

Comment from American Chemistry Council

On behalf of the American Chemistry Council and its members, please find comments in response to Notice 2022-51. This letter is being submitted in to each of the six RFC Dockets opened for comments on Inflation Reduction Act incentives, and includes recommended principles for broad implementation of the Department's IRA tax credits and specific responses to the questions identified therein.



November 4, 2022

To: Hon. Charles B. Retting, Commissioner
Internal Revenue Service
Department of the Treasury

Re: Response of the American Chemistry Council ("ACC") to Requests for Comment Nos. [Notice 2022-46](#), [Notice 2022-47](#); [Notice 2022-48](#), [Notice 2022-49](#), [Notice 2022-50](#), and [Notice 2022-51](#)

Submitted via: www.regulations.gov

Dear Commissioner Retting:

On behalf of the American Chemistry Council and its members, I am pleased to submit comments in response to the six notices issued by the Department of Treasury (Treasury) and the Internal Revenue Service (IRS) on October 5, 2022. The historic energy and manufacturing innovation incentives and infrastructure investments contained in the Inflation Reduction Act (IRA) and 2021 Bipartisan Infrastructure Legislation (BIL) have the potential to reshape the U.S. economy and move the Nation toward a lower emissions future. To unlock the potential of these laws, policymakers, businesses, and the citizenry now must work together to advance rather than impede rapid implementation.

ACC represents a diverse set of companies engaged in the business of chemistry, an innovative, \$486 billion enterprise. [ACC members](#) work to solve some of the biggest challenges facing our Nation and our world, driving innovation through investments in research and development (R&D) that exceed \$10 billion annually. They supply the chemical products, polymers, and materials underpinning the energy sector's industrial base and the energy efficiency, clean energy, and clean energy-enabling technologies needed for a low-carbon economy.

Our members are also taking action to reduce the industrial greenhouse gas (GHG) intensity of their own supply chains, operations, and products, making them essential partners in IRA implementation. The sector's greenhouse gas carbon mitigation strategy includes consideration of a broad range of emissions sources and sinks, including upstream fuel and feedstock emissions, manufacturing process emissions, energy emissions from heat and power, avoided carbon during the use phase, and both emissions and mitigation during the end-of-life and recycling phase. Each point in the lifecycle raises novel technology challenges. Moreover, even where technologies have been demonstrated for a particular application or industrial segment, translation and validation of that technology at commercial scale may be costly, time consuming, and risky.



The IRA tax incentives could provide an early and essential foundation for action by chemical manufacturers and other energy intensive, trade-exposed, and hard-to abate industries – if implemented in a clear, pragmatic, and constructive manner. We applaud the commitment of the Treasury Department and the IRS for their focus on the principles of “*robust public engagement*,” “*clarity and certainty*,” and “*sound stewardship*” throughout the implementation process. ACC urges Treasury to consider three additional guiding principles: “supply chain perspective,” “policy alignment,” and “capacity building.”

Supply chain perspective: While many vital lower-emissions energy and manufacturing solutions are progressing toward or have reached early-stage commercial-scale viability, continued federal support for innovation is needed to increase the efficacy, efficiency, reliability, and cost-effectiveness of the applied technologies and the enabling equipment, components, materials, and chemistries within their supply chains. This requires a broad, inclusive interpretation of which types of facilities, technologies, components, and materials qualify for federal incentives. Narrow interpretation and qualification for federal incentives could result in supply chain bottlenecks between suppliers to the renewable energy industry and those within the industry producing renewable energy products and/or technologies.

Policy Alignment: IRA tax credits and funding provide powerful incentives for innovation and technology deployment – provided federal regulatory policy supports these objectives. ACC urges the Treasury Department and IRS to work with DOE, EPA, and other agencies to reduce barriers and ensure the regulatory process supports the continued innovation and deployment of lower emissions technologies, products, and projects. This includes using science and best available information to support a risk-based review and approval process under the Toxic Substances Control Act for the myriad of new and existing chemistries used within energy and manufacturing supply chains, and working to expedite the project siting and permitting processes using transparent, objective and fact-based approaches to deploy lower emissions solutions.

Capacity Building: A necessary predicate to the economic and climate transformation sought through the IRA is rapid and broad expansion of the Nation’s clean energy, manufacturing, and transportation infrastructure linking suppliers, manufacturers, and users. Guidance should recognize these linkages and account for the time and incremental adjustment needed for this infrastructure build-out when establishing or interpreting dates, milestones, and deadlines for qualifying projects.

I. Industry Priorities for Tax Credit Guidance and Implementation.

The business of chemistry touches and is touched by almost every sector of the economy, either directly or through its upstream and downstream supply chain. The diversity of the industry also means that different members have different tax credit priorities, depending on their supply chains, manufacturing processes, product markets, and financial structures. In short, while certain IRA tax credits have generated particular attention within our membership (e.g., 45V, 45X, 48, and 48C, 179), all the IRA's tax credits will provide support, either directly or indirectly, to the chemical industry’s (and broader economy’s) transition towards a lower-emissions future.

For this initial prioritization exercise, below are some specific areas where members have raised specific questions or comments for consideration.

II. IRS RFI on Consumer Vehicle Tax Credits

A. 30D Clean Vehicles Credit

1. Please provide additional guidance on the minimum amount of critical mineral allowed to be sourced from the United States, Free Trade Agreement countries or recycled, including how to determine the value.
2. Please confirm that battery system and assembly materials are included in the scope of “components” of a battery. Some system material components, especially those that mitigate fires or that are used for thermal management, are critical to a battery’s safety performance. Global manufacturing capacity for those materials is already limited and the current rate of investment in new capacity might not be sufficient to meet the demand projected from new battery capacity coming online. Those components, while representing only a small fraction of a battery’s bill of material costs, are critical to its safety and performance.

III. RFI on Tax Incentives for Homes/Buildings

A. 179D Energy Efficient Commercial Buildings Deduction

1. 179D(1) - the “person primarily responsible” should be defined as a currently licensed engineer in the state in which the project is located. Their professional seal with signature and date should be affixed to the engineering documents produced.
2. Section 179D(h)(1) requires that regulations are promulgated to consider new technologies regarding energy efficiency and renewable energy for purposes of determining energy efficiency and savings under Section 179D. In such regulations, energy efficiency and savings should include any energy that is made by renewable energy sources that is fully consumed on the site in which it is produced.
3. Section 179D requires that a qualified professional must prepare a qualified retrofit plan. The statute defines qualified professional as “an individual who is a licensed architect or a licensed engineer and meets such other requirements as the Secretary may provide.” The only additional requirement that should be provided is a requirement that the license is obtained in the state in which the project is located.

4. With respect to a qualified retrofit plan, please provide guidance on how the 25% energy use intensity requirement is defined and measured.
5. Please clarify whether a “qualified professional” can be a project’s Engineer-of-Record, or whether it must be a 3rd party hired specifically for this qualification.

IV. RFI on Manufacturing Tax Credits

A. The 45X Advanced Manufacturing Production Credit

1. Please confirm and clarify that the term “cathode materials” in the definition of electrode active material expressly includes the Polyvinylidene fluoride (PVDF) binder that is in the cathode.
2. Section 45X(b)(1)(M) states the credit amount is “in the case of any applicable critical mineral, an amount equal to 10 percent of the costs incurred by the taxpayer with respect to production of such mineral.” Please clarify whether the cost of producing chemicals/technologies sold specifically for purposes of critical mineral extraction are eligible for this credit.
3. Under 45X(b), the Advanced Manufacturing Credit equals the sum of credit amounts with respect to each eligible component produced by the Taxpayer and sold to an unrelated party. The “eligible components” are solar, wind, inverter, qualifying battery component, and “applicable critical mineral.” Please confirm that “applicable critical mineral” includes minerals used both in the production of durable rotor blades and in the operation of wind turbines.

B. The 48C Qualifying Advanced Energy Project Credit

1. Please provide additional guidance on determining compliance with the requirement for a 20 percent reduction of GHG footprint under Section 48C(c)(1)(A)(ii). What are acceptable methods for setting baseline emissions?
2. Section 48C(c)(1)(A)(i)(IX) references “other advanced energy property designed to reduce greenhouse gas emissions as may be determined by the Secretary.” Section 48C(c)(1)(A)(ii)(IV) references “any other industrial technology designed to reduce greenhouse gas emissions, as determined by the Secretary.” Please confirm and clarify that property and technology “designed to reduce greenhouse gas emissions” includes water conservation property and technologies, as studies have shown water conservation is one of the most effective practices for reducing greenhouse gas emissions.

V. RFI on Energy Generation Tax Credits

A. The Energy Investment Credit (§ 48)

1. Comments were requested on whether guidance is needed to determine whether an investment credit facility that elects to claim the Section 48 investment tax credit in lieu of the Section 45 production tax credit is subject to all the requirements of Section 45. We request that guidance makes clear that an investment credit facility claiming the Section 48 investment tax credit need not meet all requirements of the Section 45 production tax credit, particularly a requirement that the sale of electricity generated from must be sold to an unrelated third party. Such a requirement would severely limit the utility of changes to Section 48.
2. In interpreting Section 48(a)(3)(A)(i) that energy property includes “equipment which uses solar energy to generate electricity, to heat or cool (or provide hot water for use in) a structure,” guidance should ensure that the term applies to waste energy recovery sites, including buildings, warehouses, or other uses that result in offsetting the use of other energy sources.
3. Treasury and IRS should ensure that determinations of what types of technologies are covered under Section 48, including expanded definitions of energy property, encompass: solar technologies; geothermal systems, microturbines, combined heat and power; waste energy recover systems to include those generating electricity or used to heat or cool structures; energy storage systems, both paired with generation and installed as a stand-alone system; thermal energy storage systems; interconnection equipment; and any other technology that utilizes waste energy sources to generate or offset the consumption.
4. Please clarify whether investments needed to retrofit facilities to enable use of renewable energy generating equipment and reduced greenhouse gas emitting equipment is includible in the basis of qualified property for purposes of calculating the credit under Section 48. For example, investments can be needed to enable facilities to handle the electric capacity needed to transition away from use of GHG emitting equipment (*i.e.*, use of electric boilers to displace use of natural gas boilers). While these transitions reduce the emission of GHGs, they result in greater electric load capacity needs to operate facilities. The investment in electric infrastructure, both internally within the building and externally for grid connectivity is needed to facilitate such transition.

VI. RFI on Credit Enhancement Provisions

A. Extended Comment Period

1. ACC respectfully requests that Treasury continue to consider - and make clear that it will consider - comments received by stakeholders after the expiration of the official thirty-day window provided in the notices. Such consideration is warranted in light of the significant implications the IRA will have on the construction, repair, and maintenance of our members' facilities. These implications will vary significantly across our members, depending on their location, facility type and size, and the nature of the potential projects they are considering. As such, additional time is needed, even for initial comments and questions to inform the implementation process.

B. Prevailing Wage and Apprenticeship Requirement

1. Please provide clarification around what constitutes reasonable practice and efforts for monitoring subcontractor compliance with prevailing wage and apprenticeship requirements.
2. Please clarify what constitutes "best efforts" to comply with prevailing wage and apprenticeship requirements in cases where limitations on availability of qualified workforce or safety concerns prevent reasonable compliance.

C. Domestic Content Requirements

1. Please clarify how this requirement would apply as it relates to steel, iron and other manufactured products. Such clarification must include a definition of manufactured products, how to determine their value, and how to evaluate the domestic content when manufactured products are comprised of components and possibly sub-components.

D. The 45V Hydrogen Production Credit

1. Our members are currently reviewing the GREET model and would appreciate the opportunity to engage with Treasury staff further in the development of guidance governing its use.

Thank you again for the opportunity to provide these initial comments and questions on the notices. We hope this can become the start of an ongoing dialogue between Treasury and IRS staff and the chemical industry on implementation of these critical industrial emissions reduction incentives. If you have any questions or would like more information on our industry and the role these tax incentives will play in our members' emissions reduction efforts, please free to contact me at Kimberly_White@americanchemistry.com or (202) 249-6707.

KIMBERLY WISE WHITE, PH.D.
VICE PRESIDENT
REGULATORY & TECHNICAL AFFAIRS



Sincerely,

A handwritten signature in blue ink, appearing to read "KWW", is written over a light blue horizontal line.

Kimberly Wise White
Vice President, Regulatory and Scientific Affairs

