December 3, 2022

Submitted via www.regulations.gov

Internal Revenue Service
CC:PA:LPD:PR (Notice 2022-58)
Room 5203
PO Box 7604
Ben Franklin Station
Washington, DC 20044

Re: Notice 2022-58

Dear Sir/Madam:

Infinium Holdings, Inc. ("Infinium") submits these comments in response to changes to Code section 45V, the Clean Hydrogen Production Tax Credit, as enacted, extended and amended by the law known as the Inflation Reduction Act of 2022 (IRA).[1]

Infinium is a renewable fuel and chemical company headquartered in Sacramento, California that is an owner and operator of plants that convert waste carbon dioxide and green hydrogen into ultra-low carbon transportation fuels, commonly referred to as "electrofuels." Though electrofuels are produced using different feedstocks than conventional petroleum-based fuels, the end product is chemically indistinguishable from conventional fuel and thus is a drop-in replacement for use in existing planes, ships, and trucks which does not require costly infrastructure changes or upgrades to fleets.

Infinium is financially and strategically supported by its investors, including affiliates of Amazon, NextEra Energy, Mitsubishi Heavy Industries, and AP Ventures- groups who are interested in both reducing their carbon footprints and innovating solutions to current environmental issues.

The comments contained in this letter relate to the following requests in Notice 2022-58 and its request for comments with respect to Code section 45V:

1. Section 3.01(6)(c), Coordination with Section 45Q;
2. Section 3,01 (1)(e), Verification of Source; and
3. Section 3,01 (4) (e) Recordkeeping and Reporting.

Specific comments on these three areas are below.

[1] Public Law 117-169, 136 Stat. 1818 (August 16, 2022).

A. Coordination with Section 45Q

The notice seeks comments on the circumstances in which a single facility with multiple unrelated process trains could qualify for Section 45V and 45Q credits. The IRA provided a taxpayer may not claim a Section 45V credit for qualified hydrogen produced at a facility that includes carbon capture equipment for which a credit is allowed to any taxpayer under 45Q for the current or any prior taxable years.

Section 45Q defines carbon capture equipment as property that is used to capture or process carbon oxide until the carbon oxide is transported for disposal, injection, or utilization. Such equipment must be installed either at an industrial facility emitting a carbon oxide stream or associated with a direct air capture facility capturing carbon oxide from the atmosphere (the "carbon capture facility"). Correspondingly, section 45V defines a hydrogen production facility as a facility that involves the activity of producing a stream of clean hydrogen (the "hydrogen facility").

Sections 45Q and 45V provide a basis of defining a qualified facility according to the equipment, functional activity and feedstock/product streams involved. We strongly urge Treasury to extend this basic framework to assess a determination if separate facilities exist between hydrogen production and the equipment to which carbon capture equipment is associated in its capture of carbon oxides, irrespective of the proximity between the two activities.

The assessment should examine if the equipment producing hydrogen and that associated with carbon capture is functionally separate by process operation, feedstocks and/or resulting product streams. If the two processes are functionally separate, then the associated equipment should be considered as separate and different facilities. This determination should be made without any regards to the degree of proximity of the facilities to one another, including instances of being co-located, adjacent or separated by only a short distance.

Consideration should also be given that in typical refining or processing plants common systems of support for heat, steam, electricity, feedstock, administration, etc. may be shared across equipment employed in separate process or product streams. This can also occur in cases of co-location or adjacent sites. The fact there are support functions or systems potentially shared should not be considered a factor, as long as the two processes are functionally different and separate.

Finally, as this circumstance is equally relevant to section 45Z, the same approach can be readily extended in the same manner. An examination can be made in relation to the equipment associated with the fuel production process to determine if it can be treated as a separate facility, based on supporting evidence of being functionally different to the hydrogen production and carbon capture processes.

B. Verification of Source of Electricity

Treasury should allow flexibility on how renewable power can be supplied and identified for production of qualified clean hydrogen and clean fuel under Section 45Z and in determining the greenhouse gas emissions rates.

Options should include the use of (a) direct connection to a renewable generator; (b) grid-connected renewable power verified by power purchase agreements (PPAs); or (c) a combination of both methods.

We encourage Treasury to review how similarly situated regulatory regimes are dealing with this issue, such as the California Low Carbon Fuel Standard ("LCFS") program under rules for renewable process energy and renewable electricity used to produce hydrogen.

Consistent with the LCFS program, we recommend adopting the following criteria to demonstrate sources of renewable electricity:

(1) ***Direct connection.*** The generation equipment should be directly connected through a dedicated line to the project site ("the load") such that the generation and the load are both physically located on the customer side of the utility meter. The generation equipment should be allowed to be grid connected, to enable net-metering of excess or unused power back to the grid. Finally, the load should be sufficient to match the amount of directly connected renewable electricity claimed within a monthly balancing period.

(2) **Grid-supplied Renewable Power.** Electricity taken from the grid should be considered renewable using virtual power purchase agreements (a "virtual PPA"). The location of the renewable power generation facility under the virtual PPA should be in the same balancing zone as the project site. Book and claim accounting should be used as a chain-of-custody model to verify that the quantity of renewable electricity supplied to the grid to the quality claimed by the project site occurs within a span of three calendar quarters (consistent with other regulatory regimes, e.g., the LCFS program).

C. Recordkeeping and Reporting.

Finally, if a taxpayer serves as both the clean hydrogen producer and the clean hydrogen user, rather than selling to an intermediary third party, Treasury should allow flexibility with respect to the verification methods used and records maintained, to demonstrate that the production of clean hydrogen meets the requirements for the § 45V credit. For example, it is Infinium's intention to employ accurate and real-time measuring systems to determine the amount of clean hydrogen that it produces at its production facilities. In turn, because the formulation of the electrofuels being produced will require precise and real-time measurement of the feedstocks used in the production of the electrofuels, Infinium will be able to provide up to date and accurate records both at the production and utilization phases of the clean hydrogen. It is believed that this record-keeping should suffice and that taxpayer's should be presumed to be

acting in good faith as long as some form of reliable and consistent measurement and record keeping is employed.

Thank you for considering our comments.

Sincerely yours,

David J. Zaziski, Ph.D.
Vice President, Government Affairs & Policy