

NOT-104447-14

## Reallocation of Section 48B Credits under the Qualifying Gasification Project Program

Notice 2014-81

### SECTION 1. PURPOSE

Section 48B of the Internal Revenue Code, as originally enacted by section 1307(b) of the Energy Policy Act of 2005, Pub. L. 109-58, 119 Stat. 1004 (August 8, 2005), provided for the first phase of the qualifying gasification project program and authorized \$350 million of credits (“the § 48B Phase I program” and “§ 48B Phase I credits”). Section 48B, as amended by section 112 of the Energy Improvement and Extension Act of 2008, Pub. L. 110-343, 122 Stat. 3824 (October 3, 2008), provided for a second phase of the qualifying gasification project program and authorized an additional \$250 million of credits (“the § 48B Phase II program” and “§ 48B Phase II credits”).

This notice establishes a third phase of the qualifying gasification project program (“the § 48B Phase III program”) to reallocate the § 48B Phase I credits that are available for allocation after the conclusion of the § 48B Phase I program. The procedures in this notice apply only to § 48B Phase I credits that were forfeited and are available for reallocation as § 48B Phase III credits.

To be considered in the § 48B Phase III allocation round, applications must be submitted to the Department of Energy (“DOE”) and to the Internal Revenue Service

("Service") on or before March 2, 2015. See section 5 of this notice for additional rules regarding these applications.

## 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 gasification project credit under § 48B.

.02 Section 48B(d)(1) provides that the Secretary, in consultation with the Secretary of Energy, shall establish a qualifying gasification project program to consider and award certifications for qualified investment eligible for credits to qualifying gasification project sponsors under § 48B. The Treasury Department and the Service, in consultation with the Secretary of Energy, established the § 48B Phase I program in Notice 2006-25, 2006-1 C.B. 609, as modified and updated by Notice 2007-53, 2007-1 C.B. 1474.

.03 Under the § 48B Phase I program, the qualifying gasification project credit for a taxable year was an amount equal to 20 percent of the qualified investment (as defined in § 48B(b)) for that taxable year in qualifying gasification projects (as defined in § 48B(c)(1)) for which the credit was allocated under § 48B(d)(1)(A).

.04 The term "qualified investment" is defined in § 48B(b) as the basis of eligible property placed in service by the taxpayer during such taxable year which is part of a qualifying gasification project (A) the construction, reconstruction, or erection of which is completed by the taxpayer, or which is acquired by the taxpayer if the original use of such property commences with the taxpayer, and (B) with respect to which

depreciation (or amortization in lieu of depreciation) is allowable. Pursuant to § 48B(b)(2) and (3), rules regarding certain subsidized property similar to § 48(a)(4) (without regard to § 48(a)(4)(D)) and rules regarding certain qualified progress expenditures similar to § 46(c)(4) and (d) (as in effect on the day before the enactment of the Revenue Reconciliation Act of 1990) apply for purposes of § 48B.

.05 The term “qualifying gasification project” is defined in § 48B(c)(1) as any project that (A) employs gasification technology, (B) will be carried out by an eligible entity (as defined in section 3.02 of this notice), and (C) includes a qualified investment of which an amount not to exceed \$650 million is certified under the qualifying gasification program as eligible for credit under § 48B. Pursuant to § 48B(c)(2), gasification technology is any process that converts a solid or liquid product from coal (as defined in section 3.01 of this notice), petroleum residue (as defined in § 48B(c)(8)), biomass (as defined in § 48B(c)(4)), or other materials that are recovered for their energy or feedstock value into a synthesis gas composed primarily of carbon monoxide and hydrogen for direct use or subsequent chemical or physical conversion.

.06 Pursuant to § 48B(d)(1)(A), the § 48B Phase I program provided for \$350 million of credits to be allocated to qualifying gasification projects. The § 48B Phase I program under Notice 2006-25 and Notice 2007-53 provided for annual allocation rounds. The initial allocation round was conducted in 2006. An additional allocation round was conducted in 2007-08. The entire § 48B Phase I credit amount of \$350 million was allocated in these two allocation rounds.

.07 Under the § 48B Phase II program, the qualifying gasification project credit for a

taxable year was an amount equal to 30 percent of the qualified investment (as defined in § 48B(b)) for that taxable year in qualifying gasification projects (as defined in § 48B(c)(1)) for which the credit is allocated under § 48B(d)(1)(B).

.08 Pursuant to § 48B(d)(1)(B), the § 48B Phase II program provided for \$250 million of credits to be allocated to qualifying gasification projects that include equipment which separates and sequesters at least 75 percent of such project's total carbon dioxide (CO<sub>2</sub>) emissions. The Service established the § 48B Phase II program in Notice 2009-23, 2009-1 C.B. 802, which provided for an allocation round in 2009-2010. The entire § 48B Phase II credit amount of \$250 million was allocated in this allocation round.

.09 As originally enacted by the Energy Policy Act of 2005, § 48B(d)(1) directed the Secretary to carry out a certification program for the allocation of § 48B credits and authorized the Secretary to establish additional programs to reallocate § 48B credits by providing that allocations were to be made "under rules similar to the rules of section 48A(d)(4)." Although the Energy Improvement and Extension Act of 2008 amended § 48B(d)(1) and removed the cross-reference to § 48A(d)(4), the effective date provision of the 2008 amendment states that it "appl[ies] to credits described in Code section 48B(d)(1)(B) . . . which are allocated or reallocated after the date of enactment [October 3, 2008]." Thus, by its terms, the 2008 amendment was not intended to impact the program for the credits initially allocated as § 48B Phase I credits, and which pursuant to the statute as revised by the 2008 amendment are described in § 48B(d)(1)(A). Accordingly, the authority to reallocate § 48B Phase I credits remains effective, and the

Service may review prior § 48B Phase I allocations and conduct an additional certification program for any § 48B Phase I credits that are available for reallocation. Moreover, by referring to § 48(d)(1)(B) credits that are “allocated or reallocated” after the October 3, 2008, date of enactment, the effective date provision of the 2008 amendment indicates congressional support for reallocation of § 48B credits. The Service has completed its review of the prior § 48B Phase I allocations and has determined that § 48B Phase I credits in the total amount of \$ 309,337,000 are available for reallocation under the § 48B Phase III program.

.10 Pursuant to § 48B(d)(2), certificates of eligibility may be issued under the § 48B program only during the 10-year period beginning on October 1, 2005. As a result, the Service may only reallocate any available § 48B credits prior to October 1, 2015.

.11 Under the § 48B Phase III credit program, the qualifying gasification project credit for a taxable year is an amount equal to 20 percent of the qualified investment (as defined in § 48B(b)) for that taxable year in qualifying gasification projects (as defined in § 48B(c)(1)) for which the credit is allocated under § 48B(d)(1)(A).

.12 Section 48B(d)(4) provides that (A) highest priority is given to projects with the greatest separation and sequestration percentage of total CO<sub>2</sub> emissions, and (B) high priority is given to applicant participants who have a research partnership with an eligible educational institution (as defined in § 529(e)(5)). While the capability of a qualifying project to separate and sequester CO<sub>2</sub> emissions is considered in ranking projects, the § 48B Phase III program will not require a qualifying project to include equipment that separates and sequesters CO<sub>2</sub> emissions.

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

.14 Section 48A(h) directs the Secretary to modify the terms of any competitive certification award under § 48B and any associated closing agreement where such modification (i) is consistent with the objectives of § 48B, (ii) is requested by the recipient, and (iii) involves moving the project site to improve the potential to capture and sequester CO<sub>2</sub> 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 § 48B 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).

.15 The at-risk rules in § 49 and the recapture and other special rules in § 50 apply to the § 48B Phase III credit. Generally, section 49 provides that the investment credit is limited to the extent that the taxpayer is at risk with respect to the investment credit property. Section 50(a) provides for pro rata recapture of the investment tax credit if the investment credit property is disposed of, or otherwise ceases to be investment credit property, within five years after the property is placed in service.

### SECTION 3. DEFINITIONS

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

.01 Coal. Section 48B(c)(6) defines the term "coal" as 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 Eligible entity. Section 48B(c)(7) defines "eligible entity" as any person whose application for certification is principally intended for use in a domestic project that employs domestic gasification applications related to chemicals, fertilizers, glass, steel, petroleum residues, forest products, agriculture, including feedlots and dairy operations, and transportation grade liquid fuels (qualifying industries). For purposes of § 48B, a qualifying gasification project is carried out by an eligible entity if the project supplies more than 50 percent of the thermal output in British thermal units ("Btu") from the gasification process in the form of synthesis gas for direct use or subsequent chemical or physical conversion in an application related to one or more qualifying industries or if more than 50 percent of the fuel input in Btu to the gasification process is supplied from one or more qualifying industries.

.03 Total synthesis gas capacity. The total synthesis gas capacity of a project is the total MMBtu (one million Btu) per hour of the synthesis gas (higher heating value (HHV)) at the gasifier outlet of the project. The synthesis gas must be composed primarily of carbon monoxide and hydrogen for direct use or subsequent chemical or physical conversion.

.04 Fuel Input.

(1) In general. 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 Btu on an energy input basis and (ii) pursuant to applicable standards prescribed by the American Society for Testing and Materials (“ASTM”). For example, § 48B(d)(3)(D) provides that the fuels identified in § 48B(c)(2) will at all times cumulatively comprise at least 90 percent of the total fuels (fuels identified in § 48B(c)(2) and any other fuel input) required by the project. This requirement is satisfied if, after completion and during normal plant operations, the fuels identified in § 48B(c)(2) will cumulatively comprise at least 90 percent of the project’s total fuels measured in Btu 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 § 48B. Normal plant operations are operations other than during periods of initial plant certification, plant startup, plant shutdown, interconnected gasifier(s) shutdown for gasification system maintenance, or interruptions of the supply of fuels identified in § 48B(c)(2) 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 fuels not identified in § 48B(c)(2) because fuel used during initial plant certification is disregarded in determining whether the requirement of § 48B(d)(3)(D) to use 90 percent of the fuels identified in § 48B(c)(2) is satisfied.

.05 Placed In Service. For purposes of § 48B, 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 gasification project or eligible property (as defined in § 48B(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 synthesis gas from the feedstocks identified in § 48B(c)(2).

.06 Separation and Sequestration. The term “separation and sequestration” refers to the separation and capture of a project’s CO<sub>2</sub> emissions, and the placement of the captured CO<sub>2</sub> into a repository in which the CO<sub>2</sub> will remain permanently sequestered.

#### SECTION 4. SECTION 48B PHASE III PROGRAM

.01 In General. To be considered in the § 48B Phase III allocation round, applications must be submitted separately to DOE and to the Service on or before March 2, 2015 pursuant to section 5 of this notice. The Service will consider a project under the § 48B 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 § 48B Phase III gasification 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 by the Service under § 48B(d) (“application for § 48B certification”).

#### .02 Program Specifications.

(1) The Service determines the amount of the § 48B Phase III credits allocated

to a project at the time the Service accepts the application for § 48B certification for that project in accordance with section 4.02(9) of this notice (see section 5 of this notice for the requirements applicable to the application for DOE certification and the application for § 48B certification).

(2) The § 48B Phase III credit for a taxable year is an amount equal to 20 percent of the qualified investment (as defined in § 48B(b)) for that taxable year in qualifying gasification projects (as defined in § 48B(c)(1)).

(3) Section 48B Phase III credits in the amount of \$ 309,337,000 are available for the § 48B Phase III allocation round. Under § 48B(c)(1)(C), the certification for a § 48B Phase III project cannot apply to more than \$650 million of the qualified investment in the project. Thus, the maximum amount of the § 48B Phase III credit that will be allocated to a project is \$130 million. This limitation applies to a qualifying project rather than to the taxpayer holding interests in the project. Therefore, the number or type of entities holding ownership interests in a project does not change the maximum amount of the § 48B Phase III credit that may be allocated to that project. However, a taxpayer holding interests in multiple projects may be allocated more than the maximum § 48B Phase III credit that may be allocated to a single project.

(4) A taxpayer that was allocated § 48B Phase I credits or § 48B Phase II credits for a project may submit an application for § 48B Phase III credits for the same project if the project meets the requirements for a qualifying project under the § 48B Phase III gasification program.

(a) Section 48B Phase III credits will be allocated to the taxpayer's qualified

investment in the project only to the extent such investment exceeds the qualified investment with respect to which § 48B Phase I credits or § 48B Phase II credits was awarded but does not exceed \$650 million. Thus, if the qualified investment in a project is \$700 million and § 48B Phase I credits were allocated with respect to \$500 million of the qualified investment, § 48B Phase III credits may be allocated with respect to only \$150 million (\$650 million - \$500 million) of the qualified investment. Any § 48B Phase I or Phase II credits allocated to a project are not taken into account for purposes of determining the \$650 million qualified investment limitation to the extent the right to claim such credit has been irrevocably waived in such manner as the Commissioner may require.

(b) Section 48B Phase III credits allocated to a project will be forfeited if the taxpayer fails to place the project in service within 7 years of the date of acceptance of the application for § 48B certification under section 4.02(9) of this notice. The allocation of § 48B Phase III credits does not delay the taxpayer's placed in service obligations with respect to any § 48B Phase I credits or § 48B Phase II credits previously allocated to the project. Accordingly, any § 48B Phase I credits or § 48B Phase II credits allocated to the project will be forfeited if the taxpayer fails to place the project in service within 7 years of the date of acceptance of the application for § 48B certification under the applicable program.

(5) For § 48B Phase III credits, 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. DOE will rank the certified projects

based on the Program Policy Factors specified in Appendix B, and the Service will allocate the credits as follows:

(a) If the requested allocation of credit 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 credit 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 credit 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) 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. If an application for DOE certification is postmarked on or before March 2, 2015, 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 July 1, 2015.

(7) For the § 48B Phase III allocation round, the application period for § 48B certification begins on December 29, 2014, and ends on March 2, 2015, and any completed application for § 48B certification received by the Service after December 28, 2014, and on or before March 2, 2015, will be deemed to be submitted by the taxpayer on March 2, 2015.

(8) For purposes of determining the timeliness of submission of applications the rules of § 7502 shall apply.

(9) By September 1, 2015, the Service will accept or reject the taxpayer's application for § 48B certification and will notify the taxpayer, by letter, of its decision. This acceptance letter constitutes a certificate of eligibility provided by the Service pursuant to § 48B(d)(2).

(10) If the taxpayer's application for § 48B 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 an agreement in the form set forth in Appendix A to this notice. By November 2, 2015, the taxpayer must execute and return the agreement to the Service at the appropriate address listed in section 5.04 of this notice. The Service will execute and return the agreement to the taxpayer by February 1, 2016. The executed 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).

(11) A successor in interest that plans to claim the § 48B credit allocated to the project must request permission to execute a new agreement with the Service. If the request is granted, the new 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 agreement, the following rules apply:

(a) In the case of an interest acquired at or before the time the qualifying gasification 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 gasification 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.

(12) The site of the qualifying gasification project relating to a credit allocation may be changed only if the change is consistent with the objectives of the qualifying gasification 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 CO<sub>2</sub> 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 § 48B 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.

(13) The § 48B Phase III credit allocated to the project will be forfeited if the taxpayer fails to place the project in service within 7 years from the date of the acceptance letter under section 4.02(9) of this notice.

(14) 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 § 48B certification and a separate application for DOE certification must be submitted for each qualifying gasification 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 § 48B 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 gasification project.

(4) A statement specifying the projected placed in service date of the qualifying gasification project.

(5) The estimated total cost of the project and the estimated total qualified investment in the eligible property that will be part of the project.

(6) The amount of the qualifying gasification project credit requested for the project. The amount requested must not exceed \$130 million (the amount permitted under § 48B(a) and (c)(1)(C)).

(7) The exact total synthesis gas capacity (as defined in section 3.03 of this notice) of the project.

(8) A statement specifying whether the project is entitled to highest priority for the percentage of total CO<sub>2</sub> emissions that the project will separate and sequester.

(9) A statement specifying whether the project is entitled to high priority for having a research partnership with an eligible educational institution (as defined in § 529(e)(5)) and, if entitled to priority, a statement identifying the eligible educational institution, stating the name(s) of the eligible institution.

(10) 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."

(11) 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 a person authorized under state law to bind the taxpayer, such as 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, or 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 § 48B Certification. An application for § 48B 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) 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 § 48B Phase I credits or § 48B Phase II credits were allocated to the project, the estimated total cost and estimated total qualifying investment of the project as represented in the application for the § 48B Phase I credits or § 48B Phase II credits, and the amount of the allocated § 48B Phase I credits or § 48B 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, or 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 § 48B Application. There is no user fee for these applications. The application for § 48B certification meeting the requirements of section 5.03 of this notice should be marked: “SECTION 48B APPLICATION FOR

CERTIFICATION.” A taxpayer may submit the application 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

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

## SECTION 6. 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 § 48B and DOE certification. Except as otherwise provided under § 48A(h) and section 2.14 of this notice, 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 application for DOE certification was due for the § 48B Phase III allocation round under section 4.02(6) of this notice:

(1) The Service will give no further consideration to the project if acceptance has not yet been granted; and

(2) Any acceptance provided by the Service and any allocation or certification based on that acceptance will be void.

.02 Recapture of § 48B Phase III credits. Section 48B 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.

.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 gasification project credit under § 48B. 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 § 48B 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 § 48B 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 assessment 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 7. REDUCTION OR FORFEITURE OF ALLOCATED CREDITS

Under the provisions of this notice and the agreement set forth in Appendix A to this

notice, the § 48B Phase III 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 required reduction or forfeiture required under the agreement. This notification must be sent to the appropriate address listed in section 5.04 of this notice.

## SECTION 8. QUALIFIED PROGRESS EXPENDITURES

.01 Section 48B(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 § 48B. 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 gasification 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 gasification project credit for the qualified progress expenditures paid or incurred by a taxpayer during the taxable year for construction of a qualifying gasification project, the taxpayer must make an election under the rules set

forth in § 1.46-5(o) of the Income Tax Regulations. The taxpayer may not make the qualified progress expenditures election for a qualifying gasification project until the taxpayer has received an acceptance letter for the project under section 4.02(9) of this notice.

.04 If a taxpayer makes the qualified progress expenditures election pursuant to section 8.03 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 gasification project are:

(1) Failure to place the project in service within 7 years from the date of the acceptance letter under section 4.02(9) of this notice; or

(2) A significant change to the plans for the project as set forth in the applications for § 48B and DOE certification if, under section 6.01 of this notice, the Service's acceptance of the project is void as a result of the change.

## SECTION 9. DISCLOSURE OF INFORMATION

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

.02 In general. Any taxpayer associated information provided to or received,

recorded, collected or prepared by the Service as part of this process is return information under § 6103. Unless authorized under the Internal Revenue Code, such as the authorization under § 48A(d)(5), return information may not be disclosed. This prohibition on disclosure, in conjunction with 5 U.S.C. § 552(b)(3), exempts return information from being provided 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 under 5 U.S.C. § 552(b)(4) and exempts personal information under 5 U.S.C. § 552(b)(6).

.03 FOIA requests. Anyone interested in submitting a request for records under the FOIA with respect to the qualifying gasification project program under § 48B 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 10. EFFECT ON OTHER DOCUMENTS

Notice 2009-23 is amplified.

#### SECTION 11. EFFECTIVE DATE

This notice is effective on December 29, 2014.

#### SECTION 12. 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 1545-2002.

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, and 8 and Appendix B of this notice. This information is required to obtain an allocation of the qualifying gasification project credit. This information will be used by the Service to verify that the taxpayer is eligible for the qualifying gasification project credit. 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 1,700 hours.

The estimated annual burden per respondent varies from 50 to 125 hours, depending on individual circumstances, with an estimated average of 85 hours. The estimated number of respondents is 20.

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 § 6103.

#### SECTION 13. DRAFTING INFORMATION

The principal author of this notice is Jennifer C. Bernardini of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice contact Ms. Bernardini on (202) 317-6853 (not a toll-free call).

**APPENDIX A**  
**AGREEMENT**

[Insert taxpayer's name, address, and identifying number] ("Taxpayer") and the Commissioner of Internal Revenue ("Commissioner") make the following Agreement:

**WHEREAS:**

1. On or before [insert date and year], Taxpayer submitted to the Internal Revenue Service ("Service"), an application for certification under the § 48B Phase III program described in Notice 2014-81 ("Application for § 48B Certification");

2. Taxpayer's application for § 48B certification is for the qualifying gasification project (the "Project") described below--

(a) The name of the Project is [insert name as provided in Taxpayer's application];

(b) The Project will be located in or near [insert city and state];

(c) The Project site in subsection (b) above may be changed only if the change is consistent with the objectives of the qualifying gasification project program, is requested by the taxpayer that received the credit allocation (or a successor in interest that has timely entered into an Agreement regarding the Project with the Service), and involves moving the Project site to improve the potential to capture and sequester CO<sub>2</sub> emissions (if applicable), 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 § 48B 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 will have a total synthesis gas capacity (as defined in section 3.03 of Notice 2014-81) of at least [insert number] total MMBtu per hour of synthesis gas. The synthesis gas is composed primarily of carbon monoxide and hydrogen for direct use or subsequent chemical or physical conversion; and

(e) The fuels identified in § 48B(c)(2) will at all times cumulatively comprise at least 90 percent of the total fuel input (as defined in section 3.04 of Notice 2014-81 and including fuels identified in § 48B(c)(2) and any other fuel input) required by the Project for normal plant operations (as defined in section 3.04(2) of Notice 2014-81) for the production of chemical feedstocks, liquid transportation fuels, or co-production of electricity.

3. On [insert date of acceptance letter issued under section 4.02(9) of Notice 2014-81], the Service accepted Taxpayer's application for § 48B certification for the Project and allocated qualifying gasification project credit under § 48B Phase III in the amount of \$[insert number] to the Project.

4. Taxpayer understands that if the Project is not placed in service by Taxpayer within 7 years of [insert the date in WHEREAS clause 3] as determined under section 3.05 of Notice 2014-81, the § 48B Phase III credit in the amount allocated to the Project as specified in WHEREAS clause 3 is fully forfeited. Taxpayer must provide evidence to the Service that the Project has been timely placed in service.

5. 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 2014-81) and the application for § 48B certification (as defined in section 5.03 of Notice 2014-81), other than a project site change agreed to by the Service as described in WHEREAS clause 2(c), the acceptance of Taxpayer's application for § 48B certification on the date specified in WHEREAS clause 3 is void and the § 48B Phase III credit in the amount allocated to the Project as specified in WHEREAS clause 3 is fully forfeited.

6. Taxpayer understands that if the Project fails to satisfy any of the requirements in § 48B for a qualifying gasification project—

(a) at the time the Project is placed in service, the § 48B Phase III credit allocated to the Project as specified in WHEREAS clause 3 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.

7. Taxpayer understands that, if the Project fails to use gasification technology as defined in § 48B(c)(2) or is not carried out by an eligible entity (as defined in section 3.02 of Notice 2014-81), the § 48B Phase III credit in the amount of allocated to the Project as specified in WHEREAS clause 3 is fully forfeited.

8. Taxpayer understands that if, at any time, the fuels identified in § 48B(c)(2) with respect to gasification technology do not cumulatively comprise at least 90 percent of the total fuel input (as defined in section 3.04 of Notice 2014-81 and including fuels identified in § 48B(c)(2) and any other fuel input) required by the Project for normal plant operations (as defined in section 3.04(2) of Notice 2014-81) for the production of

chemical feedstocks, liquid transportation fuels, or co-production of electricity, the Project ceases to be investment credit property and the recapture rules of § 50(a) apply.

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

10. Taxpayer understands that if Taxpayer elects to claim the qualifying gasification project credit on the qualified 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 gasification 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.

11. 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 § 48B credit allocated to the Project must request permission to execute a new Agreement with the Service. If the request is granted, the new 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 Agreement, the § 48B Phase III credit in the amount allocated to the Project as specified in WHEREAS clause 3 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 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 § 48B Phase III credit that Taxpayer will claim for the Project under this Agreement on account of the acceptance of Taxpayer's application for § 48B certification cannot exceed the amount specified in WHEREAS clause 3;
2. This Agreement does not express whether the Taxpayer has met any of the requirements to receive tax credits under § 48B; and
3. This Agreement is limited and applies only to Taxpayer. A successor in interest that plans to claim § 48B credit allocated to the Project must request permission to execute a new 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 notwithstanding any law or rule of law; and
3. If it relates to a tax period ending after the date of this 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 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:** \_\_\_\_\_  
Kathy J. Robbins

**Title:** Industry Director, Natural Resources & Construction

## **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 gasification technology.

This request for submission of supplemental application information:

- Describes the information to be provided by the applicant seeking a DOE certification of feasibility, and
- Lists the evaluation criteria and Program Policy Factors that are 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 the tax credits.

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, but is not required to do so.

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.

### **INFORMATION TO BE SUBMITTED IN AN APPLICATION FOR DOE CERTIFICATION**

#### **A. General**

This request, together with the information in relevant sections of Notice 2014-81 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 2014-81 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 2009-23.

An application to DOE will not be considered in the § 48B Phase III allocation round unless it is postmarked by March 2, 2015. One electronic version on a USB flash drive or a CD of the application must be submitted to:

Gina Mick  
National Energy Technology Laboratory  
3610 Collins Ferry Road  
Morgantown, WV 26507

Note that under section 5.03(4) of Notice 2014-81, one electronic version of the Application for DOE certification must be sent to the Service as part of the application for § 48B certification. The application for § 48B certification will not be considered in the § 48B Phase III allocation round under this notice unless it is submitted to the Service by March 2, 2015.

### **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™ 2010 or later edition
- Microsoft Excel™ 2010 or later edition
- Adobe Acrobat™ PDF 7.0 or later edition

Financial models should be submitted using the Excel™ spreadsheet and must include working calculation formulas and clearly identified 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**

- Description of the Project
- Financing and Ownership Structure
  - Include a list of all IRC section 48B tax credit allocations
- Description of the main parties to the project, including background, ownership and related experience
- 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 § 48B are met. Specifically, the applicant should:

- Provide evidence sufficient to demonstrate that the proposed technology will employ gasification technology as defined in § 48B(c)(2).
- Present information sufficient to justify the total amount of synthesis gas (as defined in § 48B(c)(2)) to be produced by the project (synthesis gas capacity).
- Provide the total MMBtu/hr of the synthesis gas (HHV) at the gasifier outlet.
- Provide evidence sufficient to ensure that fuels identified in § 48B(c)(2) will comprise 90 percent of the total fuel input (fuels identified in § 48B(c)(2) and any other fuel input) for the project. Provide the total quantities of CO, H<sub>2</sub>, CH<sub>4</sub>, CO<sub>2</sub>, and water in the synthesis gas.
- Identify the domestic industry for which the proposed project is intended to be used.
- Identify the specific products and quantities produced by the proposed project, providing sufficient evidence to support claims.
- Provide evidence that indicates, for projects using nonrenewable fuels, the gasification technology design reflects reasonable consideration for, and if applicable, is capable of, accommodating equipment necessary to capture CO<sub>2</sub> for later use or sequestration. 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.
- If applicable, provide evidence sufficient to demonstrate that the project includes equipment which separates and permanently sequesters CO<sub>2</sub> emissions and provide the percentage of the project's total CO<sub>2</sub> emissions that are separated and permanently sequestered. The CO<sub>2</sub> separation and sequestration percentage shall be calculated based on the amount of CO<sub>2</sub> sent for permanent sequestration and the total CO<sub>2</sub> which would otherwise be released into the atmosphere as industrial emission of greenhouse gas. Also provide CO<sub>2</sub> separation, capture, sequestration, and emission quantities on a metric tons per hour basis and on a metric tons per year basis, both under normal plant operating conditions.

### **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. 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, feedstock supply, water supply, transmission interconnect and public policy requirements. Such documentation may include signed agreements, letters of intent, or term sheets relating to feedstock supply, water supply, and product (e.g. CO<sub>2</sub>) 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 gasification 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 gasification 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 industrial gasification plant planning to sell CO<sub>2</sub> for enhanced oil recovery (“EOR”) should provide an agreement for such a transaction indicating the annual CO<sub>2</sub> purchase quantity, expected project lifetime sales, CO<sub>2</sub> capacity of the site for EOR, and EOR site ownership.

## **5. Utilization of Project Output**

Provide evidence that demonstrates that a majority of the proposed 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 CO<sub>2</sub>, 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.

## **6. 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 and any existing IRC Section 48B tax credit allocations.

## **7. 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 for (a) 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.

## **8. 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 5 above).
- Raw Material Input: describe the source and price of raw material inputs for the project. Include as an appendix any studies of price and amount of raw materials that have been prepared. Include a summary of any supply contracts and a signed copy of the contracts.
- Transportation: explain the arrangements for transporting project inputs and outputs, 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 CO<sub>2</sub> is separated by the project and is to be sold to a third party for sequestration, provide a Sales Agreement and provide specifics, such as CO<sub>2</sub> sales (metric tons per year), expected project lifetime sales (metric tons),

potential CO<sub>2</sub> capacity of the site for sequestration (metric tons), technology and site suitability for sequestration, and sequestration site ownership and operation.

## **9. 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.

## **10. Project Schedule**

Provide an overall project schedule which includes technical, business, financial, permitting and other factors to substantiate that the project will meet the 7 year placed-in-service requirement.

The project schedule should be comprehensive and provide sufficient detail to demonstrate how applicant will meet the placed-in-service requirement. 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.

## **11. Appendices**

- 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, raw material supply, water supply, transmission interconnect, and public policy reasons.
- Power Purchase or Energy Sales Agreement
- Energy Market Study.
- Financial Model of project.
- Financial statements for the applicant and other project funding sources for the most recently ended three fiscal years, and quarterly interim financial statements for the current fiscal year.
- Expressions of interest or commitment letters from funding sources.

- Copies of executed project contracts. If 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.

## **E. 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.

### **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.

## **EVALUATION CRITERIA**

### **A. Criteria of § 48B**

Gasification projects will be evaluated on whether they meet all the requirements of § 48B including:

Technical: whether the applicant has demonstrated the capability to accomplish the technical objectives.

Site: whether the site requirement for ownership or control has been met, and that the site is suitable for the proposed project.

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

Schedule: the applicant's ability to meet the 7 year placed-in-service requirement.

### **B. Program Policy Factors to Be Used by DOE in the Evaluation of Applications**

Section 48B identifies minimum requirements for consideration for the qualifying gasification 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 credits, DOE will apply additional factors to rank eligible projects based on their ability to advance gasification technology beyond its current state.

If there are more certified applications than available amount of § 48B Phase III credits, 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 the Secondary Ranking Factors than to Tertiary Ranking Factors.

Primary Ranking Factor:

- Capacity to separate and sequester CO<sub>2</sub> emissions. Among the certified projects, highest rankings will be given to projects with the greatest separation and sequestration percentage of total CO<sub>2</sub> emissions.

Secondary Ranking Factor:

- Research partnership with an eligible educational institution as defined in §48B(d)(4)(B).

Tertiary Ranking Factors:

- Presentation of other environmental, economic, or performance benefits.
- Higher plant efficiency.
- Geographic distribution of potential markets.
- The ratio of total synthesis gas capacity (as defined in section 3.03 of Notice 2014-81) to requested tax credit.
- Diversity of technology approaches and methods.