



August 12, 2025

The Honorable Scott Bessent
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Ave., NW
Washington, D.C. 20220

Re: Section 45Q and Beginning of Construction Guidance

Dear Secretary Bessent:

The Carbon Capture Coalition (the “Coalition”) writes to provide comments in response to President Trump’s Executive Order issued on July 7, 2025, titled “Ending Market Distorting Subsidies for Unreliable, Foreign Controlled Energy Sources.” This Executive Order directs the Department of Treasury (“Treasury”) to issue “new and revised guidance” for determining the beginning of construction for wind and solar facilities under the section 45Y and section 48E clean electricity production and investment tax credits.¹ We write to encourage Treasury to maintain the current beginning of construction guidelines and existing safe harbors relating to the section 45Q carbon sequestration credit.

As discussed below, the concept of beginning of construction is a well-defined legal standard developed through long-standing Treasury and Internal Revenue Service (“IRS”) guidance. Any deviation from this existing framework introduces uncertainty that could negatively impact carbon capture, utilization, and sequestration (“CCUS”) projects under the section 45Q carbon oxide sequestration credit.

The Carbon Capture Coalition is a nonpartisan, nonprofit collaboration of more than 100 companies, labor unions, and conservation and environmental policy organizations. Coalition members work together to lay the groundwork for the necessary portfolio of federal policy support to enable nationwide, commercial-scale deployment of carbon management technologies. The full suite of carbon management technologies is necessary to drive down emissions across sectors, bolster domestic energy and industrial sectors, and support workers with a broad range of skill sets.

I. Importance of Section 45Q

Carbon management plays a critical role in advancing domestic energy and industrial production, reducing emissions, and supporting good-paying jobs. The section 45Q credit has been instrumental in enabling energy producers across a variety of domestic sectors to continue operating existing energy production facilities, while

¹ E.O. 14315, 90 Fed. Reg. 30,821 (Jul. 10, 2025), <https://www.govinfo.gov/content/pkg/FR-2025-07-10/pdf/2025-12961.pdf>.

encouraging investment in emissions-reducing CCUS technologies rather than mandating shutdowns.

Since the inception of the section 45Q tax credit, members of Congress across the political spectrum have increasingly recognized the credit's essential value in bolstering the economy-wide adoption of carbon management technologies. This includes support for the full value chain of carbon management technologies, carbon capture, removal, transport, utilization, and storage.

The section 45Q credit plays a critical role in driving investment into CCUS projects that support domestic energy production and manufacturing, particularly in sectors such as natural gas processing, ethanol production, hydrogen, cement, steel, and power generation. These emissions-heavy industries are critical to our economic growth and the section 45Q credit supports carbon management technology to help these projects reduce overall emissions. In addition to supporting innovation, section 45Q creates skilled energy-sector jobs in areas such as construction, pipeline development, and geologic storage.

The Coalition is pleased that the One, Big, Beautiful Bill Act ("OBBBA") recognized the important role that the section 45Q credit and CCUS have in the nation's domestic energy policy agenda. We are encouraged the OBBBA preserved section 45Q's core credit structure and will continue to provide a vital market signal for a broad range of CCUS technologies. Notably, the OBBBA establishes, for the first time, credit level parity for end uses of captured carbon. This provision builds upon critical enhancements made to the credit in 2022 by providing enhanced credit values for carbon reuse projects, ensuring innovative reuse technologies can fulfill their role as an important complement to large-scale dedicated geologic storage.

By maintaining the integrity and structure of section 45Q across a variety of domestic sectors, Congress has reinforced its commitment to the continued build-out of carbon management infrastructure, job creation, and robust private sector investment. Maintaining clear and reliable "beginning of construction" guidance is essential to ensuring CCUS projects can move forward in support of President Trump's domestic energy and manufacturing priorities.

II. Treasury Should Maintain the Clearly Defined Safe Harbors Applicable to Section 45Q

In 2013, the Treasury and IRS issued guidance establishing the requirements for a project to be considered as having begun construction under sections 45 and 48.² Through a series of notices over the last decade, Treasury and the IRS have subsequently modified, amended, and re-affirmed this begin construction guidance to

² Notice 2013-29, <https://www.irs.gov/pub/irs-drop/n-13-29.pdf>.

establish tax credit eligibility for multiple types of energy tax credits, including section 45Q.³

This body of established guidance provides a recognized legal framework with two clearly defined methods for establishing that construction of a facility has begun: (i) the physical work test and (ii) the 5% safe harbor.⁴ After either of these tests are met, the taxpayer then must make continuous efforts to complete the facility.⁵

In February 2020, Treasury and the IRS issued Notice 2020-12 to provide begin construction guidance for CCUS projects under section 45Q. Notice 2020-12 follows the established rules that were provided for beginning construction for wind and solar projects. Under Notice 2020-12, a taxpayer begins construction under the same two methods provided for solar and wind projects in previous guidance: by either meeting the physical work test or the 5% safe harbor.⁶ After meeting one of these tests, Notice 2020-12 requires the taxpayer to make continuous progress towards completion and to place the project in service within six years of beginning construction.⁷

These existing rules offer taxpayers both certainty and flexibility. The 5% safe harbor provides the certainty by allowing taxpayers to measure the beginning of construction based on the project's costs, while the physical work test offers additional flexibility to establish the beginning of construction based on the activities undertaken by the taxpayer. The existing 5% safe harbor and physical work tests under Notice 2020-12 continue to serve as appropriate and reliable standards for determining the beginning of construction for purposes of section 45Q.

Although the Executive Order only directs Treasury to issue new and revised begin construction guidance for the section 45Y and section 48E credits for solar and wind projects, any changes to the underlying safe harbor rules may have significant and immediate implications for the section 45Q credit that currently relies on the same begin construction framework. Specifically, all of the prior begin construction notices, including Notice 2020-12, interpret the same statutory language, so changing the interpretation in one or two statutory provisions raises the issue of whether it has changed for all these statutory provisions.

However, Congress did not change the phase-out of the section 45Q tax credits, and the Executive Order makes no mention of tax credits beyond the solar and wind credits. Accordingly, Treasury and the IRS should not make any changes to Notice 2020-12.

³ See, e.g., Notice 2013-60; Notice 2014-46, Notice 2015-25, Notice 2016-31, Notice 2017-4, Notice 2018-59, Notice 2019-43, Notice 2020-12 (begin construction guidance for section 45Q), Notice 2020-41, Notice 2021-5, Notice 2021-41, and Notice 2022-61 (affirming that existing begin construction guidance applies to the IRA's prevailing wage and apprenticeship rules).

⁴ See, e.g., Section 3, Notice 2013-29.

⁵ See, e.g., Section 5, Notice 2013-29.

⁶ Section 4, Notice 2020-12.

⁷ *Id.*

III. New or Revised Begin Construction Guidance Should Not Affect Projects That Have Reasonably Relied on Existing Begin Construction Guidance

The issuance of the begin construction guidance and safe harbors for section 45Q in Notice 2020-12 has been critical to enabling project developers to attract investment and provide the needed certainty for investors.

CCUS projects often involve large scale innovative technologies and significant expenditures of hundreds of millions of dollars. The current begin construction guidance under Notice 2020-12 recognizes the additional scale, innovation, and significant expenditures involved in carbon capture projects by providing a six-year continuity safe harbor rather than the four-year period applicable to wind and solar projects.⁸

Investors may be reluctant to invest in clean energy projects, even if the project qualifies for the tax credit, if they cannot determine whether the project begins construction within the required timeline. To help provide market certainty, project developers and investors have relied on the safe harbors in Notice 2020-12 to develop plans and made investment decisions for developing CCUS projects in reliance on this long-standing guidance.

As recently as 2022, the IRS reaffirmed that it would continue to apply the existing begin construction tests to the expanded section 45Q credits enacted in the Inflation Reduction Act.⁹

Changing this guidance now to decrease eligibility would undermine established reliance interests on the existing rules and increase legal uncertainty for determining tax credit eligibility, particularly for CCUS projects with long lead times, significant costs, and multi-year procurement cycles.

If Treasury and the IRS do decide to change the existing begin construction framework for CCUS projects, any changes should apply prospectively and include clear transition rules, allowing projects currently under development to rely on the existing begin construction guidance. Any such changes to the well-defined and long-established begin construction framework without a transition period would cause significant market disruptions throughout the energy industry and limit the benefits of the policies enacted in the OBBB.

We also urge Treasury to avoid introducing vague tests, such as a “substantial construction” thresholds, that lack legal clarity and may favor one technology over another technology to pick winners and losers in the marketplace.

In summary, we urge Treasury and the IRS to continue to apply the existing safe harbors to CCUS projects under section 45Q. If they adopt any changes, those changes should only apply prospectively.

⁸ Section 7.05, Notice 2020-12.

⁹ 87 Fed. Reg. 73,580, 73,585 (Nov. 30, 2022).

In light of the role that CCUS technologies play in our domestic energy production, the Coalition urges Treasury to maintain the current beginning of construction rules and safe-harbors applicable to the section 45Q credit when implementing the OBBBA. If Treasury and the IRS decide to adopt any changes to the begin construction framework, any changes should apply prospectively and include clear transition rules.

The Coalition looks forward to working with you on the following recommendations as you implement the OBBBA to ensure the section 45Q tax credit remains the lynchpin for ensuring the timely and efficient deployment of carbon management technologies. If you have any questions, please contact me at jstolark@carboncapturecoalition.org.

Sincerely,



Jessie Stolark
Executive Director
Carbon Capture Coalition

cc: Hon. Ken Kies, Assistant Secretary for Tax Policy, Department of the Treasury,
and Acting Chief Counsel, Internal Revenue Service
Kevin Salinger, Deputy Assistant Secretary for Tax Policy, Department of the
Treasury
Derek Theurer, Counselor to the Secretary, Department of the Treasury
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