



ATTN: CC:PA:LPD:PR (Notice 2019-32)  
Room 5203, Internal Revenue Service  
P.O. Box 7604, Ben Franklin Station,  
Washington, DC 20044

*Submitted via [www.regulations.gov](http://www.regulations.gov) on July 31, 2020.*

Comments on proposed regulations Credit for Carbon Oxide Sequestration  
ID: IRS REG-112339-19

On behalf of Clean Water Action, I am writing to comment on the proposed rule on “Credit for Carbon Oxide Sequestration.”

We are deeply concerned that the proposed regulations will continue to allow claimants of the Section 45Q tax credit to benefit from the production of fossil fuels without adequately demonstrating secure geologic storage of captured carbon, as the law requires. Given the history of abuse of 45Q, IRS should strengthen the regulatory requirements for demonstrating secure storage, instead of giving claimants a pathway for compliance that sidesteps existing requirements and oversight by the U.S. Environmental Protection Agency (EPA).

### **Background**

In 2018, Clean Water Action published “Carbon Capture and Release” which detailed the discrepancy of claimed credits with EPA approved Monitoring, Reporting and Verification (MRV) plans.<sup>1</sup> Our organization’s findings were confirmed and detailed in the U.S. Treasury Inspector General for Tax Administration (TIGTA) report from April 2020 which found roughly \$900 million in Section 45Q claims which were not accompanied by MRVs, in response to an inquiry from U.S. Senate Finance Committee senior member Robert Menendez.<sup>2</sup>

Concurrently to the ongoing practice of improperly claiming credits, oil and gas companies have pushed for a change to how secure storage must be demonstrated. Members of Congress have introduced bills, such as S. 2263, the CO<sub>2</sub> Regulatory Certainty Act of 2019 (Hoeven), to slash regulatory requirements for compliance with the Section 45Q credit for enhanced oil recovery.

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<sup>1</sup> “Carbon Capture and Release” Clean Water Action. May 21, 2018.

<https://www.cleanwateraction.org/publications/carbon-capture-and-release>

<sup>2</sup> Department of the Treasury, Office of the Inspector General for Tax Administration. “Letter to Senator Robert Menendez.” April 15, 2020.

<https://www.menendez.senate.gov/imo/media/doc/TIGTA%20IRC%2045Q%20Response%20Letter%20FINAL%2004-15-2020.pdf>

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To date, the Section 45Q tax credit has been largely claimed for CO<sub>2</sub>- enhanced oil recovery (CO<sub>2</sub>-EOR), making this credit a subsidy for oil production. This reality, combined with the non-compliance issues confirmed by TIGTA, and the efforts to weaken the secure storage requirements, suggest a nefarious effort to skirt tax and environmental law by oil and gas companies and avoid adequately demonstrating that they are providing the possible climates benefit of CO<sub>2</sub>-EOR.

Furthermore, the current regulatory scheme for CO<sub>2</sub>-EOR is inadequate. The Underground Injection Control (UIC) Class VI regulations provide numerous protections for carbon sequestration in saline formations, but most CO<sub>2</sub>-EOR projects are permitted under Class II, a deficient regulatory structure, with varying levels of state oversight and efficacy. The Class II regulation was not developed for long term carbon storage. Its regulatory intent is to protect Underground Sources of Drinking Water (USDWs), but it does not address atmospheric emissions nor long term storage of carbon. EPA's Greenhouse Gas Reporting Program (GHGRP) Subpart RR addresses a major gap in Class II for CO<sub>2</sub>-EOR, yet together with Class II does not form a fully appropriate regime. This points to the need for a tailored regulatory approach for CO<sub>2</sub>-EOR such as a new class of UIC well that is designed specifically for this activity.

### **Insufficient proposal**

The proposed rulemaking seems to ignore the recent findings by the TIGTA. This regulation does not reflect the reality that the Section 45Q tax credit has been abused and undermined for the purposes of producing fossil fuels – an activity anathema to the goal of mitigating climate change. The proposal acquiesces to oil companies who have not followed existing requirements, weakens EPA's role in protecting the environment, and chips away at transparency and accountability.

The biggest cause for concern within this proposal is the option for claimants to rely on International Organization of Standardization (ISO) standard ISO 27916:2019 for demonstrating secure geologic storage to comply with Section 45Q, in place of requiring EPA's GHGRP Subpart RR. Chipping away at EPA's role in protecting the environment sets a bad precedent and puts the environment at risk. The primary regulatory agency for environmental protection should continue to be the responsible party for ensuring compliance, especially when it already has a program designed for this exact purpose.

The ISO option is a blow to the transparency of 45Q at a time when the public trust of this program is low. After the TIGTA found that companies were skirting the law, more transparency is needed, not less. Yet the ISO option would allow companies to claim 45Q credits with little public accountability.

### **Recommendations**

We suggest the following recommendations for changes to the proposed regulations. IRS should

- Prohibit 45Q claims for CO<sub>2</sub>-EOR until new class of UIC well and/or regulation is developed specifically for CO<sub>2</sub>-EOR. Since the existing regulations for CO<sub>2</sub>-EOR are not

designed to ensure permanent geologic storage of carbon, allowing tax credit claims for this activity is not appropriate.

- Maintain EPA's GHGRP subpart RR requirements as the minimum reporting requirements to demonstrate "secure storage" under Section 45Q. Allowing claimants to use ISO 27916:2019 instead of subpart RR lowers the bar for demonstrating secure geologic storage, weakens the existing transparency of the program and removes EPA from its role in approving MRV plans.
- Require an approved MRV plan from EPA to be received before any Section 45Q credit can be claimed. There must be an approval process, overseen by EPA to ensure compliance. The history of 45Q claimants' skirting the requirements calls for a more active approval process from the primary environmental regulator.
- Articulate enforcement actions it will take against future operators who claim Section 45Q tax credits without following EPA's MRV requirements. Given the historic lack of compliance, there must be more accountability for claimants violating the regulations.

Thank you for considering these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Grinberg", with a horizontal line underneath.

Andrew Grinberg  
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