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Nuclear Advocates See Improved Pathways to Hydrogen Tax Credits

By Alexis Waiss

- Existing nuclear fleet has more options to qualify
- Some hurdles remain with the rule's three pillar system

Various stakeholders within the nuclear industry say the clarity provided by the Treasury Department's hydrogen tax credit rules is a positive step rather than a thorough solution to the obstacles they face in a nascent global hydrogen market.

The goal of the updated tax guidance was to "clarify how producers of hydrogen, including those using electricity from various sources, natural gas with carbon capture, renewable natural gas (RNG), and coal mine methane can determine eligibility," the Energy Department said in a written statement.

The rules extended the deadline to meet hourly emission matching requirements to 2030 and gave qualification exemptions to facilities in states with greenhouse gas caps, in addition to setting up more pathways for existing nuclear plants to receive credits and provisions helping older nuclear plants avoid retirement.

But the updated guidance faces criticism for not being up to date with current market dynamics, as it focuses more on the struggles nuclear faced when the credit first came out two years ago, said Elina Teplinsky, a partner at Pillsbury Winthrop Shaw Pittman LLP and co-chair of the Nuclear Hydrogen Initiative.

"I think it is unfortunate that this rule came out the way it was in 2023 because I think it created this setback," Teplinsky said. "When you put restrictions and inject uncertainty into a market that doesn't yet exist, it really just wanes people from wanting to participate."

One of Nuclear Hydrogen Initiative's main gripes about the rule as it was proposed centered on its regulations around incrementality, one of three pillars the rule outlines as requirements facilities must fulfill to show the proper emission reductions needed to qualify for tax credits. The Treasury Department said only California and Washington have policies where hydrogen facilities could automatically meet the incrementality criteria.

The president of Constellation Energy, a carbon-free energy producer that's active in hydrogen projects, said in a statement Jan. 3 that "any incrementality limit is incompatible with the conclusion that clean hydrogen customers should be able to use reliable nuclear energy from America's fleet of plants."

These concerns were echoed by several of the 30,000 comments the Treasury Department and IRS received about the proposed rule. The federal bodies responded to these comments about nuclear viability by creating a few more pathways producers of nuclear-based hydrogen could use to fulfill the incrementality requirement, they said in the final rule.

“The Treasury Department and the IRS likewise disagree that the incrementality requirement discriminates against nuclear power,” the guidance said in response to these comments. “As with other facilities, redirecting electricity produced by existing nuclear facilities to hydrogen production can result in induced emissions.”

There is a possibility the rule could be revoked under the Congressional Review Act or altered by the Treasury and IRS under the second Trump administration, said Morgan, Lewis & Bockius LLP tax partner Casey August. But it’s unlikely the rule will be taken off the books since it benefits the administration’s interests in natural gas and nuclear, said David Victor, a professor at University of California San Diego who studies how regulation impacts energy markets.

The market for hydrogen energy is still in the early stages of its development and continues to struggle getting investors, said Salem Esber, an energy expert for PA Consulting. The tax guidance helps make the market more stable for investors, but its growth could face more challenges as nuclear plants turn their priorities toward data center development, he added.

“They seem to be interested in entering into fairly lucrative contracts that are large and, you know, probably more attractive than a hydrogen offtake contract could be for most nuclear plants,” Esber said about the nuclear industry’s interest in data center agreements.

“It’s a net positive for the nuclear industry, because it opens up a new set of potential buyers for them. But you know, the data center buyers are a much better audience at this point,” Esber added.

The Nuclear Regulatory Commission and Energy Department’s Loan Programs Office declined to comment.

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