

Proposed IRS Guidance on Carbon Capture Tax Credits

Market participants can comment on new details related to the requirements, time periods, and permitted transfers of carbon credits.

On May 28, the IRS released the long-awaited third piece of carbon capture tax credit guidance in the form of proposed Treasury Regulations addressing many issues remaining under Section 45Q of the Internal Revenue Code. These proposed regulations:

- Incorporate existing environmental requirements to define the standard taxpayers must meet in order to sequester carbon in “secure geological storage”
- Provide further detail on the time periods and circumstances during which previously claimed credits are subject to recapture
- Clarify the regulatory framework permitting the transfer of credits from the capturing party to the sequestering party
- Address a number of other key issues critical to the effectiveness of the 45Q credit regime as a means of encouraging investment in carbon capture equipment

The IRS and the Treasury Department have requested comments to the proposed form of these Treasury Regulations no later than 60 days after the date the proposed regulations are published in the Federal Register, scheduled for June 2, 2020. Interested parties should consider submitting comments.

The full text of the regulations is [available online](#). Latham & Watkins lawyers are preparing a detailed *Client Alert* which will discuss questions arising from the proposed Treasury Regulations.

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