



November 4, 2022

Re: Comments to the Department of the Treasury and the Internal Revenue Service (IRS) on Certain Energy Generation Incentives in the Inflation Reduction Act (IRA)

Docket No.: IRS-2022-0049 (Oct. 11, 2022)

Notice: 2022-49

Dear Commissioner Rettig:

Taxpayers for Common Sense (TCS) provides the following comments to the Department of the Treasury and the Internal Revenue Service (IRS) related to “Certain Energy Generation Incentives” (Notice 2022-49), particularly changes made to relevant tax incentives and the creation of new tax credits in the Inflation Reduction Act (IRA).

TCS is an independent, nonpartisan budget watchdog serving the American taxpayer. Since 1995, TCS has worked to ensure that taxpayer dollars are spent responsibly, and that government operates within its means.

We appreciate the opportunity to comment on the implementation of IRA’s energy tax provisions, specifically the new Clean Electricity Production Credit (Section 45Y) and the Zero-Emission Nuclear Power Production Credit (Section 45U).

IRA Addition of the Clean Electricity Production Credit (§ 45Y)

TCS has long been a critic of the federal [Renewable Fuel Standard](#) (RFS) biofuels mandate, federal subsidies and tax credits for biofuels and biomass sources, and other federal programs that fail to significantly reduce greenhouse gas (GHG) emissions while spurring unintended consequences and long-term liabilities for taxpayers, consumers, and the environment. To date, independent experts have linked certain federal bioenergy incentives to [market distortions](#), increased food and fuel costs, greater GHG emissions (instead of [reducing the costs](#) of climate change), and the loss of wildlife habitat and [millions of acres](#) of carbon-rich forests, native grasslands, and wetlands, among others.

In short, the federal government must reverse course and, at a minimum, ensure that Congressional intent is adhered to when implementing new and/or revised energy tax credits impacting the bioenergy sector. In the case of the Clean Electricity Production Credit, the Treasury Department/IRS should ensure that facilities qualifying for the credit indeed have “GHG emissions rates of not greater than zero” (according to page 4 of the [notice](#) requesting comment). Allowing ineligible facilities to qualify for the credit would not only fail to heed Congressional intent but may also lead to greater – instead of lower – GHG emissions and continue decades of wasteful federal bioenergy subsidies that do more harm than good.

Question #2 (and a related Question #4) pertain to Section 45Y(b)(2)(C)(i) (and (ii)), which “requires the Secretary to annually publish a table that sets forth the greenhouse gas emissions rates for types or categories of facilities” qualifying for the new Clean Electricity Production Credit. Implementation of this provision must ensure that energy sources with a GHG emissions rate of greater than zero do not qualify for the tax credit. This will require accurate calculations of GHG emissions rates for relevant energy sources.

The Treasury Department/IRS must ensure that ineligible types of energy do not qualify for the tax credit, including biomass energy facilities. A 2016 [Congressional Research Service](#) (CRS) report notes that biomass energy cannot be assumed to be carbon neutral. The CRS report elaborates further,

“Whether biopower is considered carbon neutral depends on many factors, including the definition of carbon neutrality, feedstock type, technology used, and time frame examined. Carbon flux (emission and sequestration) varies at each phase of the biopower pathway, given site- and operation-specific factors.”

In practice, subsidizing the use of forest biomass, such as wood pellets, for electricity generation has led to increased – instead of decreased – CO₂ emissions, negatively impacted [air quality](#), and created other long-term liabilities. A 2021 [Chatham House](#) report found,

“US-sourced [wood] pellets burnt for energy in the UK were responsible for 13 million–16 million tonnes of CO₂ emissions, when taking into account emissions from their combustion and their supply chain, forgone removals of CO₂ from the atmosphere due to the harvest of live trees and emissions from the decay of roots and unused logging residues left in the forest after harvest.”

A 2017 [report](#) prepared for the UK government also found that bioenergy subsidies may lead to negative air quality impacts as well:

“A range of incentives that encourage the use of biomass burning for power and heat generation could have adverse air quality impacts in particular around PM and nitrogen dioxide (NO₂).”

If biomass sources associated with higher GHG emissions and adverse air quality impacts are allowed to qualify for US taxpayer subsidies and tax credits, as they have in other countries such as the UK, then federal bioenergy subsidies will continue to fail to provide a net-benefit for the climate, taxpayers, and the environment. Support for harmful biomass projects will increase taxpayer costs, negatively impact low-income communities near such facilities, accelerate the loss of carbon-rich forests needed to sequester carbon and mitigate climate costs, distort markets, and more. Calculating GHG emissions rates for electricity-generating facilities must incorporate lessons learned from other countries and US policies such as the RFS and other federal programs that have [increased climate costs](#) instead of [mitigating](#) them.

IRA Addition of the Zero-Emission Nuclear Power Production Credit (§ 45U)

TCS has long been a critic of the heavily subsidized nuclear industry. Current federal subsidies supporting civilian nuclear energy in the U.S. come in the form of foregone royalties on uranium from federal lands, discretionary spending on development and demonstration, loan guarantees for new construction, covered liabilities for accidents, access to federal facilities, tax credits for electricity production, and many other means. These subsidies have collectively cost taxpayers billions of dollars year after year for

nearly a half century. The 45U credit will add to the existing suite of federal subsidies for nuclear. Steering towards new and expanded nuclear subsidies without examining current costs and inefficiencies runs the risk of crowding out faster, cheaper sources of low carbon energy. At the very least the Treasury Department/IRS should proceed with extreme caution in the implementation of the new 45U credit so that it does not further increase the burden on taxpayers.

Question #1 raises concerns about how gross receipts should be defined in calculating the reduction amount defined by Section 45U(a)(2). The Treasury Department/IRS must provide clear guidelines on what qualifies as gross receipts especially when the credit is applicable to taxpayers that receive their revenue through cost-of-service regulations and do not sell electricity in competitive wholesale or capacity markets or to third parties. When gross receipts are not reflective of any factors attributable to individual nuclear reactors, the subsequent determination of the reduction and credit amount would distort the electricity market and arbitrarily pick “winners and losers” based on prices that are not reflective of reactor economics.

The 45U credit would not be the first federal program to provide direct payments from federal agencies to nuclear facilities. The Civil Nuclear Credit (CNC) program, a new Department of Energy (DOE) initiative established by the Infrastructure Investment and Jobs Act (IIJA) to subsidize economically ailing nuclear reactors, makes the 45U credit a duplicative subsidy that could become a burden to taxpayers. The Civil Nuclear Credit program would provide direct subsidies to financially struggling reactors if closure would result in increased greenhouse gas emissions. The Department of Energy announced that the first award cycle was limited to those reactors that had publicly announced intentions to retire within the four-year award period to prioritize reactors at most imminent risk of closure for economic reasons. However, the second award cycle does not restrict eligibility to applicants who have publicly announced intentions to cease operations. The CNC program does not simply pick “winners and losers,” it singles out individual reactors for support via a regulatory process. This makes it the most expansive and expensive direct intervention by a federal agency into electricity markets in recent memory. The 45U credit and the CNC program, as well as any potential interactions of the two programs, will lead to an unprecedented amount of cash subsidies for nuclear facilities. This creates an undue burden on taxpayers, especially when more cost-effective options for decarbonizing the electricity sector exist.

Conclusion

When implementing various Inflation Reduction Act provisions, the US has an opportunity to end past mistakes – including taxpayer spending on counterproductive climate-related policies – and instead invest in [real climate solutions](#). Our comments on Certain Energy Generation Incentives and other IRA provisions provide an opportunity to help right the ship and ensure US taxpayer dollars are spent more wisely.

Thank you for the opportunity to submit comments and for your consideration. Please let us know if you have any questions.

Sincerely,

Steve Ellis
President