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MEMORANDUM

TO: Carbon Capture Coalition

FROM: Hunter Johnston
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RE: One, Big, Beautiful Bill and Foreign Entity of Concern Provisions

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On July 4, 2025, President Trump signed the tax and spending budget reconciliation legislation, referred to as The One Big Beautiful Bill (the "OBBB") intended to extend expiring provisions of the 2017 Tax Cuts and Jobs Act ("TCJA") and to implement other priorities of President Trump and the Republican-controlled Congress.

To raise additional revenue and offset the cost of extending the TCJA's tax provisions, the OBBB would also phase out or terminate certain clean energy tax incentives enacted by the Inflation Reduction Act ("IRA").

Although, the OBBB maintains the section 45Q tax credit and taxpayers can continue to claim the section 45Q credit for projects that begin construction before January 1, 2033, it applies three key changes relevant to section 45Q:

- Conforms the credit values for captured carbon oxide to provide parity for carbon oxide that is disposed of in secure geological storage, utilized, or used as a tertiary injectant. As a result, all end uses of captured carbon oxides qualify for the base credit of $17 (or $85 if the prevailing wage and apprenticeship ("PWA") requirements are met) per metric ton of credit.

- Imposes new foreign entity of concern ("FEOC") restrictions on claiming the credit beginning in taxable years after the date of enactment (2026 for calendar year taxpayers).

- Maintains transferability for the life of the section 45Q credit but prevents the transfer of credits to any entity deemed to be a Specified Foreign Entity under the FEOC restrictions.

I. Credit Value Parity for Secure Geological Storage, Utilization, and Enhanced Oil Recovery

Before the OBBB, section 45Q provided a base credit of:

- $17 (or $85 if the PWA requirements are met) per metric ton of carbon that is disposed of in secure geological storage; or
- $12 (or $60 if the PWA requirements are met) per metric ton of carbon that is utilized or used as a tertiary injectant in a qualified enhanced oil recovery (EOR) project.

The OBBB conforms the credit values to provide $17 (or $85 if the PWA requirements are met) per metric ton for carbon disposed of in secure geological storage, utilized, or used as a tertiary injectant in a qualified EOR project. Such credit amounts are then indexed for inflation. The Senate Finance Committee's initial draft of the OBBB would have changed the base index year for calculating the inflation adjustment factor to 2026 but the enacted version of the OBBB maintains the 2027 inflation adjustment date and base index year of 2025. This means that the section 45Q credit amounts will be adjusted annually for inflation beginning in 2027 relative to the 2025 price levels.

The changes to the higher credit value for all qualifying end uses of carbon oxide are effective for equipment that is placed in service after the date of enactment (July 4, 2025). Carbon capture projects already placed in service before July 4, 2025, would not be able to claim the higher 45Q credit amounts for these uses.

II. New FEOC Provisions for Section 45Q

The OBBB imposes new FEOC restrictions limiting the ability of a taxpayer to claim tax credits if the taxpayer is a "Prohibited Foreign Entity" from a covered nation, including China, Iran, North Korea, or Russia. The OBBB defines a Prohibited Foreign Entity as either a "Specified Foreign Entity" or a "Foreign-Influenced Entity."

The determination of FEOC status generally occurs on the last day of each taxable year, but for the first taxable year after enactment, the determination is made as of the first date of such taxable year (except for a "Foreign Controlled Entity" as described below).

A. Specified Foreign Entity

A Specified Foreign Entity is:

- Designated as foreign terrorist organization, included on the OFAC lists, alleged to have been involved in espionage activities, or determined to have been engaged in conduct detrimental to U.S. national security or foreign policy;
- An entity listed on the 1260H Chinese military company list;
- An entity listed in reporting required under the Uyghur Forced Labor Prevention Act that benefits from forced labor;

- An entity owned by certain battery companies (or a successor) listed in the FY 2024 NDAA legislation (e.g., CATL, BYD, Gotion, Envision Energy, Hithium);
- An entity organized in, or having their principal place of business in, a covered nation; or
- A Foreign Controlled Entity of a covered nation, which is an entity owned or 50 percent controlled[1] by the government of a covered nation (including subnational governments, agencies, or instrumentalities); citizens or residents of those countries (that is not also a US citizen or resident); or entities organized or having a principal place of business in one of those countries.

B. Foreign-Influenced Entity

An entity is a Foreign-Influenced Entity if, during the taxable year:

- A Specified Foreign Entity has the direct authority to appoint board members or officers of the entity;
- A single Specified Foreign Entity owns at least 25 percent of the entity;
- One or more Specified Foreign Entities own, in the aggregate, at least 40 percent of the entity; or
- At least 15 percent of the debt has been issued, in the aggregate, to one or more Specified Foreign Entities.

C. Publicly Traded Entities

There are special rules applying the FEOC restrictions to publicly traded entities, which take into account the fact that it would be difficult for such entities to determine the identity of all of their shareholders. Specifically, the Foreign Controlled Entity prong of Specified Foreign Entity applies only with regard to owners that are required to report their beneficial ownership under Rule 13d-3 of the Securities and Exchange Act of 1934 (or an equivalent foreign rule), which is typically a 5-percent stockholder. In addition, the ownership prongs of Foreign-Influenced Entity do not apply to publicly traded entities or their 80-percent controlled subsidiaries. Instead, such ownership prongs apply only with regard to owners that are required to report their beneficial ownership as described above. Finally, the debt prong of Foreign-Influenced Entity applies only to publicly traded debt. For this purpose, exchanges or markets in covered nations are excluded from the definition of publicly traded.

D. Determination of Ownership or Control

For purposes of determining whether an entity is a Prohibited Foreign Entity, Specified Foreign Entity, or Foreign-Influenced Entity, the attribution rules of section 318(a)(2) determine ownership of stock in a corporation. This means that stock that is owned by a partnership, estate, or trust generally is treated as proportionately owned by its partners or beneficiaries (or grantor in the case of a grantor trust), and stock that is owned by another corporation is treated as proportionately owned by any 50-percent or greater stockholders.

[1] For this purpose, control generally is defined by such persons or entities beneficially owning (1) more than 50 percent of the vote or value of a corporation, (2) more than 50 percent of the capital or profits interest of a partnership, or (3) more than 50 percent of the beneficial interests of other entities.

E. Impact on Carbon Capture Projects

Beginning in taxable years after enactment (2026 for calendar year taxpayers), the FEOC provisions under section 45Q would apply at the taxpayer level and focus on ownership and control of the taxpayer. Specifically, the taxpayer would be unable to claim the section 45Q credit if the taxpayer is a Specified Foreign Entity that is formed in China, Russia, North Korea, or Iran, identified on one of the designated lists relating to covered nations, or more than 50-percent controlled by such an entity.

The broader Foreign-Influenced Entity restrictions would also apply beginning in taxable years after enactment that could limit a taxpayer's eligibility for the section 45Q credit. This will require taxpayers to look beyond their controlling shareholders to owners with a smaller ownership percentage (i.e., 25 percent by one Specified Foreign Entity or 40 percent by multiple Specified Foreign Entities), persons who can appoint officers and directors, and significant creditors to determine if any of those entities are Specified Foreign Entities.

If the taxpayer is publicly traded, the ownership tests are applied only with regard to owners that are required to report their beneficial ownership under the relevant securities laws. The OBBB also incorporates the section 318(a)(2) attribution rules for purposes of determining ownership of stock of a corporation. However, it is not clear whether taxpayers will be required to look at the ownership all the way up a chain of entities. Because the statute only incorporates section 318(a)(2), it is not clear whether section 318(a)(5)(A) applies. Section 318(a)(5)(A) treats stock that is constructively owned by reason of section 318(a)(1)-(4) as actually owned, which allows for attribution of ownership up a chain of entities to the ultimate beneficial owner. If that section is found not to apply so that attribution is limited to direct ownership, the FEOC restrictions could have somewhat limited applicability in larger corporate structures.

III. Maintaining Transferability for Section 45Q

Under current law, transferability allows taxpayers to monetize their tax credits by selling the tax credits to another taxpayer in exchange for cash.

The OBBB maintains the current transferability provisions that are applicable to section 45Q (and other eligible clean energy tax credits), but taxpayers can no longer transfer tax credits to a Specified Foreign Entity beginning in 2026.

The OBBB does not modify the direct pay election that allows taxpayers to elect to monetize their tax credits through a direct refund from the IRS. Taxpayers can continue to elect direct pay for 45Q for the first five years after the carbon capture equipment is placed in service.

IV. Early Repeal and FEOC Restrictions for Other Clean Energy Credits

A. Hydrogen

The OBBB terminates the section 45V clean hydrogen production tax credit for facilities that begin construction after December 31, 2027, a later termination than the December 31, 2025 date

proposed in the House-passed version of the OBBB, but still five years earlier than the prior December 31, 2032 termination date.

The OBBB does not apply the FEOC restrictions to the section 45V credit.

B. Clean Fuels

The OBBB extends the period the section 45Z clean fuel production credit can be claimed for transportation fuel by two years, until December 31, 2029. The OBBB also disallows a double credit by excluding from the definition of creditable fuel that which is produced from a fuel for which a section 45Z credit was already claimed.

After December 31, 2025, the OBBB prohibits the credit for fuel derived from feedstocks that are produced or grown outside the United States, Mexico, or Canada.

The OBBB prohibits negative emissions rates, except in the case of animal-manure-based fuels, and excludes indirect land use changes for the purposes of lifecycle greenhouse gas emissions. It directs the Secretary of the Treasury to provide an emissions rate for specific animal manure feedstock. The Secretary is also authorized to provide rules addressing certain related-party sales.

The OBBB eliminates the enhanced credit amounts for sustainable aviation fuel after December 31, 2025. The OBBB also terminates the excise tax credit for sustainable aviation fuel credit under section 6426(k) after September 30, 2025, and disallows the credit for any fuel for which a section 45Z credit was claimed.

The OBBB also extends the small agri-biodiesel producer credit from December 31, 2024, until December 31, 2026, and increases it from 10 cents to 20 cents per gallon. The OBBB also provides that this credit is in addition to any credit under section 45Z.

Similar to section 45Z, eligible small agri-biodiesel producers must exclusively derive the fuel from feedstock produced or grown in the United States, Mexico, or Canada.

The OBBB also allows transferability for the section 40A small argi-biodiesel producer credit.

C. Tech Neutral ITC and PTC and Manufacturing Credits

Under prior law, the section 48E investment tax credit ("ITC") and section 45Y production tax credit ("PTC") would begin to phase out in the later of 2032 or the year in which the greenhouse gas emissions are reduced to or below 25 percent of their levels in 2022. The OBBB terminates the ITC and PTC for solar and wind projects that are placed in service after December 31, 2027, but the termination does not apply if the project begins construction before July 4, 2026. The OBBB maintains the prior law phase-out for other eligible technologies, including hydropower, nuclear, and geothermal, but it eliminates the later phase-out based on reduction of greenhouse gas emissions.

Additionally, the OBBB maintains the prior law phase-out for the section 45X advanced manufacturing production credit beginning with components sold after December 31, 2032, though it phases out the credit for wind components for components sold after December 31, 2027, and also phases out the credit for critical minerals early. The OBBB also provides a new 2.5 percent credit to produce metallurgical coal that is available through December 31, 2029, expands the definition of battery modules, and tightens the rules allowing integration of eligible components into other eligible components.

The OBBB also applies additional and more onerous FEOC "material assistance" restrictions to the section 45Y PTC, the section 48E ITC, and the section 45X advanced manufacturing production credit that do not apply to section 45Q.

An entity receives material assistance if the material assistance cost ratio is less than the applicable threshold listed in statute. The threshold amounts listed in the statute vary based on the technology. The material assistance cost ratio percentage is determined using the following formula: *(Total Costs – Costs Attributed to a Prohibited Foreign Entity / Total Costs).* The cost-ratio percentage effectively considers the project's non-FEOC costs compared to a project's total costs. If the non-FEOC costs exceed the threshold, the project did not receive material assistance from an FEOC.

The material assistance provisions are likely to be applied like the existing domestic content bonus provisions as the OBBB directs the Secretary of the Treasury to issue safe harbor tables similar to the Domestic Content Bonus under Notice 2025-08 but taxpayers can also rely on supplier certifications to meet the requirement for determining material assistance.

Taxpayers may also exclude costs of components or materials that are acquired pursuant to a binding contract entered into prior to June 16, 2025, and placed in service or sold prior to January 1, 2030 (or in the case of a solar or wind facility before January 1, 2028; or in the case of a component or material sold or used in an eligible component before January 1, 2027).