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IRS expands safe harbor for Section 45Q carbon sequestration credit

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In brief

What happened?

Treasury and the IRS on August 14 issued Notice 2026-50, which expands and extends the safe harbor originally provided in Notice 2026-1 for claiming the carbon oxide sequestration credit under Section 45Q. The updated guidance expands the safe harbor to projects that capture qualified carbon oxide for use as a tertiary injectant in a qualified enhanced oil or natural gas recovery project (EOR project) and later subject that qualified carbon oxide to secure geological storage, addresses credit recapture determinations, and extends the applicability date of the safe harbor until further guidance is published.

Why is it important?

The EPA's proposed elimination of Subpart RR reporting—the framework that the Section 45Q regulations adopted to verify secure geological storage—threatened to strand billions of dollars in planned and operating carbon capture projects. Notice 2026-50 provides more certainty for these projects by preserving the existing compliance pathway for Section 45Q credit claims until a permanent replacement standard is established.

Actions to consider

Companies that claim the Section 45Q credit should review the expanded safe harbor provided in Notice 2026-50 and evaluate their ability to satisfy the independent certification requirements by the time they file their tax returns. Written comments on potential alternative standards for verifying secure geological storage are due October 30, 2026, offering companies an opportunity to shape the permanent compliance framework that will replace Subpart RR for purposes of the Section 45Q credit.

In detail

Background

Section 45Q of the Internal Revenue Code provides a per-metric-ton credit for qualified carbon oxide that is captured and either disposed of in secure geological storage, used in an EOR project and later subject to secure geological storage, or utilized.

Observation: Section 45Q was one of the few energy tax credits preserved and expanded by the 2025 One Big Beautiful Bill Act (OBBBA), which curtailed or repealed many other energy incentives that had been expanded by the Inflation Reduction Act of 2022, underscoring the credit's political durability and long-term relevance.

To claim the Section 45Q credit for secure geological storage, final regulations issued in 2021 require compliance with the applicable requirements of Subpart RR of the EPA's Greenhouse Gas Reporting Program. The Section 45Q regulations also provided that for EOR projects that engage in secure geological storage, a taxpayer may satisfy applicable requirements under Subpart RR, or the International Organization for Standardization (ISO) standards endorsed by the American National Standards Institute (ANSI) under CSA/ANSI ISO 27916:2019.

On September 16, 2025, the EPA issued proposed regulations to amend the Greenhouse Gas Reporting Program by in part, removing reporting obligations under Subpart RR, for reporting years after 2024. Subpart RR requires covered facilities to develop and implement an EPA-approved site-specific monitoring, reporting, and verification (MRV) plan and report the amount of carbon dioxide geologically stored using a mass balance approach and annual monitoring activities. Because Reg. 1.45Q-3(b) requires compliance with Subpart RR to demonstrate secure geological storage for purposes of the Section 45Q credit, the EPA's proposed removal would create a compliance gap for Section 45Q credit claimants because reporters would no longer be required to submit Annual Reports through the EPA's electronic reporting system (e-GGRT).

Notice 2026-1 and the expansion to EOR projects

In response to concerns raised by the energy sector that the EPA's proposed removal of Subpart RR would eliminate any method for substantiating volumes of qualified carbon oxide subject to secure geological storage, Treasury and the IRS provided an initial safe harbor in Notice 2026-1 for determining Section 45Q credit eligibility. However, the scope of Notice 2026-1 was limited because it applied only to dedicated projects that capture carbon oxide and then engage in secure geological storage or to a project that engages in secure geological sequestration after carbon oxide is injected into an oil reservoir that is not a qualified enhanced oil recovery project under Section 43(c)(2) due to circumstances such as the first injection of a tertiary injectant occurring before 1991, or because a petroleum engineer's certification was not timely filed. Additionally, the safe harbor provided under Notice 2026-1 only applies to secure geological storage occurring in calendar year 2025.

Notice 2026-50 expands the safe harbor to include qualified carbon oxide used in an EOR project and later subjected to secure geological storage, if the company received an EPA-approved MRV plan for the project and the secure geological storage complied with Subpart RR as in effect on December 31, 2025. The EPA-approved MRV plan requirement applies to all projects using the safe harbor—not just EOR projects—and the MRV plan must apply to the relevant dates of secure geological storage.

Observation: Without this expansion of the safe harbor to projects that engage in EOR and later secure geological storage, taxpayers claiming the Section 45Q credit for these projects potentially would be unable to transition from the Subpart RR standard to the CSA/ANSI ISO 27916:2019 standard or other available reporting standards in time to claim the Section 45Q credit for 2025, or would incur significant costs, timeline constraints, and compliance issues in trying to do so.

Additionally, the safe harbor provided in Notice 2026-50 is further expanded to cover a third category of projects: certain oil reservoirs that do not qualify as EOR projects under Section 43—for example, because the first injection occurred before 1991—but that have permanently ceased production and obtained a Class VI permit.

Observation: By allowing EOR projects to be eligible for the safe harbor, Treasury and the IRS effectively preserve the status quo compliance pathway for taxpayers that claim the Section 45Q credit for dedicated secure geological storage and for EOR projects that conduct secure geological storage.

Compliance with certification requirements

Under the safe harbor, in the event of e-GGRT unavailability (i.e., when the EPA does not launch the e-GGRT system by March 31 of the calendar year immediately following the relevant reporting year), a taxpayer is considered to have satisfied the certification requirements of Reg. 1.45Q-3(d) if it submits its Annual Report to a qualified independent engineer or geologist and obtains the required certification. The key requirements are:

- The Annual Report must contain all information, documentation, mass balance accounting calculations, and monitoring and containment assurance data that would have been required under Subpart RR as in effect on December 31, 2025.
- The taxpayer must submit the Annual Report to a qualified independent engineer or geologist who is duly registered or certified in any state.
- The independent engineer or geologist must certify that (1) the capture and disposal complies with the specific regulatory pathway applicable to the project—dedicated secure geological storage or EOR followed by secure geological storage—under Subpart RR as in effect on

December 31, 2025; and (2) the information in the Annual Report is accurate and complete.

- The certification must include an affidavit of independence from the taxpayer (and from the credit claimant if a Section 45Q(f)(3)(B) election has been made), made under penalties of perjury.
- Certifications must be made annually.

Observation: The requirement for independent certification—rather than EPA submission through e-GGRT—shifts the verification burden from the government to qualified third parties. Companies should begin identifying and engaging qualified independent engineers or geologists promptly, as demand for these services may increase. Note that documentation and certification must be completed by the time the taxpayer files its relevant tax return (including extensions). Taxpayers with a fiscal year-end should carefully map their compliance timeline accordingly.

Notice 2026-1 and the application to recapture requirements

A recapture event occurs when qualified carbon oxide for which a Section 45Q credit previously has been claimed ceases to be disposed of in secure geological storage by leaking into the atmosphere during the three-year recapture period. Under a mass balance approach that is required by Subpart RR, a taxpayer must measure the amount of qualified carbon oxide it injects into secure geological storage during a tax year and subtract the amount of any qualified carbon oxide that ceases to be disposed of in secure geological storage for which the taxpayer claimed a Section 45Q credit during the same tax year. If the amount of qualified carbon oxide that ceased to be disposed of in secure geological storage exceeds the amount the taxpayer injected in the same tax year, then the taxpayer must recapture a corresponding amount of Section 45Q credits claimed for that tax year.

Notice 2026-50 clarifies that the safe harbor also applies to recapture determinations under Reg. 1.45Q-5(a) and (c). Under the expanded safe harbor, a taxpayer will be considered to have satisfied the recapture requirements if its certified Annual Report for reporting year 2025 or later includes determinations (made pursuant to the applicable requirements of Subpart RR as in effect on December 31, 2025) of (1) the quantity of qualified carbon oxide that the taxpayer injected into secure geological storage during the calendar year; and (2) the quantity, if any, of qualified carbon oxide that has leaked into the atmosphere for which the taxpayer claimed a Section 45Q credit.

Observation: By expressly addressing recapture, Treasury and the IRS have confirmed the Subpart RR-based measurement methodology remains valid under the safe harbor for the initial credit determination as well as the ongoing obligation to monitor for recapture events, such as leakage into the atmosphere.

Applicability date extension

The modified safe harbor provided by Notice 2026-50 applies to secure geological storage occurring on or after January 1, 2025, and on or before December 31 of the calendar year in which Treasury and the IRS publish further interim guidance in the Internal Revenue Bulletin or proposed regulations in the

Federal Register addressing Section 45Q measurement, reporting, and verification requirements. The safe harbor is only available for a tax year if the EPA does not launch the e-GGRT system by March 31 of the calendar year immediately following the relevant reporting year.

Observation: The use of an open-ended applicability date in lieu of the single-year window in Notice 2026-1 provides meaningful long-term certainty for project developers and investors. Projects with multi-year or multi-decade storage horizons now have a reliable compliance standard.

Request for comments on alternative standards

Notice 2026-50 includes a specific request for comments on the appropriate standard to replace Subpart RR for demonstrating compliance with requirements for secure geological storage for purposes of the Section 45Q credit. Treasury and the IRS specifically requested input on whether the ISO 27914:2026 standard—Carbon dioxide capture, transportation and storage—Geological storage (Ed. 2, 2026), published in March 2026—could serve as an alternative standard, including its verification methods. Written comments are due by October 30, 2026.

Observation: The explicit mention of the ISO 27914:2026 standard signals that Treasury and the IRS are actively considering this standard as a potential long-term replacement for Subpart RR as a compliance methodology for the Section 45Q credit. Stakeholders with views on the suitability of the ISO 27914:2026 standard—or other measurement, reporting, and verification frameworks—should consider submitting comments by the October 30, 2026, deadline to influence the final regulations.

Let’s talk

For a deeper discussion of how this issue might affect your business, please contact:

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