

## **Ensuring Investment Certainty Work Group: Background Summary**

### **Prior Coalition Consensus Positions**

- **Inflation Adjustment**

- *Coalition position:* To prevent further reduction of the credit value, 45Q should be adjusted for inflation beginning immediately, using 2022 as the base index year for the dollar figure.
  - Unlike other low- and zero-emissions technology tax credits recently reformed under the 117th Congress, the 45Q tax credit value is not adjusted for inflation until 2027.
  - An Energy Futures Initiative [report](#) and analysis estimated that between 2020 and 2022, inflation had already consumed about half of the value increase of the credit (\$85 and \$180, respectively) for carbon capture retrofits in power and industry, as well as direct air capture.
  - The Great Plains Institute projects that the credit will further erode an additional 14 percent by 2026 if inflation rates ease to three percent by 2026.
  - Project developers and equipment providers have identified inflation as a significant deployment barrier, with some developers reporting that, in some instances, equipment costs have increased more than 50 percent since 2021.

- **Credit Level Parity for Carbon Storage and Non-EOR Utilization**

- *Coalition position:* The Coalition endorsed the [CCU Parity Act](#) (S.542/H.R.1262), which would make further adjustments to 45Q to provide parity between geologic storage credit values and carbon reuse.
  - The 117th Congress increased 45Q credit values across the board, but the credit is bifurcated between permanent storage of captured CO<sub>2</sub> and utilization of CO<sub>2</sub> for reuse in commercially valuable products or to produce additional oil in depleted oil and gas wells.
  - Increasing the CO<sub>2</sub> reuse pathway credit level to \$180/ton for products sourced from direct air capture and \$85/ton for those sourced from industry and power will further incentivize the deployment and innovation of carbon reuse for low—and zero-carbon products, including fuels, chemicals, and building materials.

- **Utilization Pathway Lifecycle Assessment (LCA) Process Modifications**

- *Coalition position:* Eliminate the current pre-approval requirement in Treas. Reg. § 1.45Q-4(c)(6) and give taxpayers an option to obtain pre-approval of the LCA before claiming section 45Q credits as a risk management tool.

- When the US Department of Treasury and IRS finalized regulations for the 45Q tax credit in 2021, they inadvertently created a much higher barrier for project developers in the reuse sector wishing to monetize the 45Q tax credit relative to other eligible technologies.
- Federal regulations issued in 2021 require the project developer to prepare the LCA using real-world operating data and submit it in parallel to both IRS and DOE for pre-approval before claiming the 45Q tax credits for any taxable year. Additionally, final guidance from Treasury and the IRS provides no specific timeline for this pre-approval process.

In addition to the above legislative priorities for the 45Q tax credit, the Coalition has made the following recommendations to Treasury and IRS on direct pay and transferability guidance and in our comments on final guidance for 45Q.

- **Direct Pay**

- Final regulations should allow for an annualization principle to apply to direct pay elections so taxpayers can receive direct pay for a full 5-year window and prevent unnecessary project delays. **(Not adopted by final guidance).**
- Final regulations should address direct pay timing issues and allow taxpayers to claim direct pay against estimated taxes. At a minimum, the final regulations should waive estimated tax penalties related to a direct pay election. The final regulations should allow taxpayers to claim as direct pay only a partial amount of an applicable credit. **(Not adopted by final guidance).**
- Final regulations should allow taxpayers to whom a credit is attributable under section 45Q(f)(3)(B) to make a direct pay or transferability election. The Coalition recommends Treasury re-evaluate Prop. Treas. Reg. § 1.6417-2(c)(4) to the extent it disallows a direct pay election for a credit transferred pursuant to section 45Q(f)(3) and Prop. Treas. Reg. § 1.6417-2(c)(5)(iv). **(Not adopted by final guidance).**
- The Coalition recommends that Treasury revise the proposed regulations to confirm that the tax credit eligible for direct pay is treated as a “payment” and that other credits not eligible for direct pay, to the extent available, are to be used to reach the section 38(c) general business credit limit, and credits eligible for direct pay can be used to generate a refund. **(Adopted by final guidance).**
- Final regulations should clarify the amount of the section 45Q credit is not reduced by tax-exempt bonds used to finance transportation and storage equipment that is not owned by the taxpayer. **(Not addressed by final guidance; deemed out of scope).**

- Final regulations should streamline the registration process by clarifying the definition of a facility and clarify that taxpayers do not need to provide full documentation for annual registrations if the facts from the previous taxable year are unchanged. **(Not adopted by final guidance).**
- **Transferability**
  - Final regulations should affirm that the scope of section 6418(b) is limited only to the consideration transferred among the parties for the value of the tax credit for a transferability election and affirm that taxpayers can deduct transaction costs related to a transferability election as ordinary and necessary business expenses. **(Not addressed by final guidance; deemed out of scope).**
- **Eligible Facilities (Awaiting final guidance)**
  - The Coalition is committed to ensuring that the greatest number of industry sectors can qualify for the 45Q tax credit that may not have been originally imagined when the 45Q statute was first envisioned.
  - There are still a number of cases where projects or industry sectors broadly meet the definition of a 45Q-eligible facility and intend to meet established regulations required to claim the tax credit, but may not be able to ultimately claim the tax credit for a number of reasons, which may include:
    - The definition of industrial facilities contained in 2021 regulations promulgated in response to the 2018 FUTURE Act may unnecessarily preclude certain technologies that otherwise capture qualified carbon emissions. One such example is a facility used to flare biogas and capture the resultant CO<sub>2</sub> which would otherwise be released into the atmosphere.
    - Final regulations issued in 2021 allow taxpayers to aggregate multiple qualifying facilities capturing carbon emissions. Providing additional clarity to the factors IRS uses to determine the ability to aggregate multiple qualified facilities so they are considered part of a single project will allow additional facilities to be eligible for the tax credit.

### **Framing Questions for Discussion**

- Are there identified issues with claiming 45Q beyond those already addressed in the above points?
  - When should we begin advocating for a 45Q commence construction extension (beyond Jan 1, 2033)?
  - Is extension of the payment window a high priority (12 – 20 years)?
  - Policy for the catastrophic breakdown of equipment?

- Will the current structure of the direct pay model provide sufficient incentive for project developers to utilize?
  - Are there potential legislative or regulatory angles to pursue changes? If so, how likely?
- Will the current structure of transferability provide sufficient incentive for project developers to utilize?
  - Are there potential legislative or regulatory angles to pursue changes? If so, how likely?
- Are there other pathways (outside of 45Q) that we should look to, to shore up financing for projects?
  - Congressional staff have encouraged the Coalition to be creative when trying to address gaps in financing for carbon management projects.
    - Is there a need to provide greater incentives for carbon management hub models?
    - Should we consider tax adders for developing projects in certain areas?
      - Rural areas, fossil-fuel-dependent areas, de-industrialized areas
    - Tax adders for “clean firm” power generation (on top of existing PTC/ITC/45Q) to recognize the additional value of dispatchable, firm power?
- How does Canada’s new ITC program for carbon removal (including DAC) have the potential for strengthening our messaging around US technology leadership?

**Sources:**

- [2023 Policy Blueprint](#)
- [Section 45Q Tax Credit Primer](#)
- [Inflation Adjustment Fact Sheet](#)
- [Inflation Reduction Act Fact Sheet](#)
- [Captured Carbon Utilization Parity Act Fact Sheet](#)
- [2023 CCC Response to IRS, RFI on Direct Pay/Transferability](#)
- [CCC Comment to IRS: Proposed Guidance on Direct Pay/Transferability](#)
- [Step toe Memo on IRS’ Final Guidance on Direct Pay](#)
- [Step toe Memo on IRS’ Final Guidance on Transferability](#)