the capacity to fund the pre-construction project development costs, together with a budget for and description of those costs. Note that financial information is required for the applicant and for any other funding source.

Project Contract Structure

This section requires that the applicant demonstrate an understanding of the commercial contracting process and show progress in establishing the framework of contracts and agreements that a project typically requires. Applicants should show that their intended contract structure is reasonable and that their assumptions relative to price, terms, and conditions are consistent with current market conditions. Evidence of final agreements, agreements in principle, or summaries of terms and conditions

between the applicant and contract counterparties should be provided, if available.