

Welcome - Today's Presenters



Michael Platner – Presenter

As Senior Tax Counsel at the firm, Michael has provided numerous clients in the energy sector guidance on tax credits, including 45Q. Prior to joining the firm, Michael was a lobbyist and the Tax Director for the American Petroleum Institute and the Tax and International Trade Counsel for U.S. Senator John H. Chafee.



Shannon Angielski– Moderator

Shannon is a Principal and Co-Chair of the firm's Government Relations practice and the Executive Director of the Carbon Utilization Research Council (CURC), where she focuses on developing policies to support the development and deployment of carbon capture and storage technologies.



Overview of Proposed Regulations on §45Q

Michael Platner, Senior Tax Counsel

Shannon Angielski, Principal

History of 45Q and Proposed Regulations

- **§45Q Originally Enacted – Energy Improvements and Extension Act of 2008 – October 3, 2008**
- **IRS Issued Notice 2009-83 – November 2, 2009**
- **§45Q Amended by Future Act – February 9, 2018**
- **IRS Issued Notice 2019-32 – May 19, 2019**
- **IRS Received 116 Comments**
- **IRS Notice 2020-12 (Begin Construction) Released on February 19, 2020**
- **IRS Revenue Procedure 2020-12 (Partnership Safe Harbor) Released on February 19, 2020**

Notice of Proposed Rulemaking

- Pre-Publication [Version](#) Released on May 28th
- Published in [Federal Register](#) on June 2nd
- Comments on Proposed Regulations due on Monday, August 3, 2020

Definition of Secure Geologic Storage

- **Sequestration without Enhanced Oil Recovery**
 - Injection Operations
 - Injection wells
- **Sequestration through Enhanced Oil Recovery**
 - Injection Operations
 - Injection wells
- **Reporting Requirements**
- **Certification**

Recapture of Previously Taken Credits

- **Definition of recapture event**
- **Establishes recapture period**
- **Establishes a five-year recapture look back period**
- **Last-in-first-out accounting for recapture**
- **Impact of multiple sources of qualified carbon oxide and disposal sites**
- **Provides a limited exception from recapture**
- **Examples of recapture scenarios**

Recapture of Previously Taken Credits - Example from Regulations

- **Industrial Facility Captures 1,000,000 metric tons of CO₂ per year and sells to EOR Operator for SGS during years 2017 to 2025**
- **In 2026, no CO₂ is injected and the EOR Operator determines that 6,200,000 metric tons of CO₂ have leaked from the containment area.**
- **Because the amount leaked exceeds the amount injected in 2026, a recapture event occurs**
- **The five-year lookback period would be 2021 to 2025**
- **Under LIFO accounting, the leak is first deemed to come from the injections in 2025, then 2024, then 2023, then 2022, and finally 2021.**
- **The credits on the five million tons of CO₂ injected in 2021 to 2025 would have to recaptured**
- **The credits on the remaining 1.2 million tons would not be subject to recapture under the five-year lookback limitation in the proposed regulations**

Binding Written Contract Ensuring Disposal, Injection or Utilization

- **Commercially reasonable terms with enforcement provisions**
- **Allowable provisions –**
 - Long-term liability,
 - Indemnity,
 - Penalties for breach of contract, or
 - Liquidated damages
- **Provision on amount of qualified carbon oxide**
- **Injection operator requirements**
- **Utilization Requirements**
- **Annual Report on IRS Form 8933**

Credit Transferability

- **Credits may be transferred to one or more persons that dispose of, utilize, or use as a tertiary injectant the Qualified Carbon Oxide**
- **Carbon capture equipment owner requirements**
- **Person claiming the credit requirements**

Utilization

- **Methods of Utilization**
- **Measurement through Greenhouse Gas Life Cycle Analysis**

Definition of Key Terms

- **Qualified carbon oxide**
 - Carbon capture equipment originally placed in service prior to February 9, 2018
 - Carbon capture equipment originally placed in service prior on or after February 9, 2018
 - Direct air capture facility
- **Recycled carbon oxide**
- **Carbon capture equipment**
- **Industrial facility**

Definition of Key Terms

- **Electricity generating facility**
- **Direct air capture facility**
- **Qualified facility**
- **Applicable facility**
- **Qualified enhanced oil or natural gas recovery project**
- **Retrofitted qualified facility or carbon capture equipment (80/20 Rule)**

Questions & Answers

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