
December 3, 2022

Internal Revenue Service
CC:PA:LPD:PR (Notice 2022-58)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Re: Request for Comments on Section 45Z for the Clean Fuel Production
Credit, Notice 2022-58

Maas Energy Works is a renewable nature gas (RNG) development company that designs, develops and operates dairy digesters in the United States of America. We presently operate over 50 dairy digesters. Maas Energy Works' projects reduce carbon emissions on dairies and produce biogas that is used as Renewable Compressed Natural Gas to fuel transportation fleets. Below we have listed each question and request for comments in bold, and the response to each question is not bolded.

(1) Sale Definition.

(a) What factors should the Treasury Department and the IRS consider in determining whether an unrelated person purchases transportation fuel for use in a trade or business for purposes of Section 45Z(a)(4)(B)?

Response: The Treasury Department and the IRS should consider separate legal entities as being unrelated persons. If these separate legal entities have common ownership, then the IRS should examine the nature of the transaction to ensure that the sale is concluded at arm's length. If the station that is dispensing the RNG is being paid market rates for the RNG, and those same rates are charged to other customers, then the sale of RNG to the separate legal entity with common ownership, should not be considered a related party transaction. An example of a situation of where this scenario may occur in the dairy industry is if a dairyman owns a CNG station that dispenses the RNG produced by his dairy digester, and he also has a CNG fleet that he operates on his dairy under a separate business entity. In this example, the dairy should not be considered a related party to the CNG station if the truck entity pays the digester entity at market value for the RNG. To treat these entities as related parties would mean effectively banning farmers from creating on-farm fueling infrastructure.

(b) What factors should the Treasury Department and the IRS consider in determining whether fuel is sold at retail for purposes of § 45Z(a)(4)(C)?

Response: RNG that is dispensed at fueling stations should be metered and a sales standard should be established that applies to all customers. To meet retail standards, there should be clear documentation to support the sale of RNG, and funds should be exchanged. Treasury should not require that the CNG stations need to be available for public access since a large number of CNG stations are private, or restricted access. It is not uncommon for farming

cooperatives to convert their fleets to CNG, and to sign contracts with private CNG stations for certain monthly volumes of CNG. The transactions that these private CNG stations enter into should be considered retail if the transactions are metered, a sales standard is applied, and funds are exchanged.

RNG is often distributed through commercial pipelines. It is universally allowed for CNG/LNG retail stations to obtain natural gas from the pipeline and claim environmental attributes (e.g., RINs under the RFS program) through a “book and claim” process. The IRS should allow these types of sales to be considered as fuel sold at retail for purposes of Section 45Z(a)(4)(C), even if use of such RNG as a transportation fuel cannot be directly traced from the interconnection point to the point where the customer puts natural gas in its fuel tank (i.e., if the offtake arrangement is stylized in a manner different than physical delivery).

(3) Provisional Emissions Rates. Section 45Z(b)(1)(D) allows the taxpayer to file a petition with the Secretary for determination of the emissions rate for a transportation fuel which has not been established.

(a) At what stage in the production process should a taxpayer be able to file a petition for a provisional emissions rate?

Response: The Environmental Protection Agency’s Renewable Fuels Standard allows applicants to submit petitions for emissions rates prior to production. Information required for these petitions is based on facility design, third-party databases, literature, and other regulatory programs.

(b) What criteria should be considered by the Secretary to determine the provisional emissions rate?

Response: The Secretary should apply the closest fitting Argonne GREET model to each provisional emissions rate. The Secretary should provide a lookup table that can be used as a best fit when determining a project’s emissions rate. In the case of biomethane derived from livestock manure, the Secretary should use site specific baseline manure management practice to determine the emissions rate for that project. The Argonne GREET model already includes pull-down selections for deep pit, anaerobic lagoon, pasture, and other common manure handling systems (see RNG tab of Argonne GREET model, cell E60). Since the avoided methane impact of manure management is so critical to the carbon intensity scoring of Renewable Natural Gas (RNG, aka: biomethane), it is essential that any provisional emissions rate for RNG include a proper characterization of the baseline manure management system in place at the dairy.

(5) Coordinating Rules. Section 45Z(f)(4) states that under regulations prescribed by the Secretary, rules similar to the rules of § 52(d) apply in the case of estates and trusts. Section 45Z(f)(5) states that rules similar to § 45Y(g)(6) apply to patrons of agricultural cooperatives. Section 45Z(f)(6)(A) states that rules similar to the rules of § 45(b)(7) apply for the prevailing wage requirement. Section 45Z(f)(7) states that rules similar to the rules of § 45(b)(8) apply for the apprenticeship requirement. Is the application of the cross-referenced rules for purposes of the § 45Z credit adequately clear? What aspects of the

cross-referenced rules should apply to the § 45Z credit without modification and what aspects should be modified?

Response: For purposes of receiving the increased credit amount provided for in 45Z(a)(2)(B), we suggest that the Secretary confirm that the apprenticeship requirements do not apply if the facility is placed in service before January 1, 2025. Likewise we suggest the Secretary confirm that if an existing facility is being retrofitted to permit clean fuel production, that only the improvements that constitute repairs or alterations are potentially subject to the prevailing wage requirements and that the apprenticeship requirements do not apply.

(6) Multiple Owners. How should production from a qualifying facility with more than one person having an ownership interest in such facility be allocated to such persons for purposes of Section 45Z(f)(2)? Should rules similar to the rules under Section 45(e)(3) apply for this purpose? If so, which aspects of Section 45(e)(3) should apply without modification for this purpose and which aspects should be modified?

Response: The Secretary should consider permitting co-owners to agree in good faith what they expect their interest in gross sales to be and to respect credit allocations in accordance with such an agreement.

(7) Please provide comments on any other topics related to § 45Z credit that may require guidance.

Response: We ask that any guidance under § 45Z provide an example of the calculation under Section 45Z(b)(1)(A) for determining the emissions factor, including guidance as to the appropriate gallon equivalent in 45Z(a)(1)(A) (i.e., ethanol, gasoline, or diesel).

Along with the emissions rates, it would be helpful for the IRS to provide examples of how this emissions factor is to be calculated and then applied to determine the appropriate tax credit and suggest that the IRS look to CARB's average CI scores for the various types of feedstocks for emissions rates. We would urge the IRS to consider examples that involve RNG facilities, and confirmation that emissions rates can be negative (as is implied by Section 45Z(b)(1)(C)(i)) and, as a result, generate a credit amount in excess of \$1 per gallon (or gallon equivalent) if the prevailing wage and apprenticeship requirements are satisfied. As emissions rates drive the determination of the credit that is available, this guidance is imperative in making financial investment decisions as facilities will need to be financed in the near term and built prior to 2025 to fully benefit from the credit.

Finally, given the ability to sell Section 45Z credits under 6418:

1. The Secretary should consider allowing taxpayers flexibility to sell credits pursuant to 6418 that would have been allocated to one owner and allowing the remaining credits to be allocated to the other partner; and

2. The Secretary should consider permitting special allocations under IRC section 704 of (i) 45Z credits (and other eligible credits) and (ii) tax-exempt income from the sale of eligible 45Z credits (and other eligible credits) pursuant to IRC section 6418 in any manner agreed to by partners.

Thank you for your consideration.

Respectfully,

Daryl Maas

CEO, Maas Energy Works