March 22, 2024

The Hon. Janet Yellen
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

The Hon. Daniel Werfel
Commissioner
Internal Revenue Service
1111 Constitution Ave. NW
Washington, D.C. 20224

Mr. John Podesta
Senior Advisor to the President for Clean Energy Innovation and Implementation
The White House
1600 Pennsylvania Ave NW
Washington, DC 20500

**Subject:** Improve Section 45V Regulations to Deliver Greater Climate Benefits

Dear Secretary Yellen, Commissioner Werfel and Senior Advisor Podesta,

The undersigned organizations write to you regarding a provision within the Section 45V Clean Hydrogen Production Tax Credit (45V) that could discourage greater emissions reductions and prevent much-needed investment in clean hydrogen.

Internal Revenue Service's (IRS) proposed regulations[1] for 45V require clean hydrogen producers using natural gas as a feedstock to input a fixed upstream emissions rate based on a national average. Within the 45VH2-GREET model[2], this upstream emissions rate is "background" data that cannot be altered by a producer, even if they have verifiable upstream emissions rates that would more accurately represent the project's carbon intensity.

We believe the requirement to use a fixed, national average instead of actual emissions data is misguided and represents a missed opportunity that will have a significant impact on the development and growth of clean hydrogen. If the proposed regulation is finalized as written, clean hydrogen producers will have inaccurate lifecycle greenhouse gas emissions calculations, which will disincentivize the reduction of upstream emissions – exactly the opposite of the intent of the original legislation.

We recommend Treasury move upstream methane emissions to foreground data in its final guidance. This change would be best implemented through use of reported data using the EPA Greenhouse Gas Reporting Program (GHGRP) Subpart W[3] (or the same methodology, for producers who do not need to report under GHGRP), as Subpart W currently provides the best option for verifiable, project-specific methane leak data.

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[1] IRS Proposed Regulations for Section 45V Credit for Production of Clean Hydrogen; Section 48(a)(15) Election To Treat Clean Hydrogen Production Facilities as Energy Property; https://www.federalregister.gov/documents/2023/12/26/2023-28359/section-45v-credit-for-production-of-clean-hydrogen-section-48a15-election-to-treat-clean-hydrogen

[2] U.S. Department of Energy; Guidelines to Determine Well-to-Gate Greenhouse Gas (GHG) Emissions of Hydrogen Production Pathways using 45VH2-GREET 2023; https://www.energy.gov/sites/default/files/2023-12/greet-manual_2023-12-20.pdf

[3] EPA Greenhouse Gas Reporting Program (GHGRP); https://www.epa.gov/ghgreporting/subpart-w-petroleum-and-natural-gas-systems

Without the ability to input lower emissions intensity, developers who would qualify for a higher value credit based on the actual carbon intensity of their operations would instead receive a lower value credit – based entirely on a preset number that does not represent their real-world emissions. This will also allow operators with higher upstream emissions rates than the fixed average to claim a lower rate they are not entitled to claim.

Maintaining upstream methane emissions as background data could put major projects in jeopardy, which could result in less clean hydrogen produced and fewer American jobs. Given that more than half of the official Hydrogen Hubs selected[4] by the U.S. Department of Energy rely at least in part on the natural gas pathway, the stakes are quite high.

45V can be a powerful incentive for clean hydrogen producers to source differentiated, or certified, natural gas that has a lower carbon intensity than Treasury's national average upstream emissions rate. But under the proposed draft, there is little incentive for developers to invest in additional greenhouse gas reductions upstream.

Congress and the Administration have recognized the important role clean hydrogen will play in achieving broader economy-wide net-zero goals. We share that view. However, the proposed regulation as written will stifle investment and innovation in the clean hydrogen sector. It is imperative that the final 45V regulations provide project developers more flexibility by leveraging project-specific data for upstream emissions in the final 45V regulation.

We appreciate your consideration and urge you to provide a pathway for clean hydrogen producers to use verifiable, project-specific data within the 45VH2-GREET calculations.

Sincerely,

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CLEAN AIR TASK FORCE

FCHEA Fuel Cell & Hydrogen Energy Association

NATIONAL ASSOCIATION OF Manufacturers

OPEN HYDROGEN INITIATIVE

U.S. Chamber of Commerce

[4] Regional Clean Hydrogen Hubs Selections for Award Negotiations; https://www.energy.gov/oced/regional-clean-hydrogen-hubs-selections-award-negotiations