NGVAMERICA
Natural Gas Vehicles for America

400 North Capitol Street, N.W.
Suite 450
Washington, D.C. 20001
ngvamerica.org

Daniel Gage
President
dgage@ngvamerica.org
202.824.7397 office
202.824.9166 fax

February 26, 2024

The Honorable Janet Yellen
Secretary
United States Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

RE: Internal Revenue Service; REG-117631-23; Section 45V Credit for Production of Clean Hydrogen; Section 48(a)(15) Electric to Treat Clean Hydrogen Production Facilities as Energy Property; 88 FR 89220 (Dec. 26, 2023).

Secretary Yellen:

Introduction

NGVAmerica is pleased to provide comments on the Internal Revenue Service's proposed regulations concerning the section 45V Clean Hydrogen tax credits. NGVAmerica is the national trade association dedicated to the decarbonization of the transportation sector through the increased use of gaseous fuels including renewable and conventional natural gas and hydrogen. Our member companies produce, distribute, and market natural gas, renewable natural gas (RNG, also called biomethane), manufacture and service natural gas vehicles (NGVs), engines, and equipment, build, maintain and operate natural gas fueling stations, and operate fleets powered by clean-burning gaseous fuels across North America. A growing number of our members also provide services and products to support the advancement of hydrogen fueled vehicles.

In addition to offering these comments, we wish to indicate our support for the extensive comments submitted by both the Coalition for Renewable Natural Gas and the American Biogas Council.

The economic viability of the renewable natural industry is of upmost importance to the growth and economic well-being of today's natural gas vehicle industry. This is true because a large percentage of the natural gas used in on-road transportation now consists of renewable natural gas. In 2022, sixty-nine percent of natural gas consumed by natural gas vehicles was renewable natural gas.[1] Incentives such as the Alternative Fuel Tax Credit (IRC §§ 6426 and 6427), the Investment Tax Credit for Qualified Energy Property (IRC § 48), and regulatory programs such as the EPA's Renewable Fuel Standard Program play an important role in encouraging greater production and use of renewable natural gas as a transportation fuel. Most of that fuel today is consumed by natural gas vehicles serviced or fueled by our members. Our industry continues to work to grow the market for natural gas vehicles and to

[1] https://ngvamerica.org/wp-content/uploads/2023/04/NGV-RNG-Decarbonize-CY-2022-FINAL.pdf.

increase the uptake or consumption of renewable natural gas by on-road vehicles, ships, and other mobile equipment.

NGVAmerica members also are increasingly interested in servicing and fueling hydrogen vehicles including internal combustion engine vehicles and fuel cell vehicles as there are many synergies between the services and products that support natural gas vehicles and those necessary to support hydrogen fueled vehicles. As is the case with the natural gas industry, the hydrogen industry too will benefit from a strong and economically viable renewable natural gas industry. To that end, we view the section 45V credits and other credits included as part of the Inflation Reduction Act as important to incentivizing and encouraging greater production of RNG. This will only occur, however, if the IRS regulations do not impose burdensome or impractical constraints on the ability to capture these credits.

As currently proposed, section 45V regulations would impose unnecessary and unwarranted constraints on renewable natural gas and therefore could discourage greater production of renewable natural gas. Specifically, the requirements related to productive use, the questions raised concerning the use of book-and-claim procedures, and the lack of approved pathways for RNG to hydrogen production serve to discourage, not encourage, greater production of clean hydrogen and therefore are not consistent with the statutory intent. We offer the following brief comments on these issues.

First Productive Use

The notice indicates that to address the IRS's concern that the hydrogen tax credit could encourage fuel switching and could result in increased emissions elsewhere, the proposal would require that facilities seeking the tax credit must demonstrate that any use of renewable natural gas is the first productive use of that renewable natural gas. There likely are innumerable problems with this proposal. There is the possible disallowance for production sites that expand or increase efficiency to produce a larger quantity of renewable natural gas. There also are changing market factors that might make it more suitable for a producer to supply different end-users. This could be the result of expiring contracts, pipeline constraints, better transportation options for more local uses of renewable natural gas, and so forth. Properly functioning markets for commodities need to and depend on being able to adjust to changing market conditions including increases or declines in demand.

Fleets or businesses that use renewable natural gas for natural gas vehicles may want to acquire hydrogen to fuel their transit buses or trucks as they transition a portion of their fleet from natural gas to hydrogen. The IRS's proposed regulations would not allow this flexibility. A real-world example is the transit agency in Los Angeles that today operates one of the largest natural gas bus fleets in the U.S. but due to changing regulatory requirements is required to transition in the future to electric or hydrogen buses. The IRS rules would not allow the transit fleet's existing fuel provider to shift existing supplies of renewable natural gas over to hydrogen production for their use. Another example would be bankruptcy. Several major trucking carriers recently have gone bankrupt and sold off their assets. If that carrier had been a larger natural gas user and contracted for renewable natural gas, the IRS's proposed regulations would not allow the fuel retailers or producers to consider hydrogen as a viable outlook for their fuel. We do not see any benefit to these types of constraints and urge the IRS to amend its proposal accordingly.

Book-and-Claim Procedures

Virtually all renewable natural gas is contracted by using "book-and-claim" procedures or systems. This allows producers, fuel providers and users to efficiently move the attributes of renewable natural gas to where they have the highest economic use. Without these procedures, producers would likely have to abandon production or find much more costly means of directly transporting renewable natural gas to market. This would deprive the end-users of the option of using the attributes of renewable natural gas for compliance purposes, and it would likely result in greater emissions because producers would no longer have an economic incentive to capture what are in most cases fugitive emissions.

The IRS notice raises the concern that it might not allow book-and-claim procedures to be used by hydrogen producers to acquire renewable natural gas supplies. The notice states that "[t]he Treasury Department and IRS are considering providing rules to address whether or how book-and-claim systems with sufficient tracking and verification mechanisms may be used to attribute the environmental benefits of RNG or fugitive methane to hydrogen producers in the final regulations." This is an issue of huge importance, and we strongly urge the IRS to indicate in its final rule that it will allow the use of book-and-claim procedures to verify renewable natural gas supplies. In support of this position and as an indication that this is what Congress intended, we point to the colloquy between Senators Wyden and Carper, reprinted in the Congressional Record (Mr. Carper is the first speaker):

> It is also my understanding of the intent of section 13204, is that in determining ``lifecycle greenhouse gas emissions'' for this section, the Secretary shall recognize and incorporate indirect book accounting factors, also known as a book and claim system, that reduce effective greenhouse gas emissions, which includes, but is not limited to, renewable energy credits, renewable thermal credits, renewable identification numbers, or biogas credits. Is that the chairman's understanding as well?
> Mr. WYDEN. Yes.

Cong. Rec. Vol. 168, pp. S.4165 – 4166 (Aug. 6, 2022).[2]

Renewable Natural Gas Pathways

NGVAmerica has long supported the GREET model for assessing emission reductions of projects involving natural gas and other vehicles. We believe it is important that the Treasury and Argonne National Laboratory work expeditiously to update the model and pathways to assess a broader spectrum of renewable natural gas pathways such as that derived from anaerobic digestion of animal waste and other waste streams. We are concerned the lack of representation of other waste streams will impede the inclusion of those sources and reduce the opportunity to produce more, clean hydrogen.

GREET Treatment of Co-Products

[2] https://www.congress.gov/congressional-record/volume-168/issue-133/senate-section/article/S4165-3.

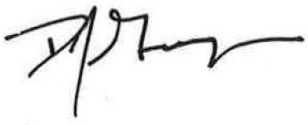
In its notice, the Treasury and IRS address the treatment of emissions related to co-products. Specifically, the notice states that the "Treasury Department and the IRS seek comments on (…) whether alternative co-product accounting methods, such as physical allocation (for example, energy allocation or mass allocation) or allocation based on other characteristics, would better ensure well-to-gate carbon intensity of hydrogen production is accurately represented."

NGVAmerica supports the comments of other organizations including the Fuel Cell and Hydrogen Energy Association (FCHEA) position that taxpayers that co-produce other products with hydrogen should be able to use any reasonable allocation method when determining the lifecycle greenhouse gas emissions of co-products (e.g., energy / mass-based / displacement / economic allocation). The FCHEA has pointed to procedures adopted by the California Air Resources Board (CARB). CARB allows a choice of physical allocation (e.g., based on energy, mass, etc.) or displacement (e.g., credit for avoided emissions resulting from a co-product). The benefit of this approach is that it provides flexibility and accommodates different technologies with unique or proprietary applications.

Conclusion

NGVAmerica appreciates the opportunity to provide these comments. We strongly encourage the IRS to move expeditiously to finalize regulations and to ensure that these regulations provide the producers the certainty and flexibility to determine how best to produce clean hydrogen, so that producers can adjust to market conditions, maximize investments in new projects, and develop new markets for existing assets.

Sincerely,



Daniel J. Gage
President