

## **BCSE Comments on Proposed Rule Related to the Section 48 Investment Tax Credit's Definition and Treatment of Biogas Property**

March 21, 2024

Thank you for the opportunity for the Business Council for Sustainable Energy (BCSE) to provide its views in response to the request for comments on the proposed rule related to the Definition of Energy Property and Rules Applicable to the Energy Credit; Correction, 89 Fed. Reg. 13,293 (Feb. 22, 2024).

The Council appreciates the work of the staff at the Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) to issue the proposed rule and prioritize guidance that will update aspects this vital tax measure that has catalyzed significant clean energy investment and jobs in the United States.

BCSE advocates for energy and environmental policies that promote markets for clean, efficient, and sustainable energy products and services. Since its founding in 1992, BCSE has been focused on policy adoption that will increase the deployment of energy efficiency, natural gas, renewable energy, as well as energy storage, sustainable transportation, and emerging decarbonization technologies. As a diverse coalition, not all BCSE members take a position or endorse the issues discussed in this submission.

The correction notice clarifies the exclusion of gas upgrading equipment from the definition of qualified biogas property in proposed 26 C.F.R. §1.48-9(e)(11) to explain that “gas upgrading equipment that is necessary to concentrate the gas from qualified biogas property into the appropriate mixture for injection into a pipeline through removal of other gases ... would be energy property if it is an integral part of an energy property as defined in §1.48-9(f)(3).” 89 Fed. Reg. at 13,294.

BCSE welcomes this clarification. However, while this clarification would allow some gas upgrading equipment to qualify, the correction continues to unduly restrict the definition of qualified biogas property to exclude significant investments being made in cleaning and conditioning equipment that Congress expressly included in that definition.

As noted in the submission made by the American Biogas Council and the Coalition for Renewable Natural Gas, gas upgrading equipment can, standing alone, constitute qualified biogas property. It is, at a minimum, functionally interdependent with the types of energy property listed in proposed §1.48-9(e)(11), e.g., a waste feedstock collection system, a landfill gas collection system, mixing or pumping equipment, and an anaerobic digester. However, without the cleaning and conditioning process, the biogas from these operations is of limited utility.



As such, BCSE urges the additional clarifications to the final rule:

- Clarify that property that is treated as an integral part of qualified biogas property (including gas upgrading equipment) is ITC eligible even if owned by a separate taxpayer.
- Clarify that the 80/20 rule is not applicable to energy property because all energy property must be new to qualify for the ITC in any event. Alternatively, the final rule should make clear that the 80/20 rule applies to those items of energy property owned by a taxpayer.
- Revise the point at which the methane content of the biogas is measured to be the point at which the processing of the biogas using cleaning and conditioning/upgrading property has been completed (i.e., after it is cleaned and conditioned).

Please see the BCSE submission made on the updates to the Sec. 48 Investment Tax Credit on January 22, 2024 [here](#).

Please do not hesitate to contact BCSE President, [Lisa Jacobson](#) with any questions. Thank you for your consideration.