



## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-117631-23]

RIN 1545-BQ97

### **Section 45V Credit for Production of Clean Hydrogen; Section 48(a)(15) Election To Treat Clean Hydrogen Production Facilities as Energy Property; Correction**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking; correction.

**SUMMARY:** This document corrects a notice of proposed rulemaking (REG-117631-23) published in the **Federal Register** on December 26, 2023, containing proposed regulations relating to the credit for production of clean hydrogen (clean hydrogen production credit) and the energy credit, as established and amended respectively by the Inflation Reduction Act of 2022,.

**DATES:** The public hearing on these proposed regulations is scheduled to be held on March 25, 2024, at 10 a.m. ET. Requests to speak and outlines of topics to be discussed at the public hearing must be received by March 4, 2024.

**ADDRESSES:** Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at <https://www.regulations.gov> (indicate IRS and REG-117631-23). Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (the Treasury Department) and the IRS will publish for public availability any comment submitted to its public docket. Send paper submissions to: CC:PA:01:PR

(REG-117631-23), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Office of Associate Chief Counsel (Passthroughs & Special Industries) at (202) 317–6853 (not a toll-free number); concerning submissions of comments or the public hearing, Vivian Hayes, (202) 317–6901 (not toll-free number) or by email to [publichearings@irs.gov](mailto:publichearings@irs.gov) (preferred).

## **SUPPLEMENTARY INFORMATION:**

### **Background**

The notice of proposed rulemaking (REG-117631-23) that is the subject of these corrections is under sections 45V and 48(a)(15) of the Internal Revenue Code.

### **Need for Correction**

As published, the notice of proposed rulemaking (REG–117631-23) contains errors that need to be corrected.

### **Correction of Publication**

Accordingly, the notice of proposed rulemaking (REG-117631-23), which was the subject of FR Doc. 2023–28359, published on December 26, 2023, at 88 FR 89220 is corrected:

1. On page 89221, the third column, the eighth line from the bottom of paragraph “b. Qualified Clean Hydrogen”, is corrected to read, “a U.S. territory (having the”.
2. On page 89222, the third column, the seventh line from the bottom of the first partial paragraph is corrected to read, “energy, beginning of construction, or prevailing wage and”.
3. On page 89223, the third column, the fifth line of the first partial paragraph is corrected to read, “addition to the production of qualified clean”.

4. On page 89223, the third column, in the sixth line of footnote 6. the language “H<sub>2</sub>.” is corrected to read, “H<sub>2</sub>.”.
5. On page 89223, the third column, the second line from the bottom of footnote 6. is corrected to read, “for 45VH2-GREET will be provided in IRS forms”.
6. On page 89224, the first column, under the heading “E. Qualified Clean Hydrogen”, the first full paragraph, the seventh line from the bottom of the paragraph is corrected to read, “1(a)(9)(i) would provide that, to”.
7. On page 89225, the last line of the first column is corrected to read, “Credit, or any successor form(s).”
8. On page 89226, the second column, paragraph “1. Process for Filing a Provisional Emissions Rate Petition”, the second line from the bottom of the paragraph is corrected to read, “*Clean Hydrogen Production Credit*, or any successor form(s), to”.
9. On page 89226, the third column, under the heading “3. Department of Energy Emissions Value Request Process” in the second paragraph, the language “§ 1.45V-5” is corrected to read, “§ 1.45V-4(c)(5)”, wherever it appears.
10. On page 89227, the second column, under the heading “C. Use of Energy Attribute Certificates” in the second line from the bottom of the first full paragraph the language, “GREET Model” is corrected to read “GREET model”.
11. On page 89227, the second column, footnote 9 is corrected to read, “<sup>9</sup> *EPA Letter, available at <https://home.treasury.gov/system/files/136/45V-NPRM-EPAletter.pdf>, DOE, "Assessing Lifecycle Greenhouse Gas Emissions Associated with Electricity Use for the Section 45V Clean Hydrogen*

Production Tax Credit," Washington, DC (2023), available at [www.energy.gov/45vresources](http://www.energy.gov/45vresources)."

12. On page 89227, the third column, the third line of the first partial paragraph is corrected to read, "generating facility rather than".
13. On page 89228, the second column, the last two lines of the first partial paragraph are corrected to read, "(PJM-GATS); and Western Renewable Energy Generation Information System (WREGIS)".
14. On page 89228, the second column, the seventh line from the bottom of the first full paragraph is corrected to read, "linked to a single region. The Midcontinent Independent System Operator, Inc. (MISO)".
15. On page 89228, the second column, the fourth line from the bottom of the first full paragraph is corrected to read, "as shown in the map located in the GREET".
16. On page 89228, the second column, the heading "2. Eligible Energy Attribute Certificate Requirements" is corrected to read, "2. Qualifying Energy Attribute Certificate Requirements".
17. On page 89228, the third column, the sixteenth and seventeenth lines from the top of the column are corrected to read, "require that qualifying EACs represent electricity produced in".
18. On page 89228, the third column, footnote 12 is corrected to read, "<sup>12</sup> EPA Letter, available at <https://home.treasury.gov/system/files/136/45V-NPRM-EPA-letter.pdf>, DOE, "Assessing Lifecycle Greenhouse Gas Emissions Associated with Electricity Use for the Section 45V Clean Hydrogen Production Tax Credit," Washington, DC (2023), available at [www.energy.gov/45vresources](http://www.energy.gov/45vresources)."

19. On page 89229, the third column, the third line from the top of the column is corrected to read, “lifecycle GHG emissions rate as determined”.
20. On page 89230, the first column, footnote 13 is corrected to read, “<sup>13</sup> DOE, “Assessing Lifecycle Greenhouse Gas Emissions Associated with Electricity Use for the Section 45V Clean Hydrogen Production Tax Credit,” Washington, DC (2023), available at [www.energy.gov/45vresources](http://www.energy.gov/45vresources).”.
21. On page 89231, the first column, in the second line from the bottom of the first full paragraph the language “state” is corrected to read, “State”.
22. On page 89231, the second column, in the third line from the bottom of the first full paragraph the language “state” is corrected to read “State”.
23. On page 89231, the third column, footnote 17 is corrected to read, “<sup>17</sup> DOE, “Assessing Lifecycle Greenhouse Gas Emissions Associated with Electricity Use for the Section 45V Clean Hydrogen Production Tax Credit,” Washington, DC (2023), available at [www.energy.gov/45vresources](http://www.energy.gov/45vresources).”.
24. On page 89232, the first column, footnote 20 is corrected to read, “<sup>20</sup> For example, see New York State Energy Research and Development Authority (NYSERDA), “Projected Emission Factors for New York State Grid Electricity,” NYSERDA Report Number 22-18 (2022), available at <https://www.nyserda.ny.gov/-/media/Project/Nyserda/Files/Publications/Energy-Analysis/22-18-Projected-Emission-Factors-for-New-York-Grid-Electricity.pdf>.”.
25. On page 89232, the first column, the second line from the bottom of footnote 21 is corrected to read, “marginal emissions rates at or near zero are defined as”.
26. On page 89232, the third column, in the seventh line from the top of the column the language “state” is corrected to read “State”.

27. On page 89233, the first column, the second partial paragraph the language “state” is corrected to read “State” wherever it appears.
28. On page 89233, the first column, in the eleventh line from the bottom of the second partial paragraph the language “federal” is corrected to read “Federal”.
29. On page 89233, the first column, footnote 22 is corrected to read, “<sup>22</sup> DOE, “Assessing Lifecycle Greenhouse Gas Emissions Associated with Electricity Use for the Section 45V Clean Hydrogen Production Tax Credit,” Washington, DC (2023), available at [www.energy.gov/45vresources](http://www.energy.gov/45vresources).”.
30. On page 89233, the second column, footnote 25. is corrected to read, “<sup>25</sup> DOE, “Assessing Lifecycle Greenhouse Gas Emissions Associated with Electricity Use for the Section 45V Clean Hydrogen Production Tax Credit,” Washington, DC (2023), available at [www.energy.gov/45vresources](http://www.energy.gov/45vresources).”.
31. On page 89234, the first column, the twentieth line from the bottom of the first paragraph is corrected to read, “claimed on the Form 7210, *Clean Hydrogen Production Credit*, or any successor form(s), or the data”.
32. On page 89234, the second column, the tenth and eleventh lines from the top of the second paragraph are corrected to read, “(as defined in section 638(1) or a U.S. territory (having the meaning of”.
33. On page 89235, the first column, the second line from the bottom of paragraph “F. General Information Required To Be Included in Verification Report” is corrected to read, “and calibration of the device(s) has been”.
34. On page 89235, the third column, the seventh line from the bottom of the first full paragraph is corrected to read, “kilogram of hydrogen but for the”.

35. On page 89236, the first column, under the heading “A. Overview” the sixth line from the top of the third paragraph is corrected to read, “45V(c)(3) and proposed §1.45V- “.
36. On page 89236, the third column, under the paragraph “2. Special Rule for Partnerships and S Corporations”, in the fourteenth line from the top of the paragraph the language “forms(s)” is corrected to read “form(s)”.
37. On page 89236, the third column, the third line from the bottom of the column is corrected to read, “claimant’s section 48 credit must be based on”.
38. On page 89237, the first column, the third line from the top of the column is corrected to read, “*Credit*, or any successor form(s), and”.
39. On page 89237, the first column, the second line from the bottom of the first partial paragraph the language “forms(s)” is corrected to read “form(s)”.
40. On page 89237, the first column, the third line from the bottom of the column is corrected to read, “5(d) through 1.45V-5(h); (ii) a”.
41. On page 89239, the first column, the fourth line from the top of the column is corrected to read, “generate electricity, or upgrade to”.
42. On page 89239, the first column, the thirteenth line from the bottom of the first partial paragraph is corrected to read, “prior to the taxable year in which the”.
43. On page 89239, the first column, the tenth line from the bottom of the first partial paragraph is corrected to read, “an emissions value consistent with”.
44. On page 89239, the second column, the third line of paragraph “(3)” is corrected to read, “for RNG certificates in book-and-claim”.
45. On page 89240, the second column, the fourth line from the top of the column is corrected to read, “The Treasury Department and the IRS are”.

46. On page 89240, the second column, the twenty-second line from the top of the first full paragraph is corrected to read, "Department and the IRS are considering".
47. On page 89240, the second column, the fourteenth line from the bottom of the first full paragraph is corrected to read, "The Treasury Department and the IRS".
48. On page 89241, the first column, the fourth line from the top of the column is corrected to read, "to the IRS will be performed by attaching".
49. On page 89241, the first column, the sixth line from the top of the column is corrected to read, "DOE to the filing of Form 7210, *Clean Hydrogen Production Credit*, or any successor form(s). The".
50. On page 89241, the first column, the ninth line from the top of the column is corrected to read, "Instructions for Form 7210. Form 7210 will be".
51. On page 89241, the first column, the ninth line of the second full paragraph is corrected to read, "§1.45V-5. The proposed regulations also".
52. On page 89241, the second column, the third line from the top of the column is corrected to read, "recordkeeping requirements for".
53. On page 89241, the second column, the sixteenth line from the top of the column is corrected to read, "an unrelated third party. The annual".
54. On page 89241, the second column, the sixth line from the bottom of the column is corrected to read, "Instructions for Form 3468. The revisions to".
55. On page 89242, the third column, the fourth line from the bottom of the first full paragraph is corrected to read, "their Federal income tax return or".
56. On page 89243, the second column, the second line from the top of the column is corrected to read, "entrance. In addition, all visitors must".



57. On page 89243, the second column, the seventh line of the third full paragraph is corrected to read, “regulation number REG-117631-23 and”.
58. On page 89243, the second column, the sixth line from the bottom of the column is corrected to read, “received by 5:00 p.m. ET on March 18,”.

**§1.45V-0 [Corrected]**

59. On page 89244, the second column, the entry for §1.45V-6(b) is corrected to read, “Retrofit of an existing facility (80/20 Rule.)”.
60. On page 89244, the second column, the entry for §1.45V-6(c)(4) is corrected to read, “Example 4: Retrofit of an existing facility (80/20 Rule).”.
61. On page 89244, the third column, the entry for 1.45V-6(c)(5) is corrected to read, “Example 5: Retrofit of an existing facility (80/20 Rule) and coordination with section 45Q credit previously allowed.”.

**§1.45V-1 [Corrected]**

62. On page 89245, the second column, the third line of paragraph (a)(7)(iii) is corrected to read, “addition to the production of qualified clean”.
63. On page 89245, the third column, in the eleventh and twelfth lines of paragraph (a)(7)(iv) remove the language “the regulations in this part under section 45V” and add in its place the language “the section 45V regulations”.
64. On page 89246, the first column, the second and third lines of paragraph (9)(i)(A) are corrected to read, “section 638(1) of the Code) or a U.S. territory, which, for purposes of”.
65. On page 89246, first column, in the fourth and fifth lines of paragraph (a)(9)(i)(A) remove the language “the regulations in this part under section 45V” and add in its place the language “the section 45V regulations”.

**§ 1.45V-2 [Corrected]**

66. On page 89246, the third column, the sixth line from the bottom of paragraph (a) is corrected to read, “Rule is satisfied will not be treated as”.
67. On page 89246, the third column, the second sentence of paragraph (b)(1) is corrected to read, “A purpose of section 45V and the regulations under section 45V (and so much of sections 6417 and 6418 and the regulations thereunder related to the section 45V credit) is to provide taxpayers an incentive to produce qualified clean hydrogen for a productive use.”.
68. On page 89246, the third column, in the second and third lines from the bottom of paragraph (b)(1) remove the language “regulations in this part under section 45V of the Code” and add in its place the language “section 45V regulations ”.
69. On page 89247, the first column, the fourth line from the bottom of paragraph (b)(2)(i) is corrected to read, “of the section 45V credit by claiming”.
70. On page 89247, the first column, the second line from the bottom of paragraph (b)(2)(i) is corrected to read, “credit through an election under”.

**§ 1.45V–4 [Corrected]**

71. On page 89248, the first column, the fifth line from the top of paragraph (c)(3) is corrected to read, “the DOE’s analytical assessment of the”.
72. On page 89248, the first column, the second line from the bottom of paragraph (c)(3) is corrected to read, “*Clean Hydrogen Production Credit*, or any successor form(s), to”.
73. On page 89248, the first column, the sixth and seventh lines of paragraph (c)(4) are corrected to read, “be deemed accepted. A taxpayer may rely upon an emissions value”.

74. On page 89248, the first column, in the second and third lines from the bottom of paragraph (c)(5), remove the language “regulations in this part under section 45V” and add in its place the language “section 45V regulations”.
75. On page 89248, the second column, the heading of paragraph (d) is corrected to read, “*Use of energy attribute certificates (EACs)*”- “.
76. On page 89248, the second column, the seventh and eighth lines of paragraph (d)(1) are corrected to read, “Secretary determines a PER for hydrogen produced at”.
77. On page 89248, the third column, the twelfth line of paragraph (d)(1) is corrected to read, “electricity used to produce hydrogen”.
78. On page 89249, the second column, fifth line from the bottom of paragraph (d)(3)(i)(C) is corrected to read, “megawatt hours (MWh) (2 MW”.
79. On page 89249, the second column, the second line from the bottom of paragraph (d)(3)(i)(C) is corrected to read, “hour of Power Plant’s production”.

**§ 1.45V–5 [Corrected]**

80. On page 89250, the second column, the first line of paragraph (e)(1)(ii) is corrected to read, “The qualified verifier has not been a”.

**§ 1.45V–6 [Corrected]**

81. On page 89251, the second column, the heading of paragraph (b) is corrected to read, “*Retrofit of an existing facility (80/20 Rule)*”.
82. On page 89252, the first column, the eighteenth and nineteenth lines of paragraph (c)(3)(i) are corrected to read, “respect to the new CCE located at Facility Y.”.

83. On page 89252, the first column, the heading of paragraph (c)(4) is corrected to read “*Example 4: Retrofit of an existing facility (80/20 Rule)*--“.
84. On page 89252, the first column, the heading of paragraph (c)(5) is corrected to read, “*Example 5: Retrofit of an existing facility (80/20 Rule) and coordination with section 45Q credit previously allowed—*”.

**§ 1.48–15 [Corrected]**

85. On page 89252, the third column, the fourth line from the bottom of paragraph (d)(2) is corrected to read, “successor form(s), with its partnership”.
86. On page 89254, the first and second columns, in paragraph (f)(5)(i) the language “0.44kg/CO<sub>2</sub>e” is corrected to read, “0.44kg of CO<sub>2</sub>e”, wherever it appears.
87. On page 89254, the first and second columns, in paragraph (f)(5)(i) the language “1.4kg/CO<sub>2</sub>e” is corrected to read, “1.4kg of CO<sub>2</sub>e”, wherever it appears.
- On page 89254, the second column, the fifth line of paragraph (f)(5)(ii) is corrected to read, “0.44kg of CO<sub>2</sub>e per kilogram of hydrogen, which is the rate specified”.
88. On page 89254, the third column, the sixth line from the bottom of paragraph (g) is corrected to read, “definition of a specified clean”.

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