

Request for Comments on the Credit for Carbon Oxide Sequestration

Notice 2022-57

SECTION 1. PURPOSE

The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) plan to issue guidance under § 45Q of the Internal Revenue Code (Code), as amended by § 13104 of Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA). This notice requests general comments on the amendments to the carbon oxide sequestration credit under § 45Q (§ 45Q credit), as well as specific questions described in section 3 of this notice. Comments received in response to this notice will help to inform the development of guidance implementing the IRA amendments to § 45Q.

SECTION 2. BACKGROUND

Section 45Q was enacted by § 115 of the Energy Improvement and Extension Act of 2008, Division B of Pub. L. No. 110-343, 122 Stat. 3765 (October 3, 2008), to provide a credit for the sequestration of carbon dioxide. Section 45Q was amended significantly by § 41119 of the Bipartisan Budget Act of 2018, Pub. L. No. 115-123 (February 9, 2018), to apply to carbon oxides, and most recently by § 13104 of the IRA.

Generally, the IRA modifies § 45Q by adjusting credit amounts;¹ extending the deadline for beginning construction of a qualified facility from January 1, 2026 to January 1, 2033; broadening the definition of a “qualified facility” by reducing the required carbon capture thresholds; modifying the rules applicable to direct air capture (DAC) facilities and electric generating units; and providing a new election to restart the § 45Q credit period for qualified facilities at which carbon capture equipment is placed in service in an area subsequently affected by a federally declared disaster (as defined by § 165(i)(5)(A) of the Code).

SECTION 3. REQUEST FOR COMMENTS

The Treasury Department and the IRS request comments on questions arising from the IRA amendments to § 45Q that should be addressed in guidance.

Commenters are encouraged to specify the issues on which guidance is needed most quickly as well as the most important issues on which guidance is needed. In addition to general comments, the Treasury Department and the IRS request comments that address the following specific questions:

.01 Direct Air Capture. The IRA modifies the applicable dollar amounts under § 45Q(b)(1) for purposes of § 45Q(a)(3) and (a)(4) for qualified carbon oxide captured by DAC facilities.

¹ Other amendments made by the IRA to § 45Q increase the credit amount if certain prevailing wage and apprenticeship requirements are satisfied. The IRA also provides an election for certain taxpayers to receive an elective payment or to transfer the credit under § 45Q. See Notice 2022-51 requesting comments on prevailing wage and apprenticeship requirements and Notice 2022-50 requesting comments on the elective payment and credit transfer elections. General comments pertaining to the prevailing wage and apprenticeship requirements should be submitted in response to Notice 2022-51. General comments pertaining to elective payment and credit transferability provisions should be submitted in response to Notice 2022-50.

(1) What types of existing and emerging technologies potentially meet the definition of a DAC facility?

(2) What methodologies could taxpayers use to best determine and verify the amount of qualified carbon oxides captured by a DAC facility?

.02 Definitions. The IRA modifies the definition of a “qualified facility” under § 45Q(d) and related definitions under § 45Q(e).

(1) What clarifications are needed regarding key terms and requirements including original planning and design, capture design capacity, principal electric generating unit, designed annual carbon oxide production, average annual carbon oxide production, and actual versus potential electric output from an applicable electric generating unit?

(2) What clarifications are needed regarding the definition of a qualified facility under § 45Q(d)?

.03 Records and Recordkeeping.

(1) What factors should the Treasury Department and the IRS consider in determining how a taxpayer can demonstrate that it satisfies the original planning and design requirement under § 45Q(d)(1)(B)?

(2) What records or documentation do taxpayers currently maintain or could they create to substantiate the required capture amounts under § 45Q(d)(2)(B)? Could facility-level data reported to the EPA Greenhouse Gas Reporting Program (Suppliers of Carbon Dioxide source category; 40 CFR Part 98, subpart PP) be used by taxpayers to substantiate the required capture amounts?

(3) Which source or sources of information should the Treasury Department and the IRS consider in establishing the capacity factor and baseline carbon oxide production requirements under § 45Q(e)(2)?

(4) Using technology currently available to industry, how could project developers that incorporate carbon capture equipment into electric generating units demonstrate that the carbon capture equipment meets the 75 percent baseline carbon oxide requirement under § 45Q(d)(2)(B)(ii)?

(5) What records or documentation do taxpayers currently maintain or could they create to substantiate captured carbon oxide within a qualified electricity generating facility that contains multiple electric generating units?

(6) What clarifications are needed regarding the treatment of modifications to a qualified electricity generating facility that result in a significant increase or decrease in carbon oxide production and are chargeable to capital account?

.04 Credit Reduction for Tax-Exempt Bonds. Section 45Q(f)(8) includes a reduction for the § 45Q credit when tax-exempt bonds are used in the financing of the facility using rules similar to the rule under § 45(b)(3). What, if any, additional guidance would be helpful in determining how to calculate this reduction?

.05 Specific Technologies. What clarifications, if any, are needed regarding the classification of industry-specific or emerging technologies that qualify for the § 45Q credit?

.06 Please provide comments on any other topics related to § 45Q credit that may require guidance.

SECTION 4. ADDRESSES TO SEND COMMENTS

01 Written comments should be submitted by December 3, 2022. Consideration will be given, however, to any written comment submitted after December 3, 2022, if such consideration will not delay the issuance of guidance. The subject line for the comments should include a reference to Notice 2022-57. Comments may be submitted in one of two ways:

(1) Electronically via the Federal eRulemaking Portal at www.regulations.gov (type IRS-2022-0057 in the search field on the regulations.gov homepage to find this notice and submit comments).

(2) Alternatively, by mail to: Internal Revenue Service, CC:PA:LPD:PR (Notice 2022-57), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

.02 All commenters are strongly encouraged to submit comments electronically. The Treasury Department and the IRS will publish for public availability any comment submitted electronically, or on paper, to its public docket on www.regulations.gov.

SECTION 5. 60-DAY RULE NOT EFFECTUATED FOR THE PREVAILING WAGE AND APPRENTICESHIP REQUIREMENTS

For purposes of §§ 30C, 45, 45L, 45Q, 45U, 45V, 45Y, 45Z, 48, 48C, 48E, and 179D of the Code, the publication of this notice requesting comments is not the publication of guidance with respect to the prevailing wage and apprenticeship requirements, and it is not relevant in determining whether the prevailing wage and apprenticeship requirements are satisfied under such sections. The Treasury Department and the IRS will explicitly identify when guidance with respect to the prevailing wage and apprenticeship requirements that is relevant for determining whether such requirements have been satisfied for purposes of §§ 30C, 45, 45L, 45Q,

45U, 45V, 45Y, 45Z, 48, 48C, 48E, and 179D is published.

SECTION 6. DRAFTING INFORMATION

The principal author of this notice is the Office of Associate Chief Counsel (Passthroughs & Special Industries). However, other personnel from the Treasury Department and the IRS participated in its development. For further information regarding this notice, call the energy security guidance contact number at (202) 317-5254 (not a toll-free call).