February 26, 2024

Comments to the Department of Treasury and IRS on 45V and 48(a)(15); RIN 1545-BQ97

Submitted electronically via the Federal eRulemaking Portal at *https://www.regulations.gov* IRS and REG–117631–23

To Whom it May Concern:

Taxpayers for Common Sense (TCS) submits the following comments to the Department of the Treasury and the Internal Revenue Service (IRS) regarding the proposed regulations under sections 45V and 48(a)(15) of the Internal Revenue Code. These sections, included in the Inflation Reduction Act of 2022 (P.L. 117-169, IRA), pertain to the Section 45V Credit for Production of Clean Hydrogen and the Section 48(a)(15) Election to Treat Clean Hydrogen Production Facilities as Energy Property.

TCS is an independent, nonpartisan budget watchdog that has been working on behalf of the nation's taxpayers since 1995. TCS works to ensure that taxpayer dollars are spent responsibly, and that the government operates within its means. This includes working to ensure that federal energy policy does not create short- or long-term liabilities for taxpayers.

The IRA's provisions can help transition the United States to a low-carbon economy, reducing taxpayer liability. To achieve the IRA's climate goals, it is vital that new tax credits adhere to principles of transparency, accountability, and tangible reductions in lifecycle greenhouse gas (GHG) emissions. It is essential that the Treasury Department implements the 45V and 48(a)(15) credits in a way that aligns with Congressional intent, ensuring it supports hydrogen production methods that result in verifiable GHG emission reductions and does not inadvertently subsidize high-carbon energy sources.

We urge the Treasury Department and the IRS to consider the following points:

- **Lifecycle GHG Emissions Rate:** Utilization of Energy Attribute Certificates (EACs) should be used as a mechanism to substantiate electricity purchased from zero GHG-emitting sources. TCS supports the IRS proposal for requiring EACs with attributes that meet criteria of incrementality, temporal matching, and deliverability. This ensures the 45V credit does not subsidize fossil fuel-powered electrolysis over renewable-powered methods. Nevertheless, an exemption to the incrementality criteria could undermine the 45V credit's purpose. The Treasury Department's contemplation of a 5-10% blanket exemption for existing electricity generation in hydrogen production is concerning. This exemption could potentially support high-carbon practices and lead to significantly higher GHG emissions. We encourage the Treasury Department to close this loophole and ensure the 45V credit fully supports the transition to a low-carbon economy without compromising environmental integrity.

- **45VH2-GREET**: The Greenhouse gases, Regulated Emissions, and Energy use in Technologies (GREET) model, chosen by Congress for calculating GHG emissions for hydrogen tax credit eligibility, should not be manipulated to qualify high-carbon energy sources for low-carbon tax credits. Regulations should include GHG emissions from both production and transportation of feedstocks in the lifecycle analysis.

- **Avoiding Subsidies for High Carbon Energy**: Implementation of 45V should exclude production methods that rely on high-carbon intensity feedstocks or processes. This includes fossil fuels without adequate carbon capture and storage (CCS) technologies, corn ethanol, and woody biomass, which do not effectively reduce GHG emissions. The Environmental Protection Agency's Science Advisory Board has stated that biomass energy should not be considered carbon neutral.[1] The Treasury Department must prevent loopholes during the 45V tax credit implementation that would allow these energy forms to qualify. Otherwise, prior Congressional intent would be undermined. Similarly, the real-world emissions from fossil fuel-powered electricity generation with CCS is also complicated and highly variable and could fail to reduce greenhouse gas emissions. For instance, during the few years before the Petra Nova plant shut down due to economic reasons, the plant was only capturing at 7% capacity although the initial design estimated the capture around 90%.[2] This gap between expected and actual capture rates is also widely observed in other CCS commercial projects. For example, the Shute Creek facility captured and sequestered about 47% of its carbon dioxide emissions, falling short of its target of 75%.[3]

- **Verification and Transparency**: Rigorous verification requirements for clean hydrogen production and the sale or use of clean hydrogen must be implemented. TCS also urges the IRS to mandate timely, independent, third-party verification of reported GHG emissions rates under 45VH2-GREET for accuracy and integrity.

- **Public Engagement and Transparency**: We appreciate the opportunity for public comment and encourage the Treasury Department and the IRS to continue engaging with stakeholders, including environmental groups, industry participants, fiscal groups, and the public. The success of the tax credits will require appropriate application, accountability, and transparency now and in the future.

In conclusion, it is crucial that the implementation of the Section 45V and 48(a)(15) credits is done in a manner that ensures verifiable GHG reductions. The Treasury Department must ensure that carbon-intensive forms of energy are not allowed to qualify for the 45V credit or risk the necessary reductions in GHG emissions.

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[1] Environmental Protection Agency Science Advisory Board, "SAB review of Framework for Assessing Biogenic CO2 Emissions from Stationary Sources (2014)," March 2019. https://cfpub.epa.gov/si/si_public_file_download.cfm?p_download_id=539269&Lab=OAP

[2] Joe Smyth, "Petra Nova carbon capture project stalls with cheap oil," *Energy and Policy Institute*, August 2020. https://energyandpolicy.org/petra-nova/

[3] IEEFA, "The Carbon Capture Crux Lessons Learned," September 2022. https://ieefa.org/sites/default/files/2022-09/The%20Carbon%20Capture%20Crux.pdf

Thank you for considering our comments.

Sincerely,

President