



November 3, 2022

VIA The Federal eRulemaking Portal at www.regulations.gov

Internal Revenue Service
CC:PA:LPD:PR (Notice 2022-49)
Room 5203
P.O. Box 7604,
Ben Franklin Station
Washington, DC 20044

RE: Comments on Notice IRS 2022-51

The Fuel Cell and Hydrogen Energy Association (FCHEA) appreciates the opportunity to respond to the Department of Treasury's Request for Comments on prevailing wage and apprenticeship requirements.

FCHEA is the national industry association representing over eighty-five leading companies and organizations advancing innovative, clean, safe, and reliable hydrogen energy technologies and solutions. FCHEA's members represent the entire global supply chain of the fuel cell and hydrogen industry including fuel cell and electrolyzer stack and system manufacturers, component suppliers, vehicle manufacturers, aviation companies, hydrogen producers, transporters, fuel distributors, utilities, end-users, and more. For over 30 years, FCHEA has provided a consistent industry voice to policymakers and regulators, working with Congress and administration officials to educate decisionmakers and support hydrogen-focused tax and policy incentives.

FCHEA is a longtime advocate of hydrogen, its potential uses, and its contribution to a clean energy future. For years, FCHEA has provided advice, guidance, and served as a resource for the DOE, Department of Transportation (DOT), Department of the Treasury (Treasury), federal policymakers, and other industry leaders. FCHEA appreciates the Biden Administration's commitment to developing an investment tax credit for hydrogen storage property and looks forward to being a resource to IRS and Treasury throughout the guidance process. FCHEA offers these comments leveraging its leadership, mentorship, and expertise within the hydrogen industry.

The Biden Administration has set [*bold national decarbonization goals*](#), including 100 percent carbon pollution-free electricity by 2035 and net-zero GHG emissions by 2050. Hydrogen energy is increasingly viewed as an essential decarbonization option across the United States and around the world for a wide range of sectors. [*The Road Map to a US Hydrogen Economy*](#) report found that hydrogen could constitute 14 percent of the US energy demand, resulting in a 16 percent national reduction in CO₂ emissions and 36 percent reduction in NO_x emissions, a significant win for mitigating climate change and improving public health. In addition, the Road Map further estimates that by 2050 the hydrogen sector would generate \$750 billion per year in revenue and create 3.4 million jobs, demonstrating this sector's incredible economic as well as environmental potential.

Section 45V(e)(2) provides that a “qualified production facility” meets the prevailing wage and apprenticeship requirements necessary to receive the increased credit amount for clean hydrogen production under § 45V(e) if “construction” of that facility “begins prior to the date that is 60 days after the Secretary publishes guidance with respect to the requirements of paragraphs (3)(A) and (4).” FCHEA respectfully proposes that the IRS provide guidance regarding methods for establishing “beginning of construction” within the meaning of this provision. Such guidance would enable taxpayers with clean hydrogen production facilities that are currently, or soon will be, under construction to have clarity on whether they will qualify for the increased credit values.

Specifically, FCHEA urges the IRS to adopt the framework established in Notice 2020-12 (Beginning Construction for the Credit for Carbon Oxide Sequestration under Section 45Q) to determine whether a clean hydrogen production facility has begun construction within the meaning of § 45V(e)(2). Under Notice 2020-12 for the 45Q credit, taxpayers may establish the beginning of construction of a qualified facility or sequestration equipment by starting physical work of a significant nature (the "Physical work test") or by paying or incurring at least five percent of the total cost of the facility or equipment ("Five percent safe harbor"). Under either test, a taxpayer must make continuous progress toward completion once construction has begun (the "Continuity requirement"). This framework has proved to be an effective test within the 45Q context, which has several provisions requiring clarity regarding when a qualified facility has begun construction.

Clean hydrogen can be produced through a broad variety of pathways. Applying the same tests for establishing when any type of facility has begun construction will promote consistency and minimize the administrative burdens for taxpayers who intend to claim these credits. Providing this clarity is also essential to continue to incentivize industry that is already moving forward with decarbonization and clean hydrogen projects to continue that work and not delay major construction until rules are defined. Failure to provide that clarity will undermine quicker emissions reductions.

For these reasons, FCHEA urges the IRS to apply the tests established in Notice 2020-12 for determining whether a clean hydrogen production facility has begun construction within the meaning of § 45V(e)(2).

FCHEA is appreciative of the opportunity to provide these comments. The association and its members are dedicated to supporting the Administration however necessary to ensure that the Inflation Reduction Act guidance on hydrogen tax incentives accurately reflects the scientific and business realities of the hydrogen sector. Please feel free to contact FCHEA CEO Frank Wolak at FWolak@FCHEA.org with any comments or questions you may have regarding this submission or any other hydrogen related issue.

Sincerely,



Frank Wolak
President & CEO
Fuel Cell and Hydrogen Energy Association