



February 5, 2024

Re: Agency Information Collection Activities; Submission for OMB Review; Comment Request; Carbon Dioxide Sequestration Credit

OMB No.: 1545–2132

Submitted via email to PRA@treasury.gov

To Whom it May Concern:

Taxpayers for Common Sense submits the following comments in response to the Notice titled “Agency Information Collection Activities; Submission for OMB Review; Comment Request; Carbon Dioxide Sequestration Credit” as published in the Federal Register on January 4, 2024.¹

We appreciate the opportunity to provide comments on this proposed information collection. Our organization is committed to ensuring that taxpayer dollars are spent wisely and efficiently, and we believe that the information collection notice has significant implications for fiscal responsibility and environmental stewardship.

Form 8933, titled Carbon Oxide Sequestration Credit, is used to claim Section 45Q of the Internal Revenue Code, a federal tax credit for qualified carbon oxide that is captured and sequestered. 45Q is intended to incentivize businesses to engage in carbon capture and sequestration (CCS) activities by providing a financial benefit for each metric ton of carbon oxide that is properly captured and stored or utilized in a manner that meets the requirements set forth by the IRS and the Environmental Protection Agency (EPA).

The updated form addresses many concerns raised over the years but can be strengthened by requiring third-party verification of the data submitted and implementing a joint audit strategy between the IRS and the EPA for 45Q tax credit claims.

History of Fraud

However, a significant portion of the Section 45Q carbon sequestration tax credits claimed from 2010 to 2019 were based on insufficient reporting. Just 10 taxpayers claimed over \$1 billion in 45Q credits, which constituted roughly 99% of the total credits claimed during that period. Of this amount, \$894 million did not comply with EPA requirements.

¹ Agency Information Collection Activities; Submission for OMB Review; Comment Request; Carbon Dioxide Sequestration Credit,” Federal Register, January 4, 2024, accessed January 18, 2024, <https://www.federalregister.gov/documents/2024/01/04/2023-29002/agency-information-collection-activities-submission-for-omb-review-comment-request-carbon-dioxide>.

The expansion of the 45Q credit by Congress in 2022, despite the history of non-compliance, could potentially lead to more fraud and abuse of the incentive. TCS has highlighted the importance of robust compliance and anti-fraud safeguards to ensure the value for taxpayer money and to prevent its misuse.

The revised Form 8933 should collect all information necessary to correctly determine and administer the 45Q tax credit. Moreover, all information collected on Form 8933 should also be subject to rigorous audit efforts.

Form 8933

TCS recognizes the IRS updates to Form 8933 to reflect changes pursuant to the Inflation Reduction Act (IRA) as a positive step. The updated form incorporates several features that could help prevent the kind of fraud that has occurred in the past with the 45Q credit.

The revised Form 8933 requires detailed information about carbon capture and sequestration activities from entities claiming the credit. This includes facility-level information on the ownership of capture equipment, the type of facility, the volume of carbon oxide captured, and the methods of disposal, utilization, or usage. The form also mandates disclosure of the name and location of a party contracted by the taxpayer claiming the credit, and it requires submission of all signed Forms 8933 received by each taxpayer making an election under section 45Q(f)(3)(B).

Form 8933 now collects data on the tons of carbon captured and disposed at each facility, offering more granularity than previous versions. This detail is crucial, considering that carbon could have been captured at multiple facilities owned by a single claimant, or the credit could be claimed by a disposal facility owner but originally entitled to one or more capture facilities or distributed among various partnerships and S corporations. Comprehensive information about ownership, transfer, and usage from each facility will be invaluable during audits.

We also applaud the IRS for updating the model certificates. Disposal or enhanced oil recovery (EOR) owners and operators must now attach a copy of the approved MRV plan or ISO 27916 documentation, certified by a qualified independent engineer or geologist. Given the history of noncompliance, requiring claimants to substantiate their claim is vital to ensuring the program's integrity.

Despite these improvements, there are still concerns regarding the validity of data obtained through Form 8933 and its associated model certificates. For example, Model Certificate DISP-Operator and Model Certificate EOR-Operator require that operators confirm that the figures submitted in Table 3 on the quantities of both qualified and nonqualified carbon delivered and stored are consistent with EPA filings. Model Certificate DISP-Owner and Model Certificate EOR-Owner then requires total reported amounts of qualified carbon injected and stored to be consistent with figures included in Table 3. In theory, this detailed breakdown and cross-checking will help the IRS better determine the applicable credit amount.

Under Subpart RR, facilities must monitor and record the sources, but not quantities, of all of the CO₂ received by category, if known. Categories include:

- CO₂ production wells
- Electric generating unit
- Ethanol plant

- Pulp and paper mill
- Natural gas processing
- Gasification operations
- Other anthropogenic source
- Discontinued enhanced oil and gas recovery project
- Unknown

This means the reported sequestered amount is an aggregate number, potentially including non-qualified carbon oxides. Consequently, even with the detailed data required by Form 8933 model certificates, there are limited means for the IRS to verify these figures against EPA reports, especially if the secure geological storage site or EOR project also receives non-qualified carbon oxides to be injected and stored.

Furthermore, the IRS allows EOR or natural gas recovery projects to self-certify volumes of carbon oxide for the purpose of claiming the 45Q credit. If these projects choose to comply with EPA 40 CFR Part 98 Subpart RR, it casts further doubt on the validity of the data reported on the form and the model certificates.

Third-Party Verification

TCS believes that the quality and validity of data that is reported on Form 8933 is paramount to the IRS correctly administering the 45Q tax credit, which is why we advocate for the implementation of third-party verification of data submitted to the EPA on CCS. While the EPA currently does not require third-party verification, we believe that an additional layer of scrutiny can significantly enhance the reliability of the data. Third-party verification or assurance provides stakeholders with a greater level of certainty in the greenhouse gas (GHG) emissions an organization discloses. This approach has been successfully implemented in other contexts, such as the California Air Resources Board's (CARB) requirement for reporting entities to have their GHG emissions data reports verified each year by a CARB-accredited verification body.²

Following the passage of the Inflation Reduction Act (IRA), the IRS issued Notice 2022-57, "Request for Comments on the Credit for Carbon Oxide Sequestration," and announced its plan to issue guidance for 45Q pursuant to the IRA amendments to 45Q. While the IRS is still working on a proposed rule, the IRS, in consultation with the EPA, should require third-party verification to improve the validity of data reported under 45Q as part of the proposed rulemaking. It is essential that the EPA and the IRS play an active role in verifying the legitimacy of claims made under Section 45Q. This is essential to avoid repeating past mistakes where a lack of stringent verification processes led to significant instances of fraud and non-compliance.

Given the importance of data quality and validity in administering the 45Q tax credit, and the potential for enhanced reliability through third-party verification, we propose the following specific measures. These recommendations are designed to bolster the integrity of the data reported on Form 8933 and to ensure that the IRS and EPA can effectively verify the legitimacy of claims made under Section 45Q:

² "Mandatory GHG Reporting - Verification," California Air Resources Board, last modified January 12, 2024, accessed January 18, 2024, <https://ww2.arb.ca.gov/verification>.

- **Mandatory Third-Party Verification:** Require all entities claiming the Section 45Q tax credit to have their captured and sequestered amounts verified by a qualified independent third party. This third party should be accredited by a recognized body to ensure they have the necessary expertise and impartiality.
- **Standardization of Verification Processes:** Develop and publish a standardized protocol for the verification of captured and sequestered amounts, including specific guidelines for the verification of the information provided in or attached to the model certificates. This protocol should align with best practices in GHG emissions verification and include requirements for documentation and data accuracy.
- **Coordination with EPA:** As current IRS guidance on 45Q still largely relies on EPA regulations (40 CFR Part 98 Subpart RR) to verify secure storage through geological sequestration and through EOR operations, IRS should coordinate with EPA to incorporate third party verification into subpart RR reporting. This would improve data quality reported to both the IRS and the EPA and facilitate cross-agency data sharing and validation.
- **Timely Public Disclosure:** Encourage transparency by requiring the public disclosure of aggregate sequestered amount and credits claimed. This disclosure should protect confidential business information while allowing stakeholders to assess the credibility of the claimed carbon sequestration activities.
- **Regular Review and Update of Verification Standards:** Establish a process for the regular review and update of the third-party verification standards and protocols to adapt to technological advancements and emerging best practices in carbon capture and sequestration.

Joint Audit Strategy

The Government Accountability Office (GAO) has highlighted the importance of coordination across federal agencies to review the effectiveness of tax credits and to conduct audit examination activities.³ In the case of the 45Q tax credit, it is imperative that the IRS and the EPA work together to ensure that the claims for carbon sequestration tax credits are legitimate and that the carbon oxide is indeed captured and sequestered according to the requirements.

Considering these concerns, we urge the Office of Management and Budget to prioritize the establishment of a joint audit strategy between the IRS and the EPA for the 45Q tax credit claims. Such a strategy should include clear guidelines for random audits, detailed MRV reports, and transparent reporting to maintain public trust in the program's administration.

Conclusion

The IRS and the EPA must work together to ensure that the claims for carbon sequestration tax credits are legitimate and that the carbon oxide is indeed captured and sequestered according to the

³ Government Accountability Office. 2024. "Refined Coal Production Tax Credit: Coordinated Agency Review Could Help Ensure the Credit Achieves Its Intended Purpose." GAO-22-104637. Accessed January 18, 2024. <https://www.gao.gov/assets/gao-22-104637.pdf>

requirements. Past investigations have revealed that a substantial portion of the 45Q credits claimed were either fraudulent or did not comply with EPA requirements. This not only represents a misuse of taxpayer funds but also undermines the environmental objectives that the credits are intended to support.

We appreciate your attention to this matter and look forward to seeing these necessary improvements implemented to safeguard taxpayer interests and promote responsible environmental stewardship.

Sincerely,

A handwritten signature in black ink, appearing to read "SE" followed by a stylized flourish.

Steve Ellis

President

Taxpayers for Common Sense