

Via Electronic Submission

July 31, 2020
Internal Revenue Service
Attn: CC:PA:LPD:PR (REG-112339-19)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington D.C. 20044

RE Notice of Proposed Rulemaking (REG-112339-19)/Comments on Proposed Regulations Regarding Credit for Carbon Oxide Sequestration Under Section 45Q (the “Proposed Regulations”)

Dear Sir/Madam:

In response to the Notice of Proposed Rulemaking regarding the credit for carbon oxide sequestration under Section 45Q of the Internal Revenue Code of 1986 (the “Code”), we submitted comments on July 28, 2020, and we are supplementing those comments as set forth below.

In the Preamble to the Proposed Regulations relating to the “Utilization of Carbon Oxide,” the Treasury Department and Internal Revenue Service (the “Service”) specifically requested comments on how to achieve consistency in boundaries and baselines so that similarly situated taxpayers will be treated consistently.

Section 1.45Q-4(c)(2) of the Proposed Regulations provides that the LCA report must contain documentation consistent with the International Organization for Standardization (ISO) 14044:2006, “Environmental management – Life cycle assessment – Requirements and Guidelines.” (the “ISO Guidelines”). Section 4.2.3.5 of the ISO Guidelines state that LCA “data may include a mixture of measured, calculated *or* estimated data.” (*emphasis added*). In order to achieve consistency in boundaries and baselines so that similarly situated taxpayers will be treated consistently, we believe one of the best sources for data, methodology and calculations is found in the Final Mandatory GHG Reporting Rule (40 C.F.R. pt. 98) (the “GHG Reporting Rule”) and specifically Table C-1 to Subpart C of Part 98 – “Default CO₂ Emission Factors and High Heat Values for Various Types of Fuel.”

The Service issued Notice 2009-83, 2009-44 I.R.B. 588 providing guidance under Code Section 45Q (prior to the amendments in the Bipartisan Budget Act of 2018) for determining (i) the eligibility for the Section 45Q tax credit for carbon dioxide sequestration, (ii) the amount of the credit, and (iii) rules regarding adequate security measures for secure geological storage of carbon dioxide. Notice 2009-83 provided that a taxpayer claiming the Section 45Q tax credit must use the same methodology, inputs and equations set forth in the GHG Reporting Rule.

The GHG Reporting Rule (promulgated by the EPA in September 2009) requires reporting of greenhouse gases (“GHG”) data and other relevant information from large GHG sources, fuel and industrial suppliers and carbon dioxide injection sites in the United States. The GHG Reporting Rule does not require control of GHG; rather, it requires only that certain sources monitor and report emissions. Approximately 8,000 facilities are required to report their emissions annually under the GHG Reporting Rule. This data is used by governmental entities and businesses to track and compare facilities’ GHG emissions, identify opportunities to cut pollution and minimize wasted energy. In total, data covering 85-90% of GHG emissions in the United States are reported under the GHG Reporting Rule.

The GHG Reporting Rule provides multiple tier equations to calculate GHG emissions for CO₂, carbon monoxide (CO), methane (CH₄), and NO_x with Table A-1 of Part 98 listing global warming potential multipliers for 70 compounds or chemical blends, including for CO₂, CH₄, NO_x, hydrofluorocarbons and perfluorocarbons. Those global warming potential values are used to calculate the CO₂ equivalent for these other greenhouse gases, which values are then multiplied by the applicable unit to determine the total GHG emissions on a CO₂ equivalent basis.

Not only does the Reporting Rule provide methodologies to measure CO₂ reductions, it also provides the methodology for measuring the reduction of other carbon oxides and GHG gases (by providing a CO₂ equivalent for such other gases). Given that the GHG Reporting Rule has been in place for ten years and is used by 85-90% of the industry in the United States to report GHG emissions, we believe that the GHG Reporting Rule provides the most comprehensive, consistent and proven method for measuring GHG emissions in the United States.

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Moreover, Section 1.45Q-4(c)(3) of the Proposed Regulations provides that the LCA will be subject to technical review by the DOE, and the Service, in consultation with the DOE and the EPA, will determine whether to approve the LCA. Given that the GHG Reporting Rule has been in place and administered by the EPA for over 10 years, the EPA and DOE will be in a much better position to review and consult with the Service in approving any LCA that relies on the methodologies, inputs and equations set forth in the GHG Reporting Rule.

In short, given that the GHG Reporting Rule already provides comprehensive and detailed rules and equations for measuring GHG emissions in the United States, CBA respectfully requests that the taxpayers be allowed to measure the amount of qualified carbon oxide captured and utilized under Section 45Q (as documented in a LCA) using the same methodology, inputs and equations set forth in the GHG Reporting Rule.

Thank you for your consideration of our comments. We would be happy to provide additional information upon request.

Very truly yours,

CBA ENVIRONMENTAL SERVICES, INC.

By: *Bruce L. Bruso*

Bruce L. Bruso
President/CEO