

Anonymous

December 6, 2022

Mr. Andres Garcia  
Internal Revenue Service, Room 6526  
1111 Constitution Avenue NW  
Washington, DC 20224

**Delivery By email only to: [pra.comments@irs.gov](mailto:pra.comments@irs.gov)**

**Re: OMB Number 1545– 2132  
Form 8933  
Public Comment Request Notice  
FR Date October 7, 2022  
Docket No: 87 FR 61146  
Pages 61146- 61147**

Dear Mr. Garcia,

Thank you for the opportunity to comment on the above referenced matter. I am a Certified Public Accountant and I'm providing comments as a tax practitioner, interested citizen and an advocate for taxpayers. My comments focus in particular on how these Regulations and reporting requirements affect smaller entities. They are far overreaching and burdensome to both taxpayers and practitioners.

**Issues:**

Your notice and request for comments states that the desired focus of the comments are:

To evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, and have practical utility;

To evaluate the accuracy of the agency's estimate of the burden of the proposed collection of the information, including the validity, methodology and assumptions used;

Enhance the quality, utility and clarity of the information to be collected;

Minimize the burden of the collection of information on those who are to respond.

**Comments:**

**Is the Collection of Information Necessary**

It is understood that guidance may have been needed on a number of issues surrounding how to qualify for the credits, who may claim or assign the credits under various scenarios and fact patterns, along with various definitional clarifications.

It is also assumed that much of the guidance was to bring clarity and compliance to large 45Q filers who have multiple contracts with various parties, to ensure the appropriate and qualified parties have claimed the available credits without double counting.

As a practitioner dealing primarily with smaller clients, less than \$40 million in gross receipts, the significant changes in the annual reporting requirements and instructions related to Form 8933 for claiming the Carbon Oxide Sequestration Credit are unclear, difficult to discern and extremely time consuming. It is problematic to justify the time that will be required to be spent for smaller entities, both time need by the taxpayer internally as well as time that will be paid in professional fees.

It is also extremely difficult to understand how the Service will use, monitor or even get through this information that it will be inundated with. Before putting this enormous task on the taxpayers and practitioners, it would be helpful to understand the problem that's being resolved and to also educate us on what and how the Service accomplish and further the proper compliance regarding the 45Q credits.

Until there is a more automated system in place both for the taxpayers and the Service, to be matching and cross referencing information submitted, this collection of information should be delayed or at the very least reduced.

As to the comments requested, in my opinion the proposed collection of information is not necessary or useful at this time for the proper performance or the function of the agency, and it is burdensome to require this reporting by the taxpayers and practitioners.

**Reporting and Estimate of Burden on the Taxpayers**

The Draft Instructions for the 2022 Form 8933 are 37 pages long with the Draft 8933 Form being now 3 pages. However, based on the Regulations and Instructions, the actual attachments to be filed as part of the form could be an untold number depending on the circumstances. The estimated times in the Draft instructions indicates a total of 17.5 hours combined for recordkeeping, learning about the law and form, and preparing and sending the form.

Regulation Section 1.45Q-1(h) provides guidance as follows on who may claim the credit and the reporting that is required annually.

***h) Eligibility for the section 45Q credit.*** The following rules determine who may claim the section 45Q credit.

*(1) Person to whom the section 45Q credit is attributable. In general, the person to whom the credit is attributable is the person who may claim the credit. Except as provided in paragraph (h)(3) of this section, the section 45Q credit is attributable to the following persons —*

*(i) Equipment placed in service before February 9, 2018. In the case of qualified carbon oxide captured using carbon capture equipment that is originally placed in service at a qualified facility before February 9, 2018, the section 45Q credit is attributable to the person that captures and physically or contractually ensures the disposal, injection, or utilization of such qualified carbon oxide.*

*(ii) Equipment placed in service on or after February 9, 2018. In the case of qualified carbon oxide captured using carbon capture equipment that is originally placed in service at a qualified facility on or after February 9, 2018, the section 45Q credit is attributable to the person that owns the carbon capture equipment and physically or contractually ensures the capture and disposal, injection, or utilization of such qualified carbon oxide. For each single process train of carbon capture equipment (as described in §1.45Q-2(c)(3)), only one taxpayer will be considered the person to whom the credit is attributable under this paragraph (h)(1)(ii). That person will be the taxpayer who either physically ensures the capture and disposal, injection, or utilization of such qualified carbon oxide or contracts with others to capture and dispose, inject, or utilize such qualified carbon oxide.*

*(iii) Reporting. The taxpayer described in this paragraph (h)(1) as eligible to claim the section 45Q credit must claim the credit on a Form 8933, "Carbon Dioxide Sequestration Credit," with the taxpayer's Federal income tax return or Form 1065, "U.S. Return of Partnership Income," for each taxable year for which the taxpayer is eligible. The taxpayer must provide the name and location of the qualified facilities at which the qualified carbon oxide was captured. If the taxpayer is claiming the section 45Q credit on an amended Federal income tax return, an amended Form 1065, or an administrative adjustment request under section 6227 (AAR), as applicable, the taxpayer must state AMENDED RETURN FOR SECTION 45Q CREDIT at the top of the amended Federal income tax return, the amended Form 1065, or the AAR, as applicable. The amended Federal income tax return or the amended Form 1065 must be filed, in any event, not later than the applicable period of limitations on filing an amended Federal income tax return or Form 1065 is being filed. A BBA partnership may make a late election by filing an AAR on or before October 15, 2021, but in any event, not later than the period of limitations on filing an AAR under section 6227(c).*

*(2) Contractually ensuring capture and disposal, injection, or utilization of qualified carbon oxide. In the case of qualified carbon oxide captured using carbon capture equipment which is originally placed in service at a qualified facility on or after February 9, 2018, a taxpayer is not required to physically carry out the capture and disposal, injection, or utilization of qualified carbon oxide to claim the section 45Q credit if the taxpayer contractually ensures in a binding written contract that the party that physically carries out the capture, disposal, injection, or utilization of the qualified carbon oxide does so in the manner required under section 45Q, this section and §§1.45Q-2, 1.45Q-3, 1.45Q-4, and 1.45Q-5. A taxpayer may enter into a binding written contract with a general contractor that hires subcontractors to physically carry out the capture, disposal, injection, or utilization of the qualified carbon oxide, but the contract must bind the subcontractors to the requirements of this paragraph (h)(2). In the case of qualified carbon*

oxide captured using carbon capture equipment which is originally placed in service at a qualified facility before February 9, 2018, a taxpayer that contractually ensures the capture of the qualified carbon oxide is not eligible for the section 45Q credit. However, the taxpayer is not required to physically carry out the disposal, injection, or utilization of qualified carbon oxide to claim the section 45Q credit if the taxpayer contractually ensures in a binding written contract that the party that physically carries out the disposal, injection, or utilization of the qualified carbon oxide does so in the manner required under section 45Q, this section, and §§1.45Q-2, 1.45Q-3, 1.45Q-4, and 1.45Q-5.

(i) *Binding written contract.* A written contract is binding only if it is enforceable under State law against both the taxpayer and the party that physically carries out the capture, disposal, injection, or utilization of the qualified carbon oxide, or a predecessor or successor of either, and does not limit damages to a specified amount (for example, by use of a liquidated damages provision). For this purpose, a contractual provision that limits damages to an amount equal to at least five percent of the total contract price will not be treated as limiting damages to a specified amount. For additional guidance regarding the definition of a binding written contract, see §1.168(k)-1(b)(4)(ii)(A)-(D).

(ii) *Multiple binding written contracts permitted.* A taxpayer may enter into multiple binding written contracts with multiple parties for the capture, disposal, injection, or utilization of qualified carbon oxide. A party that physically carries out the capture, disposal, injection, or utilization of qualified carbon oxide may enter into multiple binding written contracts with multiple parties that own carbon capture equipment or capture or contractually ensure the capture of qualified carbon oxide.

(iii) *Contract provisions.* Contracts ensuring the capture, disposal, injection, or utilization of qualified carbon oxide —

(A) *Must include commercially reasonable terms and provide for enforcement of the party's obligation to perform the capture, disposal, injection, or utilization of the qualified carbon oxide;*

(B) *May, but are not required to, include long-term liability provisions, indemnity provisions, penalties for breach of contract, or liquidated damages provisions;*

(C) *May, but are not required to, include information including how many metric tons of qualified carbon oxide the parties agree to dispose of, inject, or utilize;*

(D) *May, but are not required to, include minimum quantities that the parties agree to dispose of, inject, or utilize;*

(E) *Must, in the case of qualified carbon oxide that is intended to be disposed of in secure geological storage and not used as a tertiary injectant in a qualified enhanced oil or natural gas recovery project, obligate the disposing party to comply with §§1.45Q-3(b)(1) and (c), and, in the case of a recapture event, promptly inform the capturing party of all information that is pertinent to the recapture (e.g., location of leak, leaked amount of qualified carbon oxide, dollar value of section 45Q credit attributable to leaked qualified carbon oxide);*

(F) *Must, for qualified carbon oxide that is intended to be used as a tertiary injectant in a qualified enhanced oil or natural gas recovery, obligate the disposing party to comply with §1.45Q-3(b)(2) and (c), and in the case of a recapture event, promptly inform the capturing party of all information that is pertinent to recapture of the section 45Q credit as listed in §1.45Q-5; and*

(G) *Must, for qualified carbon oxide that is intended to be utilized in a manner specified in §1.45Q-4, obligate the utilizing party to comply with §1.45Q-4.*

(iv) *Pre-existing contracts.* If a taxpayer entered into a contract for the capture, disposal, injection, or utilization of qualified carbon oxide prior to January 13, 2021, and that contract does not satisfy all of the requirements of this paragraph (h)(2), the taxpayer must amend its existing contract or execute a new contract that satisfies all of the requirements of this paragraph (h)(2) by July 12,

*(v) Reporting of contract information. The existence of each contract and the parties involved must be reported to the IRS annually. Each party to a contract must complete a signed Form 8933 (as defined in §1.45-2(j)) and provide information required by the instructions to Form 8933. The party that contracts with the taxpayer claiming the credit must also provide that taxpayer with a signed Form 8933 in accordance with the instructions to Form 8933. The taxpayer claiming the credit must attach and file all other signed Forms 8933 received by each other party to the contract to its own signed Form 8933. Failure of the taxpayer claiming the credit to satisfy this reporting requirement in a taxable year will result in the inability of that taxpayer to claim the credit with respect to any qualified carbon oxide that is disposed of, injected, or utilized in that taxable year pursuant to that particular contract. In addition to any information stated as required on Form 8933, the report must include the following information—*

*(A) The name and taxpayer identification number of the taxpayer to whom the credit is attributable;*

*(B) The name and taxpayer identification number of each party with whom the taxpayer has entered into a contract to ensure the disposal, injection, or utilization of qualified carbon oxide;*

*(C) The date each contract to ensure the disposal, injection, or utilization of qualified carbon oxide was entered into;*

*(D) The number of metric tons of qualified carbon oxide each contracting party disposes of, injects, or utilizes on behalf of the contracting taxpayer each taxable year for reporting to the IRS; and*

*(E) For contracts for the disposal of qualified carbon oxide in secure geological storage or the use of qualified carbon oxide as a tertiary injectant in enhanced oil or natural gas recovery, the name of the operator, the field, unit, and reservoir, location by county and state, and identification number assigned to the facility by the EPA's electronic Greenhouse Gas Reporting Tool (e-GGRT ID number) for submission of the facility's 40 CFR Part 98 annual reports.*

Based on the Regulation, not only is the taxpayer who is claiming the credit required to prepare their own Form 8933 and all relevant attachments, but if they contract with others to contractually capture, dispose, inject, or utilize the qualified carbon oxide, they must:

- Include all information about those they contract with;
- Obtain Forms 8933 from all those they contracted with, and attach to their own completed Form 8933.

Failure to do so will result in the inability to claim the credit.

So the taxpayer who is entitled to the credit has the burden of getting a contractor to comply in providing Form 8933 to them in order that they may claim the credit. The contractor and his practitioner, (who has no credit available) also has the burden of working through the filing requirements of Form 8933. This makes no logical sense.

The eligible claimant has more than enough to comply with in their own reporting without having to wrangle others to spend time and money in order for someone else to claim the credit.

## **OMB Number 1545– 2132 Comments**

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Note, the draft instructions are inconsistent with the Regulations and do not seem to require that you attach Form 8933 from the other party to the contract. They appear to indicate that each party to a contract must report the contract on their own Form 8933, but does not indicate that the claimant has to obtain and attach forms from others. The Regulations also indicate Form 8933 both as the claimant and the contract parties must be signed. There is no place for signatures on the actual form. Clarification on this point would be helpful.

There are other extensive reporting requirements, but this area in particular seems overly difficult and could be changed and simplified.

In light of the request for comments on the accuracy of the agency's estimate of the burden of the proposed collection of the information, including the validity, methodology and assumptions, it is my opinion that the estimate of the burden is grossly underestimated. The reporting requirements are far overreaching, unrealistic, and again overburdensome to taxpayers and practitioners who could spend countless hours trying to comply.

### **Enhancing the Quality, Utility and Clarity of Collected Information**

As previously discussed, it is difficult to see the reasoning of tasking the taxpayers and practitioners with the voluminous reporting requirements when it is uncertain as to the current utilization and application of this information in furthering compliance and administration of the credits. Furthermore, until there is a means of getting automated data collected and analyzed, it seems these reporting requirements should be delayed.

The Form and instructions should be simplified in particular for smaller entities with less complex scenarios. Taxpayers should be able to submit relevant information that may be more readily available to assure the Service of compliance in claiming the credits.

### **Minimize the Burden on Respondents**

Agreed, see all comments above.

Form 8933 itself and the instructions are inconsistent and confusing. It is difficult to understand who is required to fill out certain forms or Model Certificates. The Model Certificate for the Capture Facility is 5 pages long for example, and all parts won't apply to taxpayers. Simplified instructions would be helpful such as "if this scenario....then complete Part X and Y of Model Certificate Z."

Options should be available for taxpayers and practitioners to attach readily available documents which represent the same information, such as the contract with other parties rather than investing time in creating another format to provide the same information.

Model Certificate EOR- Operator, Model Certificate DISP- Operator and Model Certificate RECAPTURE (to be used if claimant is contractually ensuring disposal, injection or utilization ) all ask for information on owners. This may not be relevant in the case for example where there are no credits allocated to owners. There should be an option N/A to attest that no credits apply to owners and therefore, further information is not required.

A simplified form should be available for less complex scenarios, such as one owner that captures and physically disposes, utilizes or uses as a tertiary injectant, and also claims the credit. Or in the case of one ongoing contract between the same two parties for example, where there is little to no change in the contract, a simplified form with relevant questions, rather than resubmission needed annually of a volume of information.

Instructions indicate large 45Q filers needing to include information similar to model certificates. There is no further guidance on “large” or how that is defined. Again, simplification is needed for smaller entities and less complex scenarios.

Considering the request for comments on minimizing the burden of the collection of information on those who are to respond, the required reporting should be drastically simplified and also delayed until there is clarity between the Regulations and the Form 8933 and instructions. Also, educating us on the purpose and usefulness of these requirements is needed and consideration should be given to smaller taxpayers. The compliance in claiming the Section 45Q credits should not be this onerous on both taxpayers and practitioners.

Thank you for the consideration and opportunity to comment on this matter.