

February 26, 2024

The Honorable Lily L. Batchelder
Assistant Secretary for Tax Policy
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

RE: IRS REG 117631–23, Comments on Credits for Production of Clean Hydrogen

Dear Assistant Secretary Batchelder,

On behalf of the organizations listed below, we thank you for your hard work and diligence in implementing the Inflation Reduction Act, including the pragmatic approach taken in developing draft guidance for the 45V clean hydrogen production tax credit. If strong proposed electrolytic guidance is finalized without major loopholes and changes are made to the fossil fuel-based hydrogen guidance, the tax credit will help to ensure that the hydrogen industry scales on solid climate foundations.

When targeted at hard-to-electrify and energy-intensive applications, truly clean hydrogen can help catalyze the U.S. transition to a clean and renewables-based economy. But hydrogen production, transport and use can also carry significant risks including delaying decarbonization efforts, increasing health harming pollution especially for environmental justice communities, and serving as a greenwashing tool. For this reason, strong safeguards like the ones included in this letter and outlined in the Climate Action Campaign (CAC)'s [Policy Principles](#) are needed.

We strongly support the Administration for including the “three pillars” in the draft rule, which our organizations and [a wide range of responsible industry members](#) have called for to ensure that hydrogen produced from renewable electricity (“green hydrogen”) will be truly clean. These requirements – that the claimed electricity must be provided by new carbon-free energy sources, delivered efficiently in the same region and matched hourly with power consumption – will prevent substantial emissions increases from hydrogen production, avoid electricity price spikes for people and businesses, and align near-term hydrogen investments with the needs of the overall clean energy transition. Moreover, the Environmental Protection Agency (EPA) has affirmed the robust legal standing of Treasury’s three pillar approach for 45V, [expressly noting](#) that it is consistent with its long-standing interpretation and application of CAA Sec 211. The [EPA](#) and the [Department of Energy](#) both also affirmed that the three pillars are a reasonable, appropriate, and administrable approach to determine that there are no induced grid GHG emissions from hydrogen production. Further, these requirements provide international market harmonization as they are in line with the approach taken by the European Union.

However, we are deeply concerned about the broad loopholes that the administration is considering in final guidance – notably, the 5 to 10% allowance for existing clean resources. This would constitute marked backsliding from the proposal, opening the door for the tax credit

to ultimately drive [significant emissions increases](#). We urge the administration to hold firm and ensure that any additional flexibility provided in the final guidance is carefully tailored.

Furthermore, the draft rule leaves the door open for heavily polluting hydrogen projects that utilize today's incumbent steam methane reforming technology to qualify as 'clean' – not by changes to technology or process, but rather by purchasing biomethane (sometimes referred to as “renewable natural gas” or “RNG”) or fugitive methane offsets while burning methane gas with impunity. We do not advocate for the proliferation of fossil-based hydrogen projects, and allowing offsetting would amount to outright greenwashing. Giving hydrogen producers what amounts to a free pass on their upstream methane emissions, failed carbon capture, or failed carbon storage is completely at odds with the intention of the 45V tax credit. It would fail to produce truly clean hydrogen, fail to reduce greenhouse gas emissions, and perpetuate harms to the health of nearby communities by continuing air pollution, among other effects. We vigorously call for a final rule that prohibits carbon-intensive hydrogen production projects from being counted as “clean” through the purchase of biomethane offsets.

Finally, ensuring hydrogen is truly produced in a manner aligned with climate targets requires reigning in all forms of GHG emissions – not just carbon dioxide, but methane and hydrogen emissions as well. The current tool used to determine tax credit eligibility could dramatically underestimate methane emissions upstream of hydrogen production and altogether ignores the warming impact of hydrogen emissions. Together, this means 45V could incentivize hydrogen that is [worse for the climate](#) than the fossil fuels it's replacing. Treasury must avoid this perverse outcome by updating its models – to both accurately reflect methane emissions and include hydrogen's warming potential.

The final rule stands to usher in billions of dollars of new energy investments. Coupled with necessary health, safety, and labor protections, a strong 45V rule can help shape the development of hydrogen as a climate solution. Our organizations and millions of supporting members call on you to finalize a strong rule and go the final mile toward establishing a truly clean hydrogen future.

Sincerely,

350 Wisconsin

Alliance of Nurses for Healthy Environments

Arizona Climate Action Coalition

Battle Born Progress

Change the Chamber

Chesapeake Climate Action Network

Clean Air Council

Climate Law & Policy Project

ClimateVoice, a project of Tides Center

Consolidated Oregon Indivisible Network (COIN)

Earthjustice

Ecumenical Ministries of Oregon / Oregon Interfaith Power and Light

Elders Climate Action

Elders Climate Action - Arizona Chapter

Environment America

Environment Texas

Environmental Defense Fund

Environmental Law & Policy Center

Evergreen Action

Faith in Place

George Mason University Center for Climate Change Communication

Health Care Without Harm

League of Conservation Voters

Michigan League of Conservation Voters

Moms Clean Air Force

Natural Resources Defense Council

PennEnvironment

PennFuture

Physicians for Social Responsibility

Poder Latinx

Sierra Club

Southern Environmental Law Center

The Climate Reality Project

Three Rivers Waterkeeper

Union of Concerned Scientists

CC:

Senator Schumer

John Podesta

Administrator Regan

Secretary Granholm