[REG-112339-19] RIN 1545-BP42 Credit for Carbon Oxide Sequestration
AGENCY: Internal Revenue Service (IRS), Treasury.
ACTION: Notice of proposed rulemaking.
SUMMARY: This document contains proposed regulations regarding the credit for carbon oxide sequestration under section 45Q of the Internal Revenue Code (Code).

COMMENTS:

1. §1.45Q-1, Credit for Carbon Oxide Sequestration paragraph (h) (2) (iii) *Contract provisions* and elsewhere: Fractional 45Q credits should not be allowable. All credit amounts, including those taken and recaptured, should be in whole dollars. Also, the metric ton count should cut off at the last full metric ton (i.e. no partial metric tons allowed).

2. §1.45Q-5, Recapture of Credit, paragraph (c) (*Leaked amount of qualified carbon oxide)* states that when a taxpayer, operator, or regulatory agency determines that qualified carbon oxide has leaked **to the atmosphere**…(emphasis added).

   Should taxpayers read this to mean that in order for carbon oxide to have "leaked", it must have been released into the atmosphere? In other words, in a case where sequestered carbon oxide has broken out of its primary containment zone but still has been contained under another caprock, it is **not** considered to have "leaked" for credit recapture purposes.

3. §1.45Q-5, Recapture of Credit, (h) (*Recapture in the event of intentional removal from storage)* states that, "If qualified carbon oxide for which a credit has been claimed is deliberately removed from a secure geological storage site, then a recapture event would occur in the year in which the qualified carbon oxide is removed from the storage site pursuant to §1.45Q-5(a)."

   In the case of EOR, or similar, operations, carbon oxide that is collected from producer wells and reinjected should not be considered to have been "deliberately removed from a secure geologic storage site". However, what about carbon oxide collected after production ceases and carried to another site for used as an injectant? Is that carbon oxide considered to have been "deliberately removed from a secure geologic storage site"?

4. Regarding the safe harbor for partnerships as properly allocating the credit for carbon oxide sequestration under section 45Q and the proposed regulations for Form 8933 with respect to

the submission of off-take agreements and associated information; as the *taxpayer* is not likely to be the partnership established under the safe harbor provision, but rather the *partners in the partnership* who will be the taxpayers, it is not clear if it is the partners who must *individually report* the various off-take agreements on their personal or corporate Form 8933 filings. Should each partner in the partnership enter into separate agreements with one or more off-takers or should the arrangement(s) made by the partnership be reported?