

December 19, 2024

MEMORANDUM

TO: Carbon Capture Coalition

FROM: Hunter Johnston
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RE: Inflation Reduction Act Implementation

Since the passage of the Inflation Reduction Act (“IRA”) in August 2022, the Department of Treasury and IRS (collectively “Treasury”) have provided proposed, temporary, and final regulations, as well as other forms of guidance on several of the tax credits important to the Coalition that were included in the legislation. Since our last update in March, the status of the guidance for each tax credit has continually evolved, with Treasury and IRS finalizing several regulations over the last six months. We also expect final regulations related to the clean hydrogen production tax credit under section 45V to be issued in the coming weeks before the Biden Administration leaves office, but the exact timing remains uncertain.

Several of the Biden Administration’s final IRA rules are unlikely to be in scope for rescission under the Congressional Review Act (“CRA”) as they were issued outside of the 60 legislative day lookback period. However, if the Biden Administration finalizes the proposed section 45V regulations, the Republican-led Congress could rescind these rules early next year using the CRA.¹

In addition to the CRA, the incoming Trump Administration can modify guidance that was issued by the Biden Administration. Final regulations are the most difficult to change, as they must first undergo the notice and comment process to repeal the regulations and any new regulations issued by the Trump Administration must also be issued using another notice and comment process. For proposed regulations issued by the Biden Administration, the Trump Administration could simply rescind any of the Biden Administration’s proposed regulations that were not finalized and issue new proposed regulations but such proposed regulations would again be subject to the notice and comment process before they could be finalized by the Trump Administration. Subregulatory guidance, such as notices, can similarly be revoked by the Trump

¹ The CRA has a feature that is sometimes referred to as its “lookback” mechanism. Section 801(d) of the CRA provides that if a rule is finalized within either fewer than 60 days of Senate session or fewer than 60 legislative days in the House before Congress adjourns its session, a new period for congressional review of that rule and use of the CRA to rescind such rule becomes available in the following session of Congress.

Administration, but any new subregulatory guidance need not go through the notice and comment process applicable to regulations.

The Trump Administration has some flexibility to issue subregulatory guidance that applies retroactively, but its ability to apply regulations retroactively is limited. Specifically, section 7805(b)(1) permits a regulation to be retroactive only to the date such regulation was proposed or to the date a notice substantially describing the rule was published, unless necessary to prevent abuse or it is at the election of the taxpayer.² Congress can grant authority to Treasury to issue retroactive regulations, but this would first require additional legislation to be enacted.³ Treasury has broader authority under section 7805(b)(8) to issue retroactive administrative guidance (including notices and revenue rulings), which would allow the Trump Administration to revoke notices or other subregulatory guidance issued during the Biden Administration and subsequently issue new subregulatory guidance that could apply retroactively. However, we would not expect Treasury to issue retroactive guidance that modifies rules in earlier guidance, particularly if they would have adverse tax consequences for the taxpayer.

Final Regulations

- Direct Pay: Treasury issued [final regulations](#) on March 5, 2024.
- Transferability: Treasury issued [final regulations](#) on April 30, 2024.
- Prevailing Wage and Apprenticeship: Treasury issued [final regulations](#) on June 25, 2024.
- Section 45X Advanced Manufacturing Production Tax Credit: Treasury issued [final regulations](#) on October 28, 2024.
- Direct Pay & Partnerships: Treasury issued [final regulations](#) on November 20, 2024, regarding exceptions to the final direct pay regulations for partnerships that co-own eligible credit property to make a direct pay election for credits other than the section 45X, 45V, or 45Q credits.

Proposed Regulations

- Section 45V Clean Hydrogen Production Credit: Treasury issued [proposed regulations](#) and the Department of Energy issued an accompanying [White Paper](#), an Updated GREET Model, and [GREET Model Guidelines](#) on December 22, 2023. Comments were due on February 26, 2024. We expect final regulations to be issued in the coming weeks before the Biden Administration leaves office. Any final regulations issued by the Biden Administration would be subject rescission under the CRA due to the rules being finalized during the CRA's lookback period.

² See Section 7805(b)(3), (b)(7).

³ See Section 7805(b)(6).

- Section 45Y and 48E Clean Electricity Production and Investment Technology Neutral Tax Credits: Treasury issued [proposed regulations](#) on June 3, 2024.

Notice/Request for Comments

- Direct Pay and Chaining: Treasury issued [Notice 2024-27](#) along with the final direct pay regulations on March 5, 2024, that requests additional comments on situations where a direct pay election could be made for a credit that was purchased in a transfer election under section 6418. Comments were due on December 1, 2024.

Guidance

- Section 40B Sustainable Aviation Fuel (SAF): Treasury issued initial guidance in Notices [2024-6](#) (guidance on lifecycle GHG emissions), [2023-06](#) (guidance on general SAF requirements and registration), and [2022-39](#) (guidance regarding alternative fuel claims) for the section 40B SAF credit. Treasury and DOE issued the [40BSAF-GREET Model](#). In April 2024, Treasury issued [Notice 2024-37](#) to provide safe harbors regarding use of 40BSAF-GREET 2024 model for calculating lifecycle greenhouse gas emissions reduction percentage. In October 2024, Treasury issued [Notice 2024-74](#) to provide updated instructions for taxpayers using the 40BSAF-GREET 2024 model on or after October 18, 2024, for purposes of applying the safe harbor methodologies in Notice 2024-37.
- Section 45Z Clean Fuels Credit: Treasury issued [Notice 2024-49](#) in May 2024 to provide guidance on registration requirements for section 45Z credits. Treasury also issued [Fact Sheet 2024-25](#) in July 2024 with frequently asked questions and answers related to the section 45Z credit.

No Regulations or Guidance

- Section 45Q CCUS Credit: There is no guidance or proposed regulations to date for the IRA's modifications to section 45Q. Treasury has only issued a request for comments on the section 45Q credit. However, Treasury issued [Notice 2024-60](#) in July 2024 to provide guidance for taxpayers claiming the section 45Q credit for utilization of carbon oxide. Notice 2024-60 generally describes information that must be included in a lifecycle analysis ("LCA") report and provides the procedures a taxpayer must follow to submit the LCA report (along with required supporting information) to the IRS and the DOE for review. Notice 2024-60 does not change the LCA process that has been developed informally by the IRS and DOE, but it does include new taxpayer-favorable guidance that allows a taxpayer to rely on an approved LCA for a three-year period (meaning it is approved for the year submitted and two additional tax years).