



CARBON CAPTURE COALITION

May 29, 2026

Internal Revenue Service
CC:PA:LPD:PR (REG-112339-19), Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Re: Notice 2026-23 – Public Recommendations Invited on Items to be Included on the 2026-2027 Priority Guidance Plan

To Whom It May Concern:

The Carbon Capture Coalition (the Coalition) is writing to provide comments in response to Notice 2026-23, “Public Recommendations Invited on Items to be Included on the 2026-2027 Priority Guidance Plan.” We appreciate the opportunity to provide recommendations on behalf of our industry, labor, and nonprofit members on how to appropriately prioritize necessary guidance for the carbon management sector in the Department of the Treasury and Internal Revenue Service (collectively “Treasury”) 2026 Priority Guidance Plan.

Executive Summary

Technologies that capture, remove, transport, utilize, or store emissions from power plants, industrial facilities, or directly from the atmosphere are commonly referred to as carbon management. Taken together, these technologies constitute an essential portfolio of reliable, safe, and cost-effective technologies to provide abundant, clean American energy and industrial materials.

Recognizing the economic potential of these technologies, Congress has enacted a series of reforms and enhancements to the Section 45Q tax credit over the past decade, including, most recently, creating credit parity for end uses of carbon oxides (CO) in the One Big Beautiful Bill Act (OBBBA). By enhancing the 45Q tax credit in the One Big Beautiful Bill Act (OBBBA), the administration has reaffirmed its commitment to the role that carbon capture and storage technologies will play in promoting reliable and affordable domestic energy supplies. Today, thanks to the tax credit and the supportive policy framework for carbon management technologies, over \$89 billion has been invested in capital expenditures to build out the domestic carbon management sector.

Indeed, significant federal investments in carbon management technologies over the past few years have spurred the announcement **of more than 350 publicly announced and operating domestic projects that span the carbon management**

value chain and technology readiness levels, signaling that good policy will translate into real-world projects.

After significant enhancements to the credit in 2018, Treasury issued regulations in 2021 for taxpayers electing the Section 45Q tax credit, providing foundational regulatory certainty for project developers seeking to claim the credit. This includes guidance for using information reported under the Environmental Protection Agency's (EPA) greenhouse gas reporting program (GHGRP) to verify amounts of qualified carbon oxide (CO) stored in appropriate geologic formations for the purpose of electing the tax credit. However, in 2025, the Trump administration proposed rescinding the GHGRP, without a ready-made alternative.

We commend Treasury for swiftly responding to the regulatory uncertainty that would be created for taxpayers seeking to claim the 45Q tax credit for geologic sequestration of carbon oxides by the rescission of the GHGRP in issuing [Notice 2026-1](#), "Safe Harbor for the Credit for Carbon Oxide Sequestration under Section 45Q for Qualified Carbon Oxide Disposed of in Secure Geological Storage in Calendar Year 2025".

The Coalition appreciates the opportunity to submit these comments to Treasury in response to Notice 2026-23. Given the uncertainty caused by the repeal of the GHGRP, **the Coalition's highest priority for inclusion in the 2026 Priority Guidance Plan is for Treasury to address technical eligibility matters that remain unresolved following the issuance of Notice 2026-1**, and long-term solutions to bolster investor confidence in the certainty of the 45Q tax credit. **Specifically, Treasury should:**

- **Extend applicability of the safe harbor provided in Notice 2026-1 beyond 2025;**
- **Allow approval or revision of Subpart RR MRV plans in 2025 and beyond;**
- **Clarify that qualified Enhanced Oil Recovery (EOR) projects may continue to rely on Subpart RR for reporting purposes; and**
- **Clarify application of recapture provisions.**

Additionally, there is still a need for guidance on implementing provisions of both the 2021 Inflation Reduction Act (IRA) and the OBBBA, as well as on addressing issues identified by taxpayers in existing guidance. In issuing guidance on these topics, Treasury will help to unlock the full potential of the carbon management sector and lessen the uncertainty faced by project developers. In addition to addressing unresolved issues in Notice 2026-1, the Coalition recommends that Treasury address the following matters:

With respect to Electric Generating Units (EGUs):

- Guidance should clarify the mechanism by which operators of electricity-generating facilities should measure annual capture volumes. It should clarify that annual minimum capture requirements apply to a whole facility rather than each individual unit. In the absence of the GHGRP – a program necessary for taxpayers to verify amounts of CO stored in appropriate geologic formations for the purposes of electing 45Q – guidance should provide alternative reporting mechanisms, including voluntary reporting of data pursuant to EPA’s Subpart PP. Data collected under Subpart PP can be used to demonstrate that the CO captured at their facilities exceeds the minimum capture requirement.
- Guidance should clarify the means by which a taxpayer can show that an EGU meets the design capture requirement under section 45Q(d)(2)(ii) and allow taxpayers to rely on business records related to the project that show that the capture design capacity of the carbon capture equipment exceeds 75% of the baseline CO production of the EGU.
- Guidance for modifications to baseline CO production for electricity-generating facilities should define “significant increase” or “decrease” in CO production as a more than 20% change in CO of an applicable EGU that already has carbon capture equipment installed.
- Guidance should clarify that dedicated electricity and heat generating facilities that are not subject to depreciation under the Modified Accelerated Cost Recovery System (MACRS) asset classes listed in regulation section 1.45Q-2(e), and that otherwise meet the definition of an “other facility” under section 45Q(d)(2)(C), are not electricity generating facilities and are not subject to the capture design capacity requirement.

With respect to Direct Air Capture (DAC) Facilities:

- Guidance should clarify that taxpayers may claim section 45Q credits with respect to CO captured at a DAC facility from the ambient air as well as from industrial sources within the DAC facility. The guidance should specify that the qualified CO captured at a DAC facility from the ambient-air or from other industrial sources should receive credits based on the appropriate “applicable dollar amount” for each source under section 45Q(b)(1).

With respect to Disaggregation and Other Requested Guidance:

- Guidance should clarify that in the case of phased construction of multiple process trains using shared equipment in a qualified facility, each process train should be treated as a separate unit of carbon capture equipment with **(1)** its own placed-in-service date and **(2)** 12-year credit period.

- Guidance should include clear guidelines on what is considered a facility for purposes of the overlap provisions that prevent a taxpayer from claiming a credit for clean hydrogen under section 45V or clean fuel under section 45Z produced at a facility that also claimed a credit for carbon capture equipment under section 45Q. Guidance should include an elective disaggregation safe harbor for multiple process trains at an individual facility.
- Guidance should provide taxpayers with an option to either obtain Department of Energy (DOE) pre-approval of a lifecycle analysis (LCA) report before claiming section 45Q credits or submit the LCA with their tax return, claiming the credits, and address any issues on audit.
- Guidance should affirm that a municipal solid waste landfill facility using a flare as a fuel combustion source producing a stream of CO should qualify as an industrial facility under section 45Q.

The above recommendations contained in the Executive Summary are described in more detail below.

The EPA's GHGRP Subpart RR and relevant carbon management subparts form the backbone of the carbon management sector as an industry-accepted, long-relied-upon reporting mechanism. Carbon capture projects are complex, multi-party developments that rely on long-term certainty provided by the 45Q tax credit. **To restore investor confidence, Treasury should address the following unresolved issues in Notice 2026-1, which we noted in our [February letter and model guidance](#), submitted to Treasury with the Carbon Research Utilization Council.**¹

I. Allow approval or revision of Subpart RR MRV plans in 2025 and beyond

Carbon capture and storage projects are complex, multi-party developments with long investment horizons. Certainty regarding Section 45Q eligibility is essential to reaching final investment decisions. Even a short-term lapse in guidance would create material uncertainty and deter investment. Treasury's guidance should continue to provide alternatives to the EPA's GHGRP reporting, including allowing for voluntary reporting of data under the applicable requirements of Subpart RR as in effect on December 31, 2024, and certification by an independent third-party. Accordingly, we request that Treasury extend the applicability of the safe harbor beyond tax year 2025 for taxpayers relying on Subpart RR as in effect on December 31, 2024, until the proposed regulations referenced in Notice 2026-1 are issued.

¹ Sections I – IV of response to Notice 2026-23

II. Clarify that qualified EOR projects may continue to rely on Subpart RR for reporting purposes

Notice 2026-1 provides a safe harbor for qualified carbon oxide captured and disposed of in secure geological storage. We request that Treasury expressly reference Treas. Reg. § 1.45Q3(b)(2)(ii) to clarify that qualified EOR projects may continue to rely on Subpart RR as in effect on December 31, 2024, to demonstrate secure geological storage for Section 45Q purposes.

Although ISO-27916 is an alternative pathway for EOR projects seeking Section 45Q eligibility, project developers have relied on opting into Subpart RR for more than a decade. Project developers have made significant investments to comply with its requirements, and Subpart RR remains embedded in commercial agreements throughout the industry.

Currently, 38 of the 50 approved Subpart RR monitoring, reporting, and verification (MRV) plans apply to EOR fields. Transitioning from Subpart RR to ISO-27916 is estimated to take a year or longer and to cost at least \$100,000 per plan, with substantially higher costs for larger EOR fields. Most importantly, developers who collected data during calendar year 2025 have done so pursuant to Subpart RR and cannot retroactively comply with ISO-27916 for that year. Explicit confirmation from Treasury that Subpart RR, as in effect on December 31, 2024, remains an available compliance pathway for EOR projects is therefore critical to the timely filing of tax returns, cost containment, and continued confidence in the Section 45Q credit.

We further request that Treasury clarify that the provisions of a binding written contract for contractually ensuring the disposal, injection, or utilization of qualified carbon dioxide that are described in Treas. Reg. § 1.45Q-1(h)(2) related to compliance with Subpart RR be considered satisfied if the other remaining requirements of the safe harbor are satisfied.

III. Allow approval or revision of Subpart RR MRV plans in 2025 and beyond

While Notice 2026-1 permits CO₂ geologic sequestration projects to have their annual reports certified by an independent engineer, it does not address the process for approving or revising Subpart RR MRV plans. Currently, EPA-approved MRV plans are a prerequisite for qualifying for Section 45Q credits. MRV plans are also essential for ensuring the integrity of the Section 45Q credit and the responsible stewardship of taxpayer dollars.

We therefore request that Treasury allow new or revised MRV plans to be certified by a qualified independent engineer or geologist for purposes of Section 45Q eligibility. Absent such clarification, taxpayers' ability to qualify for the credit will be materially impaired.

IV. Clarify application of recapture provisions

Notice 2026-1 does not address Section 45Q recapture requirements. Both Subpart RR and ISO27916 include methodologies for quantifying carbon oxide for credit recapture. We request that Treasury expressly reference Treas. Reg. § 1.45Q-5(a) and (c) to clarify that taxpayers remain subject to the applicable recapture provisions in Subpart RR as in effect on December 31, 2024.

In addition to technical corrections to Notice 2026-1, noted above, Treasury should address the below topics in forthcoming guidance (V. EGUs, VI. Direct Air Capture, VII. Disaggregation and Other Requested Guidance)

V. EGUs

Under changes made to the 45Q tax credit in 2021, for an electricity generating facility to be considered a “qualified facility” it must **(1)** capture not less than 18,750 metric tons of CO, and **(2)** have carbon capture equipment that has a capture design capacity of not less than 75 percent of the baseline CO production of such unit.²

a. Guidance Should Clarify the Measurement of Annual Minimum Capture Requirements for an Electricity Generating Facility

Guidance should clarify the nature of the records that are required for purposes of substantiating **(1)** the amount of section 45Q credits generated by an electricity generating facility, and **(2)** compliance with the 18,750 metric ton minimum annual capture requirement under section 45Q(d)(2)(B)(i) (the “minimum annual capture requirement”). The determination of the section 45Q credit amount and the minimum annual capture requirement are at the facility level and not the individual EGU level.

This follows from the fact that credit computations under section 45Q(a) are determined based on carbon capture equipment that is “placed in service at a qualified facility,”³ and section 45Q(d)(2)(B)(i) sets the minimum capture requirement “in the case of an electricity generating facility” and not the individual unit level. As a result, taxpayers should only be required to substantiate captured CO from a qualified electricity-generating facility, rather than individual EGUs. Requiring unit-by-unit measurements and records would be unnecessary for tax administration.

Separately, the GHGRP is necessary for taxpayers to verify amounts of CO stored in appropriate geologic formations for the purposes of electing 45Q. Should EPA rescind the GHGRP, Treasury must establish alternative reporting mechanisms for taxpayers to demonstrate that CO captured at their facilities exceeds the minimum

² See section 45Q(d)(2)(B)(i)-(ii).

³ See, e.g. section 45Q(a)(1)(A), (a)(2)(A), (a)(3)(A).

capture requirement.⁴ Additionally, any guidance to that effect should allow for voluntary reporting of data pursuant to EPA's Subpart PP.

b. Treasury Should Issue Guidance for Meeting the Capture Design Capacity Factor for an EGU

As discussed above, the 2021 IRA added a new requirement for an EGU to be a qualified facility. Under this new requirement (the “capture design capacity requirement”), any carbon capture equipment for the “applicable electric generating unit” at such facility must have a “capture design capacity” of not less than 75 percent of the “baseline carbon oxide production of such unit.”⁵ Thus, under the new requirement for generating facilities, it is necessary to determine the **(1)** applicable EGU, **(2)** capture design capacity of the carbon capture equipment for such unit, and **(3)** baseline carbon oxide production of such unit.⁶ Taxpayers investing in new utility electric generating units are already incentivized to design their carbon capture equipment for that unit to exceed the 75 percent capture threshold to fully maximize their potential section 45Q tax credits.

Guidance should define the term “applicable electric generating unit” in accordance with the well-established and longstanding “unit of property” rules under the tax law that inquires whether the components represent a single, integrated property or separate property.⁷ Thus, the EGU should be determined using the functional interdependence standard that applies in various contexts under the tax law. Applying this standard, the EGU should include only that property that is necessary for independent operation of the EGU and should not include common equipment at the larger facility or auxiliary equipment. For example, an auxiliary boiler that is placed in service separately from that EGU to power other equipment, including the carbon capture equipment, and/or is not necessary for the independent operation of the generating unit for purposes of generating electricity should not be included in determining the baseline emissions and 75 percent design efficiency standard.⁸ Further, guidance should confirm, consistent with the statutory language, that carbon capture

⁴ See 40 C.F.R. § 98.420

⁵ See section 45Q(d)(2)(B)(ii).

⁶ See section 45Q(d)(2)(B)(ii).

⁷ See Treas. Reg. § 1.46-5(e)(3)(ii); see also Treas. Reg. § 1.167(a)-11(d)(2)(vi)(g) (in the context of depreciation), Treas. Reg. § 1.263A-10(c) (in the context of capitalization rules, components of tangible personal property are a single unit of property if the components are “functionally interdependent”), *FPL Group, Inc. & Subs. v. Commissioner*, T.C. Memo. 2005-208, 2005 WL 2090808 at *60 (“component parts constitute a single piece of property when the components are interdependent, essential, and integral to the operation of a unit at the time it is placed in service”).

⁸ See, e.g. Rev. Proc. 2013-24, 2013-21 I.R.B. 1142, Appx. A, sec. 2.04 (in the case of a coal-fired power station, “[e]ach auxiliary boiler constitutes a single unit of property. The auxiliary boiler is the equipment that supplies steam from a source independent of the main boiler. The auxiliary boiler is generally used to power the turbines during the process of starting the operation of the generating unit before the main boiler is operating.”) and sec. 3.04 (in the case of a natural gas or oil fired power station, “[e]ach auxiliary boiler constitutes a single unit of property”).

equipment may be separately planned and designed with respect to a specific EGU at the facility, and that the carbon capture requirements under section 45Q(d)(2)(B) are applied with respect to that specific carbon capture equipment and EGU.

To address the calculation of credit amounts for additional carbon capture equipment placed in service at an existing qualified facility, the current regulations look to “capture design capacity,” but do not define the term.⁹ The regulations state that increasing the amount of carbon dioxide (CO₂) captured without physically modifying existing carbon capture equipment or adding new equipment, but merely operating the existing carbon capture equipment above the CO₂ capture capacity, does not constitute the installation of additional carbon capture equipment.¹⁰ For purposes of the regulations, the term “carbon dioxide capture capacity” means capture design capacity.¹¹ The regulations illustrate this concept through examples, but the examples assume capture design capacity without further explanation. Similar to the existing regulations, the IRA refers to “capture design capacity” for determining the capture design capacity requirement.¹²

Treasury should issue guidance under section 45Q(d)(2)(B)(ii) for determining when new units meet the capture design capacity requirement. Meeting this requirement involves comparing the “capture design capacity” and the “designed annual carbon oxide production,” both of which can be established at the time the equipment is designed and installed without measurement of actual CO production from the applicable unit. Guidance should allow taxpayers to rely on business records related to the project to establish the capture design capacity and designed annual carbon oxide production of a unit, including **(1)** the specifications and plans accompanying the investor’s front-end engineering design (FEED) decision, **(2)** the manufacturer or installation contractor’s warranty, and **(3)** the nameplate capacity of the carbon capture equipment. Alternatively, the guidance should provide a safe harbor for taxpayers to provide a certification of the capture design capacity from a licensed engineer. For an applicable EGU that was placed in service prior to the issuance of such guidance, taxpayers could present evidence that the equipment captured over 75 percent of the baseline CO production of the applicable EGU over a 12-month period if the identified business records are unavailable.

For purposes of determining baseline CO production for an applicable EGU already in service for more than one year, baseline carbon oxide production under section 45Q(e)(2)(A)(i) can be determined by the facility reports under Subpart D of the GHGRP or Continuous Emission Monitoring Systems (CEMS) regulations.¹³

⁹ See Treas. Reg. § 1.45Q-1(g).

¹⁰ See Treas. Reg. § 1.45Q-1(g)(2).

¹¹ *Id.*

¹² See section 45Q(d)(2)(B)(ii).

¹³ See 40 C.F.R. §§ 98.40-98.48 (Subpart D); see also 40 C.F.R. § 75.1.

As mentioned above, Treasury must provide alternative reporting mechanisms if the administration rescinds the GHGRP. Section 45Q(e)(2)(A)(i) defines the “baseline carbon oxide production” as the average annual carbon dioxide production, by mass, from such unit during specified time periods.¹⁴ For an applicable EGU placed in service:

- More than one year but less than three years prior to the date on which construction of the carbon capture equipment begins, the baseline CO production is the average annual CO production for the “period beginning on the date the unit was placed in service and ending on the date on which construction of such equipment began.”
- More than three years prior to the date on which construction of the carbon capture equipment begins, the baseline CO production is the average annual CO production for the “3 years with the highest annual carbon oxide production during the 12-year period preceding the date on which construction of such equipment began.”¹⁵

Further, EGUs report their CO emissions by mass under 40 C.F.R. Part 98, Subpart D of the GHGRP or the 40 C.F.R. Part 75 CEMS regulations. These reports (or established alternatives) should be sufficient for substantiating baseline CO production.

c. Guidance for Modifications to Baseline CO Production for Electricity Generating Facilities Should Define a Significant Increase or Decrease

The IRA authorized Treasury to issue regulations to adjust the baseline CO production for any applicable EGU if modifications to such EGU “result in a significant increase or decrease in carbon oxide production.”¹⁶ A significant increase or decrease in carbon oxide production is not defined in the statute.

Guidance should define a “significant increase or decrease” as more than a 20-percent change in the CO production of an applicable EGU.

However, taxpayers are unlikely to make modifications that result in significant increases in CO from existing EGUs that already have carbon capture equipment installed. Instead, they would likely install new carbon capture equipment to maximize their section 45Q credit. As a result, this guidance should be a lower priority for Treasury.

¹⁴ See section 45Q(e)(2)(A)(i)(I).

¹⁵ Section 45Q(e)(2)(A)(i)(I)-(II).

¹⁶ Section 45Q(i)(3).

d. Guidance Should Clarify that CO Captured from Qualified Facilities that are Not Electricity Generating Facilities Are Not Subject to the Capture Design Capacity Requirement

The definition of a qualified facility in section 45Q includes **(1)** DAC facilities, **(2)** electricity generating facilities, **(3)** other facilities.¹⁷ As described above, an electricity generating facility is further required to meet the capture design capacity requirement.¹⁸ Further, the current regulations define an electricity generating facility based on the facility's MACRS asset class life under which the facility is depreciated—specifically MACRS Asset Class 49.11 (Electric Utility Hydraulic Production Plant), 49.12 (Electric Utility Nuclear Production Plant), 49.13 (Electric Utility Steam Production Plant), or 49.15 (Electric Utility Combustion Turbine Production Plant).¹⁹

Under a plain reading of the statute and regulations, the new capture design capacity requirement only applies to electricity-generating facilities subject to depreciation under the enumerated MACRS asset classes in Treas. Reg. § 1.45Q-2(e). Other industrial facilities not depreciated under these MACRS asset classes are not subject to the capture design capacity requirement. As a result, guidance should clarify that dedicated electricity and heat-generating facilities that are not depreciated under the MACRS asset classes in Treas. Reg. § 1.45Q-2(e), and that otherwise meet the definition of an “other facility” under section 45Q(d)(2)(C), are not electricity-generating facilities and are not subject to the capture design capacity requirement.

VI. Direct Air Capture

- a. Guidance should clarify that taxpayers may claim section 45Q credits with respect to carbon oxide captured at a DAC facility from the ambient air, and with respect to CO captured from industrial sources within the DAC facility.

Section 45Q defines a “direct air capture facility” as any facility that captures carbon dioxide directly from the ambient air.²⁰ A DAC facility that captures CO from the ambient air may also include carbon capture equipment applied to industrial sources of CO within the same facility, such as fuel combustion from heating or electricity generation.

Treasury should issue guidance clarifying that a taxpayer operating a DAC facility that includes other industrial sources of CO emissions can claim section 45Q credits with respect to both the CO captured from the ambient air and the CO captured from other industrial sources within the DAC facility, at the “applicable dollar amount” for each source. The guidance should require taxpayers to separately state the CO

¹⁷ See section 45Q(d)(2)(A)-(C).

¹⁸ See section 45Q(d)(2)(B)(ii).

¹⁹ See Treas. Reg. § 1.45Q-2(e).

²⁰ See section 45Q(e)(3)(A).

captured from ambient air and the CO captured from industrial sources within the same facility. The guidance should specify that only the CO captured from the ambient air qualifies for the higher credit under section 45Q(b)(1)(B).

The guidance should specify that the qualified CO captured at a DAC facility from the ambient air and the qualified CO captured from other industrial sources should receive credits based on the appropriate “applicable dollar amount” for each source under section 45Q(b)(1).

VII. Disaggregation and Other Requested Guidance

- a. Guidance should clarify that in the case of phased construction of multiple process trains using shared equipment in a qualified facility, each process train should be treated as a separate unit of carbon capture equipment with its own placed-in-service date and 12-year credit period.

Treasury should allow for disaggregation concerning the capture of qualified CO at separate process trains at an individual facility so that section 45Q and, if applicable, section 45V or section 45Z are allowable with respect to separate facilities that may be co-located. For example, a single industrial plant may include **(1)** multiple carbon capture or DAC units that were placed in service at different dates; **(2)** a carbon capture process train independent from hydrogen production; **(3)** a carbon capture process train that is part of a blue hydrogen process that depends on carbon capture to meet section 45V’s lifecycle greenhouse gas emission rate; and **(4)** an independent electrolytic hydrogen production train that is not dependent on carbon capture to meet section 45V’s lifecycle greenhouse gas emission rate.

As long as process trains are separate and otherwise satisfy the requirements of section 45Q or 45V, such process trains could qualify under **(1)** section 45Q, **(2)** section 45Q or section 45V but not both, and **(3)** section 45V, respectively.

b. Section 45Q Credit Overlap with Other Clean Energy Tax Incentives

The IRA prevents a taxpayer from claiming a credit for clean hydrogen production under section 45V for any clean hydrogen produced at a facility that claimed a credit for carbon capture equipment under section 45Q for the taxable year or any prior taxable year.²¹ Section 45V(d)(2) states that no section 45V credit shall be allowed “with respect to any qualified clean hydrogen produced at a facility which includes carbon capture equipment for which a credit is allowed to any taxpayer under section 45Q for the taxable year or any prior taxable year.”²² Similarly, section 45Z(d)(4) excludes from the definition of a “qualified facility,” for purposes of the clean fuel production credit, a facility for which a credit is allowed under section 45Q.

²¹ See section 45V(d)(2).

²² Section 45V(d)(2).

These statutory prohibitions in sections 45V and 45Z prevent a taxpayer from claiming a second credit for carbon capture that the taxpayer had to perform anyway to produce clean hydrogen or clean fuel. However, the term “facility” is not defined within the IRA, and for the purposes of electing the 45Q tax credit, has not been satisfied by guidance on 45V and 45Z. Additional 45Q guidance should adopt an interpretation of these sections that includes a narrow definition of the term “facility” to avoid disqualifying carbon capture equipment for which no double credit is claimed. An overly broad interpretation of the term “facility” in sections 45V(d)(2) or 45Z(d)(4) could encompass industrial plants that include multiple production trains, some of which produce clean hydrogen under section 45V or clean fuel under section 45Z, and other production trains that are co-located in the plant but employ separate processes that are not interdependent with one another to produce separate products (e.g., heating units, chemical synthesis, and DAC facilities). The guidance should create a bright-line test that does not discourage the co-location of facilities. Without such guidance, taxpayers could be incentivized to create inefficiencies that would generate additional CO emissions, such as hydrogen delivered by trucks rather than delivered from a co-located facility.

We urge Treasury to harmonize the definition of a facility between these credits to develop one specific set of rules. Treasury should issue clear guidelines for what is considered a “facility” for the purposes of these overlap provisions, including multiple factors that are taken into consideration for the determination of a “facility” in those cases where co-location alone is not determinative and provide clear examples of when co-located projects are separate facilities. Without additional guidance, it is unclear, for example, whether a single unit of carbon capture equipment to capture CO from a blue hydrogen process train with respect to which a taxpayer claims the section 45V credit precludes the taxpayer from claiming the section 45Q credit for CO captured by equipment installed on separate sources within the same plant. Prior guidance does not define the scope of a facility for the purposes of section 45V or section 45Z and the overlap with section 45Q. However, Treasury and courts have considered whether a site contains a single qualified facility or multiple qualified facilities in a variety of contexts under sections 45, 45K, and 48. These authorities can provide helpful guidance under section 45Q.

In general, sections 45V and 45Z, and the regulations under section 45Q, define “facility” to include property that is necessary for production. This is consistent with the definition of the term “facility” in Rev. Rul. 94-31,²³ which defined the term “facility” for purposes of a wind facility and defined the property within the boundaries of the “facility” to be quite narrow. Rev. Rul. 94-31 ruled that “each wind turbine together with its tower and supporting pad . . . is a separate facility” and “[e]ach of these facilities is a qualified facility. . . .” Rev. Rul. 94-31 explains:

A wind turbine together with its tower and supporting pad comprise *the property on the windfarm necessary for the production of electricity from wind energy*. Moreover, each

²³ 1994-1 C.B. 16.

wind turbine on the windfarm can be separately operated and metered and can begin producing electricity when it is mounted atop a tower. Thus, the term “facility” under section 45(c)(3) means the wind turbine, together with the tower on which the wind turbine is mounted and the pad on which the tower is situated. [Emphasis added.]

Although Rev. Rul. 94-31 specifically lists the balance of the plant and other property, it determined that only the specific property above was part of the “facility.” Any transformers, collection system, substation or transmission equipment is not part of the production “facility.” Guidance should apply the principles of Rev. Rul. 94-31 to define a facility under section 45Q.

The Treasury reached a similar conclusion with respect to a biomass facility under section 45 and defined the “qualified facility” for production of electricity from open-loop biomass to not include “property used for the collection, processing, or storage of open-loop biomass before its use in the production of electricity.”²⁴ Treasury followed the same narrow definition of the term “facility” as related to synthetic fuel production under former section 29 and explained that “preparation equipment, feedstock and product conveyors, and storage tanks” are excluded from a facility.²⁵ The proposed Treasury regulations for the clean fuel production credit under section 45Z also narrowly define a “qualified facility” to include a single production line with interdependent components that produce transportation fuel.²⁶

The definition of a facility should remain consistent with Rev. Rul. 2021-13²⁷ where Treasury ruled that the section 45Q credit can be claimed by a person that owns at least one component of carbon capture equipment in the single process train and does not need to own every component within the process. As a result, Rev. Rul. 2021-13 allows a taxpayer to own different parts of a facility. Rev. Rul. 2021-13 further clarified that the original placed-in-service date of a single process train of carbon capture equipment is the date that the single process train is placed “in a condition or state of readiness and availability for the capture, processing, and preparation of carbon oxide for transport for disposal, injection, or utilization” and not at the earlier time when a component of the carbon capture equipment was placed in service. Thus, under Rev. Rul. 2021-13, the single carbon capture process train has a placed-in-service date. Applying this analysis to a facility for section 45Q, the boundaries of the facility should be the single process train that includes equipment for ensuring the capture, processing, and preparation of carbon dioxide for transportation and sequestration or utilization.

Treasury should include a disaggregation rule, allowing for the capture of qualified CO₂ at separate process trains at an individual facility so that section 45Q and, if applicable, section 45V or section 45Z are allowable with respect to separate facilities

²⁴ Section 3.01, Notice 2006-88, 2006-2 CB 686.

²⁵ ILM 200347024 (Jan. 21, 2003).

²⁶ Prop. Treas. Reg. § 1.45Z-1(b)(18).

²⁷ 2021-30 C.B. 152.

that may be co-located. For example, a single industrial plant may include (1) a carbon capture process train independent from hydrogen production; (2) a carbon capture process train that is part of a blue hydrogen process that depends on carbon capture to meet section 45V's lifecycle greenhouse gas emission rate; and (3) an independent electrolytic hydrogen production train that is not dependent on carbon capture to meet section 45V's lifecycle greenhouse gas emission rate. The Carbon Capture Coalition believes that, as long as process trains are separate and otherwise satisfy the requirements of section 45Q or 45V, such process trains could qualify under (1) section 45Q, (2) section 45Q or section 45V but not both, and (3) section 45V, respectively.

To provide sufficient taxpayer certainty, guidance should include an elective disaggregation safe harbor for multiple process trains at an individual facility. Such a safe harbor could require taxpayers to identify the separate process trains.

c. Annual Department of Energy Technical Review for Section 45Q Lifecycle Analysis

Section 45Q credits for utilization must be “based upon an analysis of lifecycle greenhouse gas emissions and subject to such requirements as the Secretary, in consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency, determines appropriate.”²⁸ DOE is not required under the statute to conduct a new review of an LCA report for each taxpayer prior to filing a tax return for each taxable year.

However, the effect of current Treasury regulations and informal DOE guidance interpreting the LCA requirement for utilization is to require an annual approval process for the section 45Q credit, which creates a significant barrier for utilization technologies to benefit from the section 45Q tax credit. In particular, Treasury regulations require the pre-approval of an LCA prior to claiming the section 45Q credits for such taxable year.²⁹ It is not clear from the regulatory language whether this requires a one-time approval or an annual report and approval. However, DOE has further clarified that a new LCA report must be submitted for review for each taxable year, and that it must use actual data.³⁰ As a result, taxpayers lack certainty that they will qualify for the section 45Q credit at the time a project is placed in service. As tax equity investors and potential tax credit transferees under section 6418 require certainty to make needed investments in projects to generate tax credits, this process will likely severely limit investment in utilization projects.

The Carbon Capture Coalition recommends that Treasury issue guidance to eliminate the current pre-approval requirement in Treas. Reg. § 1.45Q-4(c)(6) and give taxpayers an option to obtain pre-approval of the LCA before claiming section 45Q credits. This option could use estimates of future data as inputs, giving taxpayers

²⁸ See section 45Q(f)(5)(B)(i).

²⁹ See Treas. Reg. § 1.45Q-4(c)(6).

³⁰ NETL 45Q Toolkit at § 2.1.6.3.

confidence in the soundness of the LCA methodology. This LCA methodology could then be applied each year using actual data in taxpayer returns, with any residual issues with the LCA addressed during audit. Audit review would then normally be limited to issues with input data.

Such an approach would limit the uncertainty associated with annual reviews of each taxpayer's entire LCA methodology, and limit impediments to taxpayers placing utilization projects into service.

Treasury should also work with DOE and EPA to identify circumstances in which updates to LCA methodology would be warranted, in the event that significant new information becomes available calling into question the validity of a taxpayer's previously-approved LCA methodology, and procedures for resubmission and approval of an updated LCA methodology.

d. Guidance Should Clarify the Definition of an Industrial Facility Related to a Fuel Combustion Source

Under the current definition of an industrial facility, a qualifying facility also includes facilities that produce a CO from a "manufacturing process" or "fuel combustion source." The current regulations define "manufacturing process," but do not define "fuel combustion source." Guidance should be issued to define a "fuel combustion source."

Courts have recognized that untreated landfill gas is considered to be a "fuel."³¹ As a result, guidance should affirm that a "fuel combustion source" includes a municipal solid waste landfill facility using a flare that produces a stream of CO.

The Carbon Capture Coalition looks forward to working with Treasury on these critical issues. If you have any questions regarding this submission, please contact me at jstolark@carboncapturecoalition.org.

Sincerely,



Jessie Stolark
Executive Director
Carbon Capture Coalition

³¹ See *Green Gas Del. Statutory Trust v. Commissioner*, 903 F.3d 138, 142 (D.C. Cir. 2018), *aff'g Green Gas Del. Statutory Trust v. Commissioner*, 147 T.C. 1, 41 (2016).

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About Us

The Carbon Capture Coalition is a nonpartisan collaboration of companies, labor unions, and conservation and environmental policy organizations. Coalition members work together to lay the groundwork for the necessary portfolio of federal policies to enable nationwide, commercial-scale deployment of carbon management technologies.