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 the National Hispanic Energy Council (NHEC) 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).

The National Hispanic Energy Council (NHEC) is founded on the principle of fair and equitable energy for all Americans, driven by the urgent need to reduce the 20% higher energy burden Hispanic families pay compared to the median American family. Drawing on expertise from across the economy and Hispanic community, we exist to fill a void in advocacy: a voice for energy policies that helps Hispanic families, businesses and entrepreneurs. The Council is building a bipartisan coalition of leaders of Hispanic groups across the country and exists to educate elected officials, policymakers and the Hispanic public on what good energy policy choices look like.

NHEC implores the IRS to revise the proposed regulations to support a lower carbon future and be more inclusive of current and future offtake arrangements and technologies. NHEC also strongly encourages the revision of the proposed regulations to align with the language under the IRA.

There is a need to diversify energy sources that will provide more affordable and reliable energy for Hispanic communities across the U.S. The IRS's newly-proposed regulations regarding tax credits for clean hydrogen production, 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. These impacts could have a ripple effect on Hispanic communities across the U.S. 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 effectively nullify 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

NATIONAL HISPANIC ENERGY COUNCIL

ensure that investment continue to flow thus continuing to create jobs and innovation in the economy at the benefit of the Hispanic community.

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, which could affect good paying jobs for the Hispanic community.

Additionally, the Treasury Department's proposed guidelines for the Production Tax Credit (PTC) hinge on the use of energy attribute certificates (EACs) for verifying a hydrogen producer's acquisition of clean energy. These guidelines stipulate three essential criteria for the EACs to qualify for the tax credit: temporal alignment, deliverability, and additionality.

The current rigidity of these rules could potentially lead to a significant deceleration in the development and production of hydrogen projects.

The challenges in creating a robust and dynamic hydrogen industry are substantial. Similar to the nurturing of past "Infant Industries," hydrogen producers and power generators should be granted greater leeway to initiate and evolve projects, with progressively stricter standards for claiming larger tax credit benefits being implemented gradually.

For instance, the proposed standards might drastically restrict the tax credit availability for numerous prospective low-carbon hydrogen production plants. A blue hydrogen project, which involves producing hydrogen through auto thermal reforming (ATR) or steam methane reforming (SMR) of natural gas with carbon capture to reduce emissions, could be eligible for the credit if it achieves high carbon capture rates. However, the suggested rules are likely to confine it to the lower two tiers of the credit due to a fixed upstream natural gas emissions factor.

It is critical that investments in hydrogen technologies continue to help diversify power sources for industry and allows for additional affordable, reliable energy. NHEC 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,

Julio Fuentes
Chairman

Matthew Gonzales
Vice Chairman