CONSUMER ENERGY ALLIANCE
THE VOICE OF THE ENERGY CONSUMER

CC:PA:LPD:PR (REG–117631–23)
Room 5203, Internal Revenue Service,
P.O. Box 7604, Ben Franklin Station,
Washington, DC 20044

Re.: REG-117631-23 (Section 45V Credit for Production of Clean Hydrogen; Section 48(a)(15) Election To Treat Clean Hydrogen Production Facilities as Energy Property).

To whom it may concern:

On behalf of Consumer Energy Alliance (CEA) and our membership, we write to raise issues and offer potential solutions in response to the Internal Revenue Service's (IRS) notice of proposed rulemaking relating to the credit for production of clean hydrogen (45V) (clean hydrogen production credit) as established and amended by the Inflation Reduction Act of 2022 (IRA).

CEA is a nonprofit organization representing the voice of the consumer. We advocate for over 375-member organizations and more than 500,000 individuals. Our members include farmers, manufacturers, trade unions, and small businesses across the country. CEA is energy agnostic and does not favor one form of energy over the other in the fight for environmentally sustainable, affordable, and reliable energy for all American consumers.

CEA encourages the IRS in its consideration of these regulations to revise the proposed regulations to support a lower carbon future and be more inclusive of current and future offtake arrangements and technologies. Additionally, CEA encourages the revision of the proposed regulations to align with the language under the IRA.

CEA recognizes the immediate need for clean energy technology buildout, and appreciates this Administration's actions to achieve both carbon removal and clean hydrogen technologies. However, the IRS's newly-proposed regulations regarding tax credits for clean hydrogen production, including temporal matching requirements, may present a risk to the clean hydrogen investment necessary to drive down prices and stimulate industrial demand, all while limiting the potential emissions that can be removed by these technologies. As it stands, the 45V credit provides a tax incentive of up to $3 per kilogram of clean hydrogen produced; this tax credit is critical to achieving long-term decarbonization goals. Despite these goals, the IRS's proposed regulations would limit the applicability of this credit by benefiting only hydrogen produced using electricity from *newly built* zero-emissions sources. This restriction would increase clean hydrogen production costs by more than $3 per kilogram, effectively nullifying the 45V credit and disincentivizing carbon-intensive industries such as steelmaking, petroleum refining, and chemical manufacturing from investing in hydrogen technologies to offset their emissions.

Annual matching applies to hydrogen production facilities that start construction before 2028, determined under existing IRS state of construction guidance, including a 4 – year continuity safe harbor. For hydrogen production facilities that satisfy the start of construction requirement, annual matching would apply to the full 10 – year PTC period. Getting this rule correct would ensure that investment continue to flow thus continuing to create jobs and innovation in the economy at the benefit of consumers and families.

An impact analysis published by Plug Power found that these proposed regulations would have immense effects on not only clean hydrogen investments, but associated jobs and heavy industry emissions. In essence, these regulations may lead to a 45% decline in clean hydrogen investments by 2032; a loss of more than 515,000 potential U.S. jobs; a 60% reduction in clean hydrogen demand from hard-to-decarbonize sectors by 2040; and millions of tons of lost GHG abatement potential.

CEA advocates strongly for technologies that help the U.S. achieve a lower carbon future and job creation through renewable energy innovation and development. It is critical that investments in hydrogen technologies continue that could help power industries like steel manufacturing, tucking, and chemicals. However, it seems that the IRS's proposed regulations would stymie any of the positive impacts that this Administration's goals as established by the IRA were intended to achieve. Therefore, CEA proposes that the IRS align its proposed 45V regulations to meet both this Administration's clean energy goals while accounting for job creation and decarbonization of heavy industrial sources.

Sincerely,

Kaitlin Hammons

Kaitlin Hammons
Vice President
Consumer Energy Alliance