

Overview of Recent Proposed Regulations on the 45Q tax Credit and Select Congressional Issues related to Tax Credit Monetization

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Issues In Proposed Regulations

- Additional Pathway for Secure Geologic Storage
- Parameters Laid Out for Contractual Assurance
- Helpful Guidance Provided on “Transfer Election”
- Broad Definition of Carbon Capture Equipment May Cause Confusion
- Additional Guidance Provided on Scope of Industrial Facility

Initial Framework for Carbon Utilization

- Carbon Utilization is a new portion of 45Q related to making low carbon products
- Measurement methodology: Accounting for *all* greenhouse gases, not just carbon oxides
- Lifecycle Analysis (LCA): To be determined by both the IRS and DOE, in consultation with the EPA
- Definitions for what is a carbon market and the standards of an LCA were reserved

Credit Recapture

- 5 year rolling Lookback standard for credit recapture
- Determined on a LIFO Basis
- Should there be a shorter period?

Direct Pay

- Direct Pay is a term of art that is associated with a proposal that originated from the House Ways and Means Committee in 2010 in the Domestic Manufacturing and Energy Jobs Act of 2010, which was introduced by former Congressman Sander Levin.
- The Direct Pay proposal was created in part as a reaction to the difficult politics that surrounded the Section 1603 Cash Grant program that was authorized in the American Recovery and Reinvestment Act (ARRA) in 2009.
- The basic mechanism of Direct Pay is that it allows a taxpayer to treat tax credits that it has earned as an overpayment of taxes, allowing the taxpayer to utilize the tax refund mechanism in the tax code to receive a direct payment of cash from the Treasury Department in lieu of monetizing the tax credit through another means.

Direct Pay Proposals in Congress

- The GREEN Act (House Ways and Means Democrats (November 2019))
- Congressman Blumenauer Direct Pay Bill HR 5157 (November 2019)
- Congresswoman Arrington/Chamber of Commerce Bill/Section 38 GBC
- Advanced Energy Economy Proposal (Domestic Content)

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