AMERICAN TRUCKING ASSOCIATIONS

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February 26, 2024

U.S. Department of the Treasury
Internal Revenue Service
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

RE: **Request for Comment on the Section 45V Credit for Production of Clean Hydrogen; Section 48(a)(15) Election to Treat Clean Hydrogen Production Facilities as Energy Property (REG–117631–23)**

To Whom It May Concern:

The American Trucking Associations (ATA) appreciates the opportunity to provide input on the proposed guidance under Section 45V of the Internal Revenue Code, as amended by Section 13204 of Public Law 117–169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA). ATA is a national trade association that has represented the interests of the U.S. trucking industry for more than 90 years.[1] ATA is keenly interested in measures that can deliver operational savings and reduce carbon output.

Under the IRA, Congress aimed to significantly reduce carbon emissions to combat climate change. While efforts to decarbonize the trucking industry have predominantly centered on the increased adoption of battery electric heavy-duty vehicles, it's imperative to give both manufacturers and fleet operators options to further reduce their environmental impact. Hydrogen has an energy density greater than existing batteries and refueling times comparable with diesel.

The transportation sector, primarily passenger vehicles, accounted for the largest portion (29 percent) of total U.S. GHG emissions in 2021, exceeding GHG emissions from both the electricity and industry sectors.[2] Twenty-three percent of GHG emissions from the transportation sector are attributed to medium- and heavy-duty trucks, a carbon profile that the trucking sector is working to reduce.[3]

Transitioning to zero-emission vehicles (ZEVs) within the trucking industry is anticipated to occur gradually over several decades. Due to the long useful life of diesel engines, ZEVs' relatively higher upfront costs, and long fleet turnover cycles, diesel trucks will continue to

[1] ATA is a united federation of motor carriers, state trucking associations, and national trucking conferences created to promote and protect the interests of the trucking industry. Directly and through its affiliated organizations, ATA represents more than 34,000 companies encompassing every type and class of motor carrier in the United States and Canada.

[2] EPA. Fast Facts on Transportation Greenhouse Gas Emissions.

[3] *Id.*

dominate our nation's roadways for the foreseeable future. As the industry progresses, fleet consumers—hydrogen end-users—seek options that align with their duty cycles, performance requirements, and operational needs.

Still, hydrogen distribution and public refueling networks are nearly nonexistent, and the upfront heavy-duty fuel cell electric truck (FCEV) costs three to four times the price of a comparable diesel model.[4] Currently, there are only 58 publicly available hydrogen refueling stations in the United States mostly concentrated in California, and sparsely any that can accommodate heavy-duty vehicles (HDVs).[5] Unless hydrogen's price comes down significantly, fleets will find adopting FCEVs too costly. For example, filling a Class 8 diesel tank would cost $1,800 at $36 per kilogram, compared to a diesel fill up that is roughly one-third that price.[6] Steep price declines will be necessary to meet new stringent environmental regulations in our industry. In its proposed Greenhouse Gas Phase 3 rule, EPA would require 25 percent of long-haul HDV sales to be ZEVs by 2032, a target the agency expects to be met with near-total penetration of hydrogen FCEVs. Fleets will only be able to meet that level of FCEV sales with steep near-term declines in the price of hydrogen and other fuel stack components.

ATA Comments on the 45V Production Tax Credit

The 45V production tax credit presents a near-term opportunity to develop a domestic hydrogen production industry and help create competition among low-carbon transportation fuels. Unfortunately, the Department of the Treasury and Internal Revenue Service's (IRS) proposed regulation departs from how Congress wrote 45V, which did not include energy attribution certificate provisions like hourly matching or additionality as requirements. In ATA's view, these requirements as proposed encumber industry's efforts to expeditiously adopt hydrogen.

ATA offers the following comments:

A. **Matching.** Treasury should extend the current annual matching requirement within the 45V Credit program beyond 2028 until at least 2032. Extending the annual matching requirement for at least three years beyond December 31, 2027, can provide critical stability and certainty for investors and stakeholders within the hydrogen production and trucking industries. In addition, the requirement to align hydrogen production with clean power generation annually, followed by the transition to hourly matching in 2028, may disproportionately benefit regions with more diversified and evolving clean energy mixes. These requirements will hinder the scalability of the hydrogen industry nationwide and limit the accessibility of hydrogen to only those interstate fleets with operations in specific regions. Because long-haul trucks often move across state lines, a patchwork of regional availabilities would run contrary to the HDV use case and could leave commercial trucks stranded.

[4] See, *e.g.,* Transport Topics. "DOE Outlines Higher Upfront Costs for Green Heavy Trucks". March 1, 2023.
[5] DOE Alternative Fuels Data Center. Hydrogen Fueling Station Locations. Accessed February 25, 2024.; and Kelly Blue Book. "12% of America's Hydrogen Stations Just Closed." February 14, 2024.
[6] Freightwaves. "Hydrogen's newsy week skips over underlying challenges". February 9, 2024.

B. **Additionality**. The requirement for clean hydrogen facilities to become operational within 36 months may be a significant challenge for qualified facilities, mainly due to the mandated sourcing of clean electricity within a specific timeframe and region. In comments in this docket, the U.S. Chamber of Commerce proposes the three pillars' requirements in place at the time the clean hydrogen production facility to either be (1) in service for the full credit period, or (2) the year the qualified clean hydrogen is produced, whichever is more beneficial. Treasury should broaden the applicability of clean sources to include established low-emitting carbon sources like nuclear and hydropower.

C. **Grandfathering**. First movers should have access to low-cost financing that contributes to the rapid growth of the clean hydrogen industry. Grandfathering hydrogen projects that began construction before 2030 and exempting them from hourly matching and additionality requirements for ten years can provide certainty to investors and accelerate those investments.

ATA encourages the Treasury and the IRS to remove unnecessary barriers to producing hydrogen. From the trucking industry's perspective, the near decade-long shelf-life of this tax credit will overlay what EPA and the Administration hope will be a significant period of growth for the near-term availability of hydrogen fuel in the HDV sector through 2035.[7] The earlier first-moving fleets can test and deploy hydrogen-fueled trucks, the earlier industry can validate and adopt learnings. Fleet choices on whether to adopt a new technology frequently come down to a comparison of the total cost of operating one fuel versus another. In theory, the 45V production tax credit should reduce fleet costs for hydrogen, but the trucking industry will need several years of purchasing cycles to see those price declines and transition, especially at the scale envisioned by regulatory agencies. Of course, the true value of the tax credit is only as good as what is passed on to consumers. ATA hopes efforts will continue even beyond the term of the current credit to advance the continued introduction of hydrogen as a transportation fuel for trucking.

Thank you for considering our comments, and we look forward to working with you in the months ahead. I can be reached at pruiz@trucking.org if you need additional information or clarification on our comments.

Sincerely,

Paul Ruiz
Director, Energy and Environmental Policy

[7] The 45V tax credit is available through the first ten years a hydrogen production facility is in operation. To qualify, producers must begin construction before January 29, 2033.