



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

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: On December 26, 2023, the Department of the Treasury (Treasury Department) and the IRS issued a notice of proposed rulemaking (NPRM) relating to the credit for production of clean hydrogen and the election to treat clean hydrogen production facilities as energy property, as established and amended by the Inflation Reduction Act of 2022, respectively. The NPRM referred to the collection of information associated with the process for taxpayers to request an emissions value from the Department of Energy (DOE) to petition the Secretary of the Treasury or her delegate (Secretary) for a provisional emissions rate (PER). This document invites comments on the information collection related to that process.

DATES: Written comments must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Written comments to OIRA for the proposed information collection should be submitted within 30 days of this document's publication at <https://www.reginfo.gov/public/do/PRAMain>.

Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

A copy of the information collection request is available through the docket on the internet at <https://www.regulations.gov>.

In addition to the submission of comments to <https://www.reginfo.gov> as indicated above, a copy of all comments submitted to OIRA may also be submitted to the DOE at 45VemissionsRequest@ee.doe.gov, with the subject line “SNPRM Comment”.

FOR FURTHER INFORMATION CONTACT: For questions concerning this document, the Office of Chief Counsel (Passthroughs and Special Industries) at (202) 317-6853 (not a toll-free number). For questions concerning the submission of comments regarding the emissions value request process, Karen Dandridge at (202) 586-3388 or by email (preferred) at 45VemissionsRequest@ee.doe.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 13204 of Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA), added new sections 45V and 48(a)(15) of the Internal Revenue Code (Code) to provide a credit for the production of, and investment in, clean hydrogen. On December 26, 2023, the Treasury Department and the IRS published in the ***Federal Register*** proposed regulations to amend the Income Tax Regulations (26 CFR part 1) under sections 45V and 48(a)(15). 88 FR 89220.

The NPRM references the DOE’s process for applicants to request an emissions value from the DOE that could then be used to file a petition with the Secretary for determination of a PER as detailed in proposed §1.45V-4. The petition to the Secretary will be made by attaching a copy of the letter from the DOE stating the emissions value

to Form 7210, *Clean Hydrogen Production Credit* or Form 3468, *Investment Credit*.¹

This document contains supplemental information relating to the PER petition process for applicants that request an emissions value from the DOE and invites comments on the DOE's emissions value request process.

The public comment period for the NPRM closed on February 26, 2024, and a public hearing was held on March 24, 25, and 26, 2024. The public comments received are being considered. This document opens a 30-day period for comments on the DOE's emissions value request process. Comments received in response to this document must pertain to that process. Comments outside the scope of this document will not be considered.

Explanation of Provisions

This document supplements the guidance provided in the NPRM to specify the DOE's emissions value request process.

I. DOE Emissions Value Request Process

The Treasury Department and the IRS proposed that, to obtain an emissions value from the DOE based on the DOE's analytical assessment of the lifecycle greenhouse gas (GHG) emissions associated with a hydrogen production facility's production pathway, in addition to meeting the requirements set forth in the NPRM, an applicant must first complete a front-end engineering and design (FEED) study or similar indicia of project maturity, as determined by the DOE, and then request an emissions value from the DOE. The term "emissions value" means the DOE's analytical

¹ The PER petition filed with the Secretary is performed by attaching the emissions value obtained from the DOE to the filing of Form 7210 or Form 3468. The burden is included within the Forms 7210 and 3468 and their respective instructions. Forms 7210 and 3468 are, and will be, approved by OMB, in accordance with 5 CFR 1320.10, under the following OMB Control Numbers: 1545-0074 for individual filers, 1545-0123 for business filers, 1545-0047 for tax-exempt organization filers, and 1545-NEW for trust and estate filers of Form 7210 and 1545-0155 for trust and estate filers of Form 3468.

assessment of the lifecycle GHG emissions rate of a hydrogen production facility's hydrogen production process.²

A. FEED study

The NPRM provided that applicants may only request an emissions value after having completed a FEED study or similar indicia of project maturity, as determined by the DOE, such as project specification and cost estimate sufficient to inform a final investment decision. The DOE has determined that, at this time, a FEED study completed based on an Association for Advanced Cost Engineering Class 3 Cost Estimate is necessary to sufficiently indicate commercial project maturity for robust emissions analysis. The Treasury Department and the IRS continue to seek comments on whether alternative appropriate pathways to demonstrating project readiness exist. Comments received in response to the NPRM and this document will be considered and these requirements may be revised accordingly.

B. Emissions Value Request Application

In order to request an emissions value from the DOE for a given hydrogen facility, applicants must submit the following information to the DOE: (1) specific sections of the FEED study, as described in the DOE's emissions value request process instructions (Instructions); and (2) a completed Emissions Value Request Form, as described in the Instructions. Additionally, the Emissions Value Request Application may contain any additional information that may be beneficial to the DOE in completing a lifecycle GHG analysis of the hydrogen production pathway for which the applicant is requesting an emissions value. Such additional information would be optional, and the applicant's Emissions Value Request Application would be considered complete regardless of whether any additional information is provided.

² DOE's evaluation of lifecycle greenhouse gas emissions corresponds with how the term is defined in 26 U.S.C. 45V(c)(1).

In order to file an Emissions Value Request Application, applicants would first be required to send an email to the DOE at 45VemissionsRequest@ee.doe.gov, stating their intent to submit an Emissions Value Request Application and the name of the applicant's organization. The DOE would then send the applicant an email with a link to a secure folder to which the applicant would upload the Emissions Value Request Application.

Additional information about the emissions value request process will be available at: <https://www.reginfo.gov>.

II. Request for Comments

Comments are requested on the DOE's Emissions Value Request Application process, including (1) whether additional procedures should be implemented to effectuate the Emissions Value Request Application process; (2) information to be collected and whether additional information should be considered by the DOE in evaluating an Emissions Value Request Application; and (3) any other aspects of the emissions value request process.

Once approved by the Office of Management and Budget (OMB) under the DOE OMB Control Number 1910-NEW, notice will be given in the ***Federal Register*** that the emissions value request process is open.

Special Analyses

I. Regulatory Planning and Review

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

II. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA) generally requires that a Federal agency obtain the approval of OMB before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collection of information described in this document would include reporting and third-party disclosure requirements. This collection is necessary for certain hydrogen producers to obtain an emissions value which they may use to claim the section 45V credit, or the section 48 credit with respect to a specified clean hydrogen production facility. This information would generally be used by the DOE to assist applicants in obtaining their emissions values and may be provided to the IRS for tax compliance purposes.

This document addresses a collection of information related to submitting an Emissions Value Request Application and supporting documentation to the DOE to enable the DOE to provide an analytical assessment of the lifecycle GHG emissions of the applicant's facility's hydrogen production process. Prior to the opening of the emissions value request process, the DOE will publish on its website Instructions for submitting an Emissions Value Request Application and other application material at the following URL: <https://www.energy.gov/eere/emissions-value-request-process>.³

The Emissions Value Request Application will require that applicants provide specific sections of a FEED Study based on an ACE Class 3 Cost Estimate and other detailed hydrogen production and emissions information as described in this document. The information submitted with Emissions Value Request Applications would allow the DOE to prepare its analytical assessments of the hydrogen production pathways for

³ This link will not be live until the emissions value request process is available.

which applicants are requesting emissions values, which are necessary for hydrogen producers whose hydrogen production pathways are not included in the 45VH2-GREET model⁴ to petition the Secretary for a PER and which support DOE in updating the 45VH2-GREET model to include new hydrogen production pathways.⁵ To assist with the collection of information, the DOE will provide administration services for the emissions value request process. Among other things, the DOE will utilize Kiteworks file sharing system to receive and review Emissions Value Request Applications and to provide Response Letters to applicants. The DOE may provide information received or developed by the DOE to the IRS. These collection requirements will be submitted to OMB under 1910-NEW for review and approval in accordance with 5 CFR 1320.11. The likely respondents are businesses, individuals, and tax-exempt organizations.

A summary of paperwork burden estimates for the emissions value request process is as follows:

Estimated number of respondents: 100

Estimated burden per response: 40

Estimated frequency of response: 1

Estimated total burden hours: 4,000

Comments are requested on the collection requirements for the DOE's Emissions Value Request Application process. Written comments for the proposed information collection should be submitted through

<https://www.reginfo.gov/public/do/PRAMain>. Comments must contain the OMB Control

⁴ Available at: <https://www.energy.gov/eere/greet>.

⁵ 26 U.S.C. 45V(c)(1). Other examples of Federal lifecycle greenhouse gas emissions analysis include: DOE's *Interagency Statement announcing modifications to GREET to assess Sustainable Aviation Fuel lifecycle GHG emissions* (available at: <https://www.energy.gov/articles/interagency-statement-agencies-participating-sustainable-aviation-fuels-lifecycle-analysis>), and the Environmental Protection Agency's Model Comparison Technical Document, EPA-420-R-23-017 (available at: <https://www.epa.gov/renewable-fuel-standard-program/final-renewable-fuels-standards-rule-2023-2024-and-2025>). Additionally, updating the 45VH2-GREET model with new hydrogen production pathways will reduce the burden on hydrogen producers by allowing them to rely on 45VH2-GREET instead of submitting Emissions Value Request Applications to the DOE.

Number of the information collection request. They must also contain the docket number of the request, [REG-117631-23]. Find this particular information collection by selecting “*Currently under Review—Open for Public Comments*” then by using the search function. Comments on the collection of information should be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Comments are specifically requested concerning:

1. Whether the proposed collection of information is necessary for the proper performance of the functions of the DOE, including whether the information will have practical utility.
2. The accuracy of the estimated burden associated with the proposed collection of information.
3. How the quality, utility, and clarity of the information to be collected may be enhanced.
4. How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology.
5. Estimates of capital costs and costs of operation, maintenance, and purchase of services to provide the requested information.

Once approved by OMB under the DOE OMB Control Number 1910-NEW, notice will be given in the *Federal Register* that the emissions value request process is open.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedures Act (5 U.S.C. 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities. See the NPRM for the initial regulatory flexibility analysis.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of \$100 million (updated annually for inflation). This document does not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

V. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This document does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

Drafting Information

The principal author of this document is the Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department, the DOE, and the IRS participated in the development of the document.

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2024-07644 Filed: 4/10/2024 8:45 am; Publication Date: 4/11/2024]