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Regulations pending OIRA review: Credit for carbon oxide sequestration, section 45Q

OMB's Office of Information and Regulatory Affairs (OIRA) reported that on March 13, 2020, it received for review from the U.S. Treasury Department proposed regulations concerning the credit for carbon oxide sequestration under section 45Q.

Treasury regulations that are identified as "major" regulations are subject to review by OMB's OIRA before being issued, pursuant to Executive Order 13771. The proposed regulations, according to OIRA, are identified as:

- [RIN: 1545-BP42](#): *Credit for carbon oxide sequestration*

These regulations are further described on the OIRA website as follows:

Section 45Q calls for the establishment of regulations for several purposes. Section 45Q(f)(2) provides that 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 45Q(a) such that the qualified carbon oxide does not escape into the atmosphere. Section 45Q(f)(3)(A) authorizes the Secretary to issue regulations providing exceptions to the general rule for determining the taxpayer to which the 45Q credit is attributable. Section 45Q(f)(3)(B) allows the Secretary to set forth in regulations the time and manner for making an election to allow certain taxpayers other than those described in 45Q(f)(3)(A) to claim the 45Q credit. In addition, 45Q(f)(4) directs the Secretary to provide by regulations rules for the recapture of the 45Q credit. Finally, 45Q(h) allows the Secretary to prescribe such regulations and other guidance as may be necessary or appropriate to carry out 45Q, including regulations or other guidance to (1) ensure proper allocation under 45Q(a) for qualified carbon oxide captured by a taxpayer during the taxable year ending after the date of the enactment of BBA and (2) determine whether a facility satisfies the requirements under 45Q(d)(1) during such taxable year.

Section 45Q also contemplates certain other guidance by the Secretary, including for determining purposes for the use of qualified carbon oxide for which a commercial market exists (45Q(f)(5)(A)),

setting forth requirements for determining how a taxpayer may demonstrate how much qualified carbon oxide they utilized (45Q(f)(5)(B)), and certifying that 75 million metric tons of qualified carbon oxide have been taken into account for purposes of determining when the credits under 45Q(a)(1) and (2) expire (45Q(g)). On May 20, 2019, IRS Notice 2019-32 was published in I.R.B. 2019-21, requesting comments regarding the changes to the statute.

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