

## AMENDMENTS

2015—Subsec. (a). Pub. L. 114-113, §122(b)(1), struck out “, in the case of an eligible small business employer” after “section 38”.

Subsec. (b)(3). Pub. L. 114-113, §122(b)(2), amended par. (3) generally. Prior to amendment, par. (3) defined “eligible small business employer”.

Subsec. (f). Pub. L. 114-113, §122(a), struck out subsec. (f). Text read as follows: “This section shall not apply to any payments made after December 31, 2014.”

2014—Subsec. (f). Pub. L. 113-295 substituted “December 31, 2014” for “December 31, 2013”.

2013—Subsec. (f). Pub. L. 112-240 substituted “December 31, 2013” for “December 31, 2011”.

2010—Subsec. (f). Pub. L. 111-312 substituted “December 31, 2011” for “December 31, 2009”.

## Statutory Notes and Related Subsidiaries

## EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114-113, div. Q, title I, §122(c), Dec. 18, 2015, 129 Stat. 3052, provided that:

“(1) EXTENSION.—The amendment made by subsection (a) [amending this section] shall apply to payments made after December 31, 2014.

“(2) MODIFICATION.—The amendments made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 2015.”

## EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113-295, div. A, title I, §118(b), Dec. 19, 2014, 128 Stat. 4015, provided that: “The amendment made by this section [amending this section] shall apply to payments made after December 31, 2013.”

## EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112-240, title III, §308(b), Jan. 2, 2013, 126 Stat. 2329, provided that: “The amendment made by this section [amending this section] shall apply to payments made after December 31, 2011.”

## EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-312, title VII, §736(b), Dec. 17, 2010, 124 Stat. 3318, provided that: “The amendment made by this section [amending this section] shall apply to payments made after December 31, 2009.”

## EFFECTIVE DATE

Section applicable to amounts paid after June 17, 2008, see section 111(e) of Pub. L. 110-245, set out as an Effective Date of 2008 Amendment note under section 38 of this title.

## § 45Q. Credit for carbon oxide sequestration

## (a) General rule

For purposes of section 38, the carbon oxide sequestration credit for any taxable year is an amount equal to the sum of—

(1) \$20 per metric ton of qualified carbon oxide which is—

(A) captured by the taxpayer using carbon capture equipment which is originally placed in service at a qualified facility before the date of the enactment of the Bipartisan Budget Act of 2018, and

(B) disposed of by the taxpayer in secure geological storage and not used by the taxpayer as described in paragraph (2)(B),

(2) \$10 per metric ton of qualified carbon oxide which is—

(A) captured by the taxpayer using carbon capture equipment which is originally placed in service at a qualified facility before the date of the enactment of the Bipartisan Budget Act of 2018, and

(B)(i) used by the taxpayer as a tertiary injectant in a qualified enhanced oil or natural gas recovery project and disposed of by the taxpayer in secure geological storage, or

(ii) utilized by the taxpayer in a manner described in subsection (f)(5),

(3) the applicable dollar amount (as determined under subsection (b)(1)) per metric ton of qualified carbon oxide which is—

(A) captured by the taxpayer using carbon capture equipment which is originally placed in service at a qualified facility on or after the date of the enactment of the Bipartisan Budget Act of 2018, during the 12-year period beginning on the date the equipment was originally placed in service, and

(B) disposed of by the taxpayer in secure geological storage and not used by the taxpayer as described in paragraph (4)(B), and

(4) the applicable dollar amount (as determined under subsection (b)(1)) per metric ton of qualified carbon oxide which is—

(A) captured by the taxpayer using carbon capture equipment which is originally placed in service at a qualified facility on or after the date of the enactment of the Bipartisan Budget Act of 2018, during the 12-year period beginning on the date the equipment was originally placed in service, and

(B)(i) used by the taxpayer as a tertiary injectant in a qualified enhanced oil or natural gas recovery project and disposed of by the taxpayer in secure geological storage, or

(ii) utilized by the taxpayer in a manner described in subsection (f)(5).

## (b) Applicable dollar amount; additional equipment; election

## (1) Applicable dollar amount

## (A) In general

Except as provided in subparagraph (B) or (C), the applicable dollar amount shall be an amount equal to—

(i) for any taxable year beginning in a calendar year after 2016 and before 2027—

(I) for purposes of paragraph (3) of subsection (a), \$17, and

(II) for purposes of paragraph (4) of such subsection, \$12, and

(ii) for any taxable year beginning in a calendar year after 2026—

(I) for purposes of paragraph (3) of subsection (a), an amount equal to the product of \$17 and the inflation adjustment factor for such calendar year determined under section 43(b)(3)(B) for such calendar year, determined by substituting “2025” for “1990”, and

(II) for purposes of paragraph (4) of such subsection, an amount equal to the product of \$12 and the inflation adjustment factor for such calendar year determined under section 43(b)(3)(B) for such calendar year, determined by substituting “2025” for “1990”.

## (B) Special rule for direct air capture facilities

In the case of any qualified facility described in subsection (d)(2)(A) which is

placed in service after December 31, 2022, the applicable dollar amount shall be an amount equal to the applicable dollar amount otherwise determined with respect to such qualified facility under subparagraph (A), except that such subparagraph shall be applied—

- (i) by substituting “\$36” for “\$17” each place it appears, and
- (ii) by substituting “\$26” for “\$12” each place it appears.

**(C) Applicable dollar amount for additional carbon capture equipment**

In the case of any qualified facility which is placed in service before January 1, 2023, if any additional carbon capture equipment is installed at such facility and such equipment is placed in service after December 31, 2022, the applicable dollar amount shall be an amount equal to the applicable dollar amount otherwise determined under this paragraph, except that subparagraph (B) shall be applied—

- (i) by substituting “before January 1, 2023” for “after December 31, 2022”, and
- (ii) by substituting “the additional carbon capture equipment installed at such qualified facility” for “such qualified facility”.

**(D) Rounding**

The applicable dollar amount determined under subparagraph (A), (B), or (C) shall be rounded to the nearest cent.

**(2) Installation of additional carbon capture equipment on existing qualified facility**

In the case of a qualified facility placed in service before the date of the enactment of the Bipartisan Budget Act of 2018, for which additional carbon capture equipment is placed in service on or after the date of the enactment of such Act, the amount of qualified carbon oxide which is captured by the taxpayer shall be equal to—

- (A) for purposes of paragraphs (1)(A) and (2)(A) of subsection (a), the lesser of—

- (i) the total amount of qualified carbon oxide captured at such facility for the taxable year, or
- (ii) the total amount of the carbon dioxide capture capacity of the carbon capture equipment in service at such facility on the day before the date of the enactment of the Bipartisan Budget Act of 2018, and

- (B) for purposes of paragraphs (3)(A) and (4)(A) of such subsection, an amount (not less than zero) equal to the excess of—

- (i) the amount described in clause (i) of subparagraph (A), over
- (ii) the amount described in clause (ii) of such subparagraph.

**(3) Election**

For purposes of determining the carbon oxide sequestration credit under this section, a taxpayer may elect to have the dollar amounts applicable under paragraph (1) or (2) of subsection (a) apply in lieu of the dollar amounts applicable under paragraph (3) or (4) of such subsection for each metric ton of qualified carbon oxide which is captured by

the taxpayer using carbon capture equipment which is originally placed in service at a qualified facility on or after the date of the enactment of the Bipartisan Budget Act of 2018.

**(c) Qualified carbon oxide**

For purposes of this section—

**(1) In general**

The term “qualified carbon oxide” means—

- (A) any carbon dioxide which—

- (i) is captured from an industrial source by carbon capture equipment which is originally placed in service before the date of the enactment of the Bipartisan Budget Act of 2018,

- (ii) would otherwise be released into the atmosphere as industrial emission of greenhouse gas or lead to such release, and

- (iii) is measured at the source of capture and verified at the point of disposal, injection, or utilization,

- (B) any carbon dioxide or other carbon oxide which—

- (i) is captured from an industrial source by carbon capture equipment which is originally placed in service on or after the date of the enactment of the Bipartisan Budget Act of 2018,

- (ii) would otherwise be released into the atmosphere as industrial emission of greenhouse gas or lead to such release, and

- (iii) is measured at the source of capture and verified at the point of disposal, injection, or utilization, or

- (C) in the case of a direct air capture facility, any carbon dioxide which—

- (i) is captured directly from the ambient air, and

- (ii) is measured at the source of capture and verified at the point of disposal, injection, or utilization.

**(2) Recycled carbon oxide**

The term “qualified carbon oxide” includes the initial deposit of captured carbon oxide used as a tertiary injectant. Such term does not include carbon oxide that is recaptured, recycled, and re-injected as part of the enhanced oil and natural gas recovery process.

**(d) Qualified facility**

For purposes of this section, the term “qualified facility” means any industrial facility or direct air capture facility—

- (1) the construction of which begins before January 1, 2033, and either—

- (A) construction of carbon capture equipment begins before such date, or

- (B) the original planning and design for such facility includes installation of carbon capture equipment, and

- (2) which—

- (A) in the case of a direct air capture facility, captures not less than 1,000 metric tons of qualified carbon oxide during the taxable year,

- (B) in the case of an electricity generating facility—

- (i) captures not less than 18,750 metric tons of qualified carbon oxide during the taxable year, and

(ii) with respect to any carbon capture equipment for the applicable electric generating unit at such facility, has a capture design capacity of not less than 75 percent of the baseline carbon oxide production of such unit, or

(C) in the case of any other facility, captures not less than 12,500 metric tons of qualified carbon oxide during the taxable year.

**(e) Definitions**

For purposes of this section—

**(1) Applicable electric generating unit**

The term “applicable electric generating unit” means the principal electric generating unit for which the carbon capture equipment is originally planned and designed.

**(2) Baseline carbon oxide production**

**(A) In general**

The term “baseline carbon oxide production” means either of the following:

(i) In the case of an applicable electric generating unit which was originally placed in service more than 1 year prior to the date on which construction of the carbon capture equipment begins, the average annual carbon oxide production, by mass, from such unit during—

(I) in the case of an applicable electric generating unit which was originally placed in service more than 1 year prior to the date on which construction of the carbon capture equipment begins and on or after the date which is 3 years prior to the date on which construction of such equipment begins, the period beginning on the date such unit was placed in service and ending on the date on which construction of such equipment began, and

(II) in the case of an applicable electric generating unit which was originally placed in service more than 3 years prior to the date on which construction of the carbon capture equipment begins, the 3 years with the highest annual carbon oxide production during the 12-year period preceding the date on which construction of such equipment began.

(ii) In the case of an applicable electric generating unit which—

(I) as of the date on which construction of the carbon capture equipment begins, is not yet placed in service, or

(II) was placed in service during the 1-year period prior to the date on which construction of the carbon capture equipment begins,

the designed annual carbon oxide production, by mass, as determined based on an assumed capacity factor of 60 percent.

**(B) Capacity factor**

The term “capacity factor” means the ratio (expressed as a percentage) of the actual electric output from the applicable electric generating unit to the potential electric output from such unit.

**(3) Direct air capture facility**

**(A) In general**

Subject to subparagraph (B), the term “direct air capture facility” means any facility which uses carbon capture equipment to capture carbon dioxide directly from the ambient air.

**(B) Exception**

The term “direct air capture facility” shall not include any facility which captures carbon dioxide—

- (i) which is deliberately released from naturally occurring subsurface springs, or
- (ii) using natural photosynthesis.

**(4) Qualified enhanced oil or natural gas recovery project**

The term “qualified enhanced oil or natural gas recovery project” has the meaning given the term “qualified enhanced oil recovery project” by section 43(c)(2), by substituting “crude oil or natural gas” for “crude oil” in subparagraph (A)(i) thereof.

**(5) Tertiary injectant**

The term “tertiary injectant” has the same meaning as when used within section 193(b)(1).

**(f) Special rules**

**(1) Only qualified carbon oxide captured and disposed of or used within the united states taken into account**

The credit under this section shall apply only with respect to qualified carbon oxide the capture and disposal, use, or utilization of which is within—

- (A) the United States (within the meaning of section 638(1)), or
- (B) a possession of the United States (within the meaning of section 638(2)).

**(2) Secure geological storage**

The Secretary, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, and the Secretary of the Interior, shall establish regulations for determining adequate security measures for the geological storage of qualified carbon oxide under subsection (a) such that the qualified carbon oxide does not escape into the atmosphere. Such term shall include storage at deep saline formations, oil and gas reservoirs, and unminable coal seams under such conditions as the Secretary may determine under such regulations.

**(3) Credit attributable to taxpayer**

**(A) In general**

Except as provided in subparagraph (B) or in any regulations prescribed by the Secretary, any credit under this section shall be attributable to—

- (i) in the case of qualified carbon oxide captured using carbon capture equipment which is originally placed in service at a qualified facility before the date of the enactment of the Bipartisan Budget Act of 2018, the person that captures and physically or contractually ensures the disposal, utilization, or use as a tertiary injectant of such qualified carbon oxide, and

(ii) in the case of qualified carbon oxide captured using carbon capture equipment which is originally placed in service at a qualified facility on or after the date of the enactment of the Bipartisan Budget Act of 2018, the person that owns the carbon capture equipment and physically or contractually ensures the capture and disposal, utilization, or use as a tertiary injectant of such qualified carbon oxide.

#### **(B) Election**

If the person described in subparagraph (A) makes an election under this subparagraph in such time and manner as the Secretary may prescribe by regulations, the credit under this section—

(i) shall be allowable to the person that disposes of the qualified carbon oxide, utilizes the qualified carbon oxide, or uses the qualified carbon oxide as a tertiary injectant, and

(ii) shall not be allowable to the person described in subparagraph (A).

#### **(4) Recapture**

The Secretary shall, by regulations, provide for recapturing the benefit of any credit allowable under subsection (a) with respect to any qualified carbon oxide which ceases to be captured, disposed of, or used as a tertiary injectant in a manner consistent with the requirements of this section.

#### **(5) Utilization of qualified carbon oxide**

##### **(A) In general**

For purposes of this section, utilization of qualified carbon oxide means—

(i) the fixation of such qualified carbon oxide through photosynthesis or chemosynthesis, such as through the growing of algae or bacteria,

(ii) the chemical conversion of such qualified carbon oxide to a material or chemical compound in which such qualified carbon oxide is securely stored, or

(iii) the use of such qualified carbon oxide for any other purpose for which a commercial market exists (with the exception of use as a tertiary injectant in a qualified enhanced oil or natural gas recovery project), as determined by the Secretary.

##### **(B) Measurement**

##### **(i) In general**

For purposes of determining the amount of qualified carbon oxide utilized by the taxpayer under paragraph (2)(B)(ii) or (4)(B)(ii) of subsection (a), such amount shall be equal to the metric tons of qualified carbon oxide which the taxpayer demonstrates, based upon an analysis of lifecycle greenhouse gas emissions and subject to such requirements as the Secretary, in consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency, determines appropriate, were—

(I) captured and permanently isolated from the atmosphere, or

(II) displaced from being emitted into the atmosphere,

through use of a process described in subparagraph (A).

##### **(ii) Lifecycle greenhouse gas emissions**

For purposes of clause (i), the term “lifecycle greenhouse gas emissions” has the same meaning given such term under subparagraph (H) of section 211(o)(1) of the Clean Air Act (42 U.S.C. 7545(o)(1)), as in effect on the date of the enactment of the Bipartisan Budget Act of 2018, except that “product” shall be substituted for “fuel” each place it appears in such subparagraph.

#### **(6) Election for applicable facilities**

##### **(A) In general**

For purposes of this section, in the case of an applicable facility, for any taxable year in which such facility captures not less than 500,000 metric tons of qualified carbon oxide during the taxable year, the person described in paragraph (3)(A)(ii) may elect to have such facility, and any carbon capture equipment placed in service at such facility, deemed as having been placed in service on the date of the enactment of the Bipartisan Budget Act of 2018.

##### **(B) Applicable facility**

For purposes of this paragraph, the term “applicable facility” means a qualified facility—

(i) which was placed in service before the date of the enactment of the Bipartisan Budget Act of 2018, and

(ii) for which no taxpayer claimed a credit under this section in regards to such facility for any taxable year ending before the date of the enactment of such Act.

#### **(7) Inflation adjustment**

In the case of any taxable year beginning in a calendar year after 2009, there shall be substituted for each dollar amount contained in paragraphs (1) and (2) of subsection (a) an amount equal to the product of—

(A) such dollar amount, multiplied by

(B) the inflation adjustment factor for such calendar year determined under section 43(b)(3)(B) for such calendar year, determined by substituting “2008” for “1990”.

#### **(8) Credit reduced for tax-exempt bonds**

Rules similar to the rule under section 45(b)(3) shall apply for purposes of this section.

#### **(9) Election**

For purposes of paragraphs (3) and (4) of subsection (a), a person described in paragraph (3)(A)(ii) may elect, at such time and in such manner as the Secretary may prescribe, to have the 12-year period begin on the first day of the first taxable year in which a credit under this section is claimed with respect to carbon capture equipment which is originally placed in service at a qualified facility on or after the date of the enactment of the Bipartisan Budget Act of 2018 (after application of paragraph (6), where applicable) if—

(A) no taxpayer claimed a credit under this section with respect to such carbon capture equipment for any prior taxable year,

(B) the qualified facility at which such carbon capture equipment is placed in service is located in an area affected by a federally-declared disaster (as defined by section 165(i)(5)(A)) after the carbon capture equipment is originally placed in service, and

(C) such federally-declared disaster results in a cessation of the operation of the qualified facility or the carbon capture equipment after such equipment is originally placed in service.

**(g) Application of section for certain carbon capture equipment**

In the case of any carbon capture equipment placed in service before the date of the enactment of the Bipartisan Budget Act of 2018, the credit under this section shall apply with respect to qualified carbon oxide captured using such equipment before the earlier of January 1, 2023, and the end of the calendar year in which the Secretary, in consultation with the Administrator of the Environmental Protection Agency, certifies that, during the period beginning after October 3, 2008, a total of 75,000,000 metric tons of qualified carbon oxide have been taken into account in accordance with—

(1) subsection (a) of this section, as in effect on the day before the date of the enactment of the Bipartisan Budget Act of 2018, and

(2) paragraphs (1) and (2) of subsection (a) of this section.

**(h) Increased credit amount for qualified facilities and carbon capture equipment**

**(1) In general**

In the case of any qualified facility or any carbon capture equipment which satisfy the requirements of paragraph (2), the amount of the credit determined under subsection (a) shall be equal to such amount (determined without regard to this sentence) multiplied by 5.

**(2) Requirements**

The requirements described in this paragraph are that—

(A) with respect to any qualified facility the construction of which begins on or after the date that is 60 days after the Secretary publishes guidance with respect to the requirements of paragraphs (3)(A) and (4), as well as any carbon capture equipment placed in service at such facility—

(i) subject to subparagraph (B) of paragraph (3), the taxpayer satisfies the requirements under subparagraph (A) of such paragraph with respect to such facility and equipment, and

(ii) the taxpayer satisfies the requirements under paragraph (4) with respect to the construction of such facility and equipment,

(B) with respect to any carbon capture equipment the construction of which begins on or after the date that is 60 days after the Secretary publishes guidance with respect to the requirements of paragraphs (3)(A) and (4), and which is installed at a qualified facility the construction of which began prior to such date—

(i) subject to subparagraph (B) of paragraph (3), the taxpayer satisfies the requirements under subparagraph (A) of such paragraph with respect to such equipment, and

(ii) the taxpayer satisfies the requirements under paragraph (4) with respect to the construction of such equipment, or

(C) the construction of carbon capture equipment begins prior to the date that is 60 days after the Secretary publishes guidance with respect to the requirements of paragraphs (3)(A) and (4), and such equipment is installed at a qualified facility the construction of which begins prior to such date.

**(3) Prevailing wage requirements**

**(A) In general**

The requirements described in this subparagraph with respect to any qualified facility and any carbon capture equipment placed in service at such facility are that the taxpayer shall ensure that any laborers and mechanics employed by the taxpayer or any contractor or subcontractor in—

(i) the construction of such facility or equipment, and

(ii) with respect to any taxable year, for any portion of such taxable year which is within the period described in paragraph (3)(A) or (4)(A) of subsection (a), the alteration or repair of such facility or such equipment,

shall be paid wages at rates not less than the prevailing rates for construction, alteration, or repair of a similar character in the locality in which such facility and equipment are located as most recently determined by the Secretary of Labor, in accordance with subchapter IV of chapter 31 of title 40, United States Code. For purposes of determining an increased credit amount under paragraph (1) for a taxable year, the requirement under clause (ii) of this subparagraph is applied to such taxable year in which the alteration or repair of qualified facility occurs.

**(B) Correction and penalty related to failure to satisfy wage requirements**

Rules similar to the rules of section 45(b)(7)(B) shall apply.

**(4) Apprenticeship requirements**

Rules similar to the rules of section 45(b)(8) shall apply.

**(5) Regulations and guidance**

The Secretary shall issue such regulations or other guidance as the Secretary determines necessary to carry out the purposes of this subsection, including regulations or other guidance which provides for requirements for recordkeeping or information reporting for purposes of administering the requirements of this subsection.

**(i) Regulations**

The Secretary may prescribe such regulations and other guidance as may be necessary or appropriate to carry out this section, including regulations or other guidance to—

(1) ensure proper allocation under subsection (a) for qualified carbon oxide captured by a taxpayer during the taxable year ending after the date of the enactment of the Bipartisan Budget Act of 2018,

(2) determine whether a facility satisfies the requirements under subsection (d)(1) during such taxable year, and

(3) for purposes of subsection (d)(2)(B)(ii), adjust the baseline carbon oxide production with respect to any applicable electric generating unit at any electricity generating facility if, after the date on which the carbon capture equipment is placed in service, modifications which are chargeable to capital account are made to such unit which result in a significant increase or decrease in carbon oxide production.

(Added Pub. L. 110-343, div. B, title I, §115(a), Oct. 3, 2008, 122 Stat. 3829; amended Pub. L. 111-5, div. B, title I, §1131(a), (b), Feb. 17, 2009, 123 Stat. 325; Pub. L. 113-295, div. A, title II, §209(j)(1), Dec. 19, 2014, 128 Stat. 4030; Pub. L. 115-123, div. D, title II, §41119(a), Feb. 9, 2018, 132 Stat. 162; Pub. L. 116-260, div. EE, title I, §121, Dec. 27, 2020, 134 Stat. 3051; Pub. L. 117-58, div. H, title IV, §80402(e), Nov. 15, 2021, 135 Stat. 1334; Pub. L. 117-169, title I, §13104(a)(1), (2)(A), (b)-(h), Aug. 16, 2022, 136 Stat. 1924-1928.)

#### INFLATION ADJUSTED ITEMS FOR CERTAIN TAX YEARS

*For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table below.*

#### Editorial Notes

##### REFERENCES IN TEXT

The date of the enactment of the Bipartisan Budget Act of 2018 and the date of the enactment of such Act, referred to in text, is the date of enactment of Pub. L. 115-123, which was approved Feb. 9, 2018.

##### AMENDMENTS

2022—Subsec. (b)(1)(A). Pub. L. 117-169, §13104(c)(2)(A), substituted “Except as provided in subparagraph (B) or (C), the applicable dollar amount” for “The applicable dollar amount” in introductory provisions.

Subsec. (b)(1)(A)(i)(I). Pub. L. 117-169, §13104(b)(1)(A), substituted “\$17” for “the dollar amount established by linear interpolation between \$22.66 and \$50 for each calendar year during such period”.

Subsec. (b)(1)(A)(i)(II). Pub. L. 117-169, §13104(b)(1)(B), substituted “\$12” for “the dollar amount established by linear interpolation between \$12.83 and \$35 for each calendar year during such period”.

Subsec. (b)(1)(A)(ii)(I). Pub. L. 117-169, §13104(b)(2)(A), substituted “\$17” for “\$50”.

Subsec. (b)(1)(A)(ii)(II). Pub. L. 117-169, §13104(b)(2)(B), substituted “\$12” for “\$35”.

Subsec. (b)(1)(B), (C). Pub. L. 117-169, §13104(c)(1)(B), added subpars. (B) and (C). Former subpar. (B) redesignated (D).

Subsec. (b)(1)(D). Pub. L. 117-169, §13104(c)(2)(B), substituted “subparagraph (A), (B), or (C)” for “subparagraph (A)”.

Pub. L. 117-169, §13104(c)(1)(A), redesignated subpar. (B) as (D).

Subsec. (d). Pub. L. 117-169, §13104(a)(1), amended subsec. (d) generally. Prior to amendment, subsec. (d) defined qualified facility.

Subsec. (e). Pub. L. 117-169, §13104(a)(2)(A), added pars. (1) and (2) and redesignated former pars. (1) to (3) as (3) to (5), respectively.

Subsec. (f)(3). Pub. L. 117-169, §13104(e)(1), struck out par. (3) which had appeared after par. (7) and related to credit reduced for certain tax-exempt bonds.

Subsec. (f)(8). Pub. L. 117-169, §13104(e)(2), added par. (8).

Subsec. (f)(9). Pub. L. 117-169, §13104(g), added par. (9).

Subsec. (g). Pub. L. 117-169, §13104(f), inserted “the earlier of January 1, 2023, and” before “the end of the calendar year” in introductory provisions.

Subsecs. (h), (i). Pub. L. 117-169, §13104(d), added subsec. (h) and redesignated former subsec. (h) as (i).

Subsec. (i)(3). Pub. L. 117-169, §13104(h), added par. (3).

2021—Subsec. (f)(3). Pub. L. 117-58 added par. (3) relating to credit reduced for certain tax-exempt bonds at end of subsec. (f).

2020—Subsec. (d)(1). Pub. L. 116-260 substituted “January 1, 2026” for “January 1, 2024” in introductory provisions.

2018—Pub. L. 115-123 amended section generally. Prior to amendment, section related to credit for carbon dioxide sequestration.

2014—Subsec. (d)(2). Pub. L. 113-295 substituted “Administrator of the Environmental Protection Agency, the Secretary of Energy, and the Secretary of the Interior, shall establish” for “Administrator of the Environmental Protection Agency the Secretary of Energy, and the Secretary of the Interior, shall establish”.

2009—Subsec. (a)(1)(B). Pub. L. 111-5, §1131(b)(2), inserted “and not used by the taxpayer as described in paragraph (2)(B)” after “storage”.

Subsec. (a)(2)(C). Pub. L. 111-5, §1131(a), added subpar. (C).

Subsec. (d)(2). Pub. L. 111-5, §1131(b)(1), inserted “the Secretary of Energy, and the Secretary of the Interior,” after “Environmental Protection Agency” and substituted “paragraph (1)(B) or (2)(C) of subsection (a)” for “subsection (a)(1)(B)” and “oil and gas reservoirs, and unminable coal seams” for “and unminable coal seams”.

Subsec. (e). Pub. L. 111-5, §1131(b)(3), substituted “taken into account in accordance with subsection (a)” for “captured and disposed of or used as a tertiary injectant”.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2022 AMENDMENT

Pub. L. 117-169, title I, §13104(i), Aug. 16, 2022, 136 Stat. 1929, provided that:

“(1) IN GENERAL.—Except as provided in paragraphs (2), (3), and (4), the amendments made by this section [amending this section and section 142 of this title] shall apply to facilities or equipment placed in service after December 31, 2022.

“(2) MODIFICATION OF CARBON OXIDE CAPTURE REQUIREMENTS.—The amendments made by subsection (a) [amending this section and section 142 of this title] shall apply to facilities or equipment the construction of which begins after the date of enactment of this Act [Aug. 16, 2022].

“(3) APPLICATION OF SECTION FOR CERTAIN CARBON CAPTURE EQUIPMENT.—The amendments made by subsection (f) [amending this section] shall take effect on the date of enactment of this Act.

“(4) ELECTION.—The amendments made by subsection (g) [amending this section] shall apply to carbon oxide captured and disposed of after December 31, 2021.”

##### EFFECTIVE DATE OF 2021 AMENDMENT

Pub. L. 117-58, div. H, title IV, §80402(f), Nov. 15, 2021, 135 Stat. 1334, provided that: “The amendments made by this section [amending this section and sections 141, 142, and 146 of this title] shall apply to obligations issued after December 31, 2021.”

##### EFFECTIVE DATE OF 2018 AMENDMENT

Pub. L. 115-123, div. D, title II, §41119(b), Feb. 9, 2018, 132 Stat. 168, provided that: “The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2017.”

## EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-295 effective as if included in the provisions of the American Recovery and Reinvestment Tax Act of 2009, Pub. L. 111-5, div. B, title I, to which such amendment relates, see section 209(k) of Pub. L. 113-295, set out as a note under section 24 of this title.

## EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111-5, div. B, title I, § 1131(c), Feb. 17, 2009, 123 Stat. 325, provided that: “The amendments made by this section [amending this section] shall apply to carbon dioxide captured after the date of the enactment of this Act [Feb. 17, 2009].”

## EFFECTIVE DATE

Section applicable to carbon dioxide captured after Oct. 3, 2008, see section 115(d) of Pub. L. 110-343, set out as an Effective Date of 2008 Amendment note under section 38 of this title.

## INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

Provisions relating to inflation adjustment of items in this section for certain years were contained in the following:

2023—Internal Revenue Notice 2023-46.  
 2022—Internal Revenue Notice 2022-38.  
 2021—Internal Revenue Notice 2021-35.  
 2020—Internal Revenue Notice 2020-40.  
 2019—Internal Revenue Notice 2019-31.  
 2018—Internal Revenue Notice 2018-40.  
 2017—Internal Revenue Notice 2017-32.  
 2016—Internal Revenue Notice 2016-53.  
 2015—Internal Revenue Notice 2015-44.  
 2014—Internal Revenue Notice 2014-40.  
 2013—Internal Revenue Notice 2013-34.  
 2012—Internal Revenue Notice 2012-42.  
 2011—Internal Revenue Notice 2011-50.  
 2010—Internal Revenue Notice 2010-75.

## § 45R. Employee health insurance expenses of small employers

### (a) General rule

For purposes of section 38, in the case of an eligible small employer, the small employer health insurance credit determined under this section for any taxable year in the credit period is the amount determined under subsection (b).

### (b) Health insurance credit amount

Subject to subsection (c), the amount determined under this subsection with respect to any eligible small employer is equal to 50 percent (35 percent in the case of a tax-exempt eligible small employer) of the lesser of—

(1) the aggregate amount of nonelective contributions the employer made on behalf of its employees during the taxable year under the arrangement described in subsection (d)(4) for premiums for qualified health plans offered by the employer to its employees through an Exchange, or

(2) the aggregate amount of nonelective contributions which the employer would have made during the taxable year under the arrangement if each employee taken into account under paragraph (1) had enrolled in a qualified health plan which had a premium equal to the average premium (as determined by the Secretary of Health and Human Services) for the small group market in the rating area in which the employee enrolls for coverage.

### (c) Phaseout of credit amount based on number of employees and average wages

The amount of the credit determined under subsection (b) without regard to this subsection shall be reduced (but not below zero) by the sum of the following amounts:

(1) Such amount multiplied by a fraction the numerator of which is the total number of full-time equivalent employees of the employer in excess of 10 and the denominator of which is 15.

(2) Such amount multiplied by a fraction the numerator of which is the average annual wages of the employer in excess of the dollar amount in effect under subsection (d)(3)(B) and the denominator of which is such dollar amount.

### (d) Eligible small employer

For purposes of this section—

#### (1) In general

The term “eligible small employer” means, with respect to any taxable year, an employer—

(A) which has no more than 25 full-time equivalent employees for the taxable year,

(B) the average annual wages of which do not exceed an amount equal to twice the dollar amount in effect under paragraph (3)(B) for the taxable year, and

(C) which has in effect an arrangement described in paragraph (4).

#### (2) Full-time equivalent employees

##### (A) In general

The term “full-time equivalent employees” means a number of employees equal to the number determined by dividing—

- (i) the total number of hours of service for which wages were paid by the employer to employees during the taxable year, by
- (ii) 2,080.

Such number shall be rounded to the next lowest whole number if not otherwise a whole number.

##### (B) Excess hours not counted

If an employee works in excess of 2,080 hours of service during any taxable year, such excess shall not be taken into account under subparagraph (A).

##### (C) Hours of service

The Secretary, in consultation with the Secretary of Labor, shall prescribe such regulations, rules, and guidance as may be necessary to determine the hours of service of an employee, including rules for the application of this paragraph to employees who are not compensated on an hourly basis.

#### (3) Average annual wages

##### (A) In general

The average annual wages of an eligible small employer for any taxable year is the amount determined by dividing—

- (i) the aggregate amount of wages which were paid by the employer to employees during the taxable year, by
- (ii) the number of full-time equivalent employees of the employer determined under paragraph (2) for the taxable year.