

December 9, 2022

Re: Comments to the Department of the Treasury and the Internal Revenue Service (IRS) on Credits for Clean Hydrogen and Clean Fuel Production in the Inflation Reduction Act (IRA)

Docket No.: IRS-2022-58 (November 3, 2022)

Notice: 2022-58

Dear Acting Commissioner O'Donnell:

Environment America, Friends of the Earth, R Street Institute, Taxpayers for Common Sense, and U.S. PIRG provide the following comments to the Department of the Treasury and the Internal Revenue Service (IRS) related to "Credits for Clean Hydrogen and Clean Fuel Production" (Notice 2022-58), particularly the creation of new tax credits in the Inflation Reduction Act (IRA).

We appreciate the opportunity to comment on the implementation of IRA's energy tax provisions, specifically the Clean Fuel Production Credit (Section 45Z).

Section 45Z, Clean Fuel Production Credit

Overall, implementation of the Clean Fuel Production Credit should ensure that wasteful tax credits for food-based biofuels such as corn ethanol are not resurrected from the dead, undermining IRA's goal of significantly reducing lifecycle greenhouse gas (GHG) emissions. The Senate voted on a bipartisan basis in 2011 to eliminate the Volumetric Ethanol Excise Tax Credit (VEETC), known as the ethanol tax credit. If the Clean Fuel Production Credit is implemented in a way in which first-generation, food-based biofuels once again become eligible for federal tax credits, not only will Congressional intent fail to be met, but [GHG emissions](#) may *increase* – instead of *decrease*. Furthermore, other [long-term liabilities](#) and consumer and taxpayer costs may increase as well, including the loss of carbon-rich wetlands, forests, and [grasslands](#), higher [food](#) and [fuel](#) costs, and more.

Numerous studies question the GHG reduction potential of food-based biofuels such as soy biodiesel and corn ethanol, with independent analysts finding that they may actually increase climate costs. A [National Academies of Sciences report](#) concluded that tax provisions subsidizing "ethanol and other biofuels may have slightly increased greenhouse gas emissions." Studies like these should inform implementation of the clean fuel tax credit. The Secretary should ensure that indirect GHG emissions such as significant emissions from land use changes are included in emissions rate calculations. IRA specifies that "lifecycle" GHG emissions should be included in emissions calculations.

Finally, the full lifecycle GHG emissions of fuels produced in facilities utilizing biomass sources for heat and/or power should be properly accounted for, and such facilities – and related fuels – ***should not be considered to be carbon neutral***. Experts have concluded that facilities burning wood for energy, for instance, cannot be assumed to be carbon neutral or zero-emission, and certain fuels and facilities can be associated with much higher GHG emissions, as compared to petroleum-based fuels.¹ [Studies](#) assessing the carbon impacts of forest-based woody biomass note the many factors impacting emissions

¹ As a paper by [Alexander Barron](#) et al. (2021) states, "However, treating all bioenergy as carbon neutral is not supported by the best available science. A 2012 report by EPA's Science Advisory Board concluded: "Carbon neutrality cannot be assumed for all biomass energy a priori...""

totals, “including feedstocks, alternate fate, time horizon and age of the trees used for fuel, production methods, and forest management regimes.” Allowing certain fuels associated with higher GHG emissions – including their production methods – to receive federal subsidies would fail to meet the primary goal of the clean fuel tax credit, including reductions in lifecycle GHG emissions.

Question 2

Specifically, regarding Question 2 in the request for comments, entitled “Establishment of Emissions Rate for Sustainable Aviation Fuel,” the lifecycle GHG emissions rate calculation for sustainable aviation fuel should utilize the Carbon Offsetting and Reduction Scheme for International Aviation methodology. If an emissions rate does not currently exist under the International Civil Aviation Organization (ICAO) Carbon Offsetting and Reduction Scheme for a particular fuel, then a lifecycle GHG emissions rate should be determined under a “similar methodology” – through the existing § 211(o)(1)(H) of the Clean Air Act – that would result in the same lifecycle GHG emissions rate as if it was determined through the ICAO methodology. This will help ensure that Congressional intent is met and that first-generation biofuel feedstocks do not become eligible for federal tax credits at the expense of taxpayers, consumers, the climate, and environment.

Question 3

Regarding Question 3, entitled “Provisional Emissions Rates,” this provision should not be used as a loophole to evade GHG emission rate thresholds required in IRA. For consistency purposes, the Secretary should work with the Environmental Protection Agency (EPA) and the International Civil Aviation Organization (ICAO) to ensure that GHG emissions rates of new fuels meet the methodology and GHG reduction requirements outlined in IRA (and detailed in the paragraph above).

Question 4

Regarding Question 4, entitled “Special Rules,” again, the Carbon Offsetting and Reduction Scheme for International Aviation should be utilized as the primary methodology for ensuring that tax credit eligibility requirements are met, including supply chain traceability and information transmission requirements, given the lack of similar requirements in EPA’s past implementation of the Renewable Fuel Standard (RFS). Tracking fuel feedstocks through supply chains will help provide transparency and ensure that federal tax credits are not inadvertently directly or indirectly incentivizing the use of biofuels that fail to meet GHG reduction requirements in IRA.

Question 7

Regarding Question 7 on “any other topics related to § 45Z credit that may require guidance,” we urge Treasury/IRS to ensure that final GHG emission rates reflect actual lifecycle GHG emissions for those fuels. Regarding the use of a potential “successor model” to Argonne National Laboratory’s Greenhouse gases, Regulated Emissions, and Energy use in Transportation (GREET) model to measure the lifecycle GHG emissions of fuels, we urge Treasury/IRS to ensure that fuel’s emissions rates are not underestimated. Please see studies like [Lark, et. al. \(2022\)](#) for more information.

In setting an eligibility threshold of an emissions factor of 50 kilograms of CO_e per mmBTU, Congress did not intend for first-generation, food-based biofuels to qualify for the new clean fuel production credit, nor did Congress intend for the ethanol tax credit – VEETC – to rise from the dead. Likewise, facilities

powered by biomass sources that fail to meet lifecycle GHG emissions reduction thresholds should not qualify for the new clean fuel tax credit. Implementation of this provision must ensure that Congressional intent is met – including the consideration of emissions from direct and indirect land use – while not wasting taxpayer dollars on special interests and mature industries that have received taxpayer support for more than four decades.

Conclusion

When implementing various Inflation Reduction Act provisions, the US has an opportunity to end past mistakes – including wasting taxpayer dollars on counterproductive climate-related policies - and instead invest in *real* climate solutions. Our above comments and those on other IRA provisions provide an opportunity to 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,

Environment America

Friends of the Earth

R Street Institute

Taxpayers for Common Sense

U.S. PIRG