Public Testimony of the U.S. Chamber of Commerce

Public Comment on the Department of Treasury's Proposed Regulations entitled "Section 45V Credit for Production of Clean Hydrogen, Section 48(a)(15) Election to Treat Clean Hydrogen Production Facilities as Energy Property"

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Thank you for the opportunity to speak today regarding the Department of Treasury's proposed regulations, entitled "Section 45V Credit for Production of Clean Hydrogen, Section 48(a)(15) Election to Treat Clean Hydrogen Production Facilities as Energy Property."[1] My name is Dan Byers, and I am speaking on behalf of the U.S. Chamber of Commerce ("Chamber").

The Chamber and its members strongly support the 45V credit and its objective of catalyzing the clean hydrogen production necessary to deliver on economy-wide emissions reduction goals. In this vein, it is important to remember that Congress did not create 45V simply for the sake of dramatically increasing hydrogen production, but rather to ultimately supply hard-to-abate sectors of the economy with cleaner energy inputs and power alternatives.

Unfortunately, the Proposed Regulations, would deter and, in some cases, halt investment and deployment in clean hydrogen projects. This is primarily but not entirely due to the "three pillars" restrictions that significantly increase production costs and limit project investability. The Chamber's full written comments, submitted jointly as part of an industry coalition, detail our economic, practical, and legal concerns associated with the three pillars.

I will therefore forgo detailed technical comments on the pillars instead focus on our more fundamental concerns with the rulemaking and the breadth and diversity of voices that share these concerns.

At the top of the list is the federal government's own Department of Energy. When describing efforts to rapidly build out a clean hydrogen economy last year, Energy Secretary Jennifer Granholm said, "You have to do everything, everywhere all at once." It would be an exaggeration to say that Treasury's proposed rules would result in doing "nothing, nowhere, ever," but not by too much. So we believe there is a fundamental disconnect here that must be addressed.

A number of media reports have revealed that DOE is urging Treasury to relax the rules to give the industry time to grow out of concern the tax guidance will hamstring its hydrogen initiatives, including the $8 billion program to create regional hydrogen hubs. We agree with DOE and urge Treasury to closely consider DOE's advice on overcoming the barriers to accelerating clean hydrogen.

For example, DOE's national hydrogen strategy report sets forth a target of 50 million tons of clean hydrogen production and concludes that achieving this goal would

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[1] Section 45V Credit for Production of Clean Hydrogen; Section 48(a)(15) Election to Treat Clean Hydrogen Production Facilities as Energy Property, 88 Fed. Reg. 89,220 (proposed Dec. 26, 2023).

reduce economy-wide greenhouse gas emissions by 10%. But the strategy also cautions that our ability to address emissions in these hard-to-decarbonize sectors will hinge on other federal policies. As the report states :

> "Stakeholders on the production, demand, and financing sides highlight hesitancy to commit resources due to lack of price transparency and risks in clean hydrogen supply. Regulatory drivers at the state and federal level could help provide these long-term demand signals. Catalyzing long-term offtake would ensure that clean hydrogen production projects break ground while tax credits are active, allowing for production cost-downs in the 2020s and early 2030s" (emphasis added).

In other words, DOE warns that pending federal policies present a risk to the clean hydrogen investment necessary to drive down prices and stimulate industrial demand. While not explicitly mentioned in the report, the primary factor influencing these hydrogen supply risks is the 45V credit.

Of course, DOE and the Chamber are not alone in raising these concerns. Consider the following sample of stakeholders urging major changes to this proposal:

<u>Regional Hydrogen Hubs (H2Hubs)</u>: All seven of DOE's Regional H2Hub selectees issued a joint letter to express shared concerns regarding the narrow guidance that "may have far-reaching negative consequences for the entire domestic clean hydrogen industry."[2] As a reminder, these hubs aren't advocates with an axe to grind—they are literally the centerpiece of the federal government's hydrogen decarbonization efforts, and have been tasked with kickstarting a national network of clean hydrogen producers, consumers, and connective infrastructure while supporting the production, storage, delivery, and end-use of clean hydrogen. Collectively, the H2Hubs selected by DOE will ultimately reduce 25 million metric tons of CO2 emissions from end-uses each year and directly create approximately 334,300 jobs. The success of these projects and their associated emissions reductions and jobs depend on a workable 45V guidance—Treasury should heed their warnings.

<u>States</u>: Democratic governors of California, Oregon and Washington have called for an alternative compliance pathway for states with firm commitments achieve 100 percent

[2] Regional Clean Hydrogen Hubs Letter, *Concerns Regarding U.S. Treasury Department's Proposed Narrow Guidance on Hydrogen Production Tax Credit (45V)*, (Feb. 26, 2024) https://www.hyvelocityhub.com/wp-content/uploads/2024/02/H2Hubs-Letter-to-Treasury.pdf.

clean electricity, and warned against "imposing cumbersome and expensive project-level limitations on use of clean electricity sources".[3]

Members of Congress: In December, 11 Democratic Senators wrote to Secretary Yellen to reiterate the intent of the 45V tax credit was to "provide a robust and flexible incentive that will catalyze and quickly scale a domestic hydrogen economy."[4] Additionally, Senator Tom Carper, Chair of the Environment and Public Works Committee, stated "I fear that this proposed rule may well miss the mark. When developing the Inflation Reduction Act, we intended for the clean hydrogen incentives to be flexible and technology neutral. Treasury's draft guidance does not fully reflect this intent, potentially jeopardizing the clean hydrogen industry's ability to get off the ground successfully."[5]

Labor Unions: Labor unions across the country have also weighed in, including the Utility Workers Union of America, which stated, "we have already seen some of our largest employers begin to back away from investment in this technology as they view the further requirements set out in this guidance as being completely unworkable in practice."[6] The AFL-CIO warned that union members "looking to blue hydrogen projects as a source of family-sustaining, lower emissions jobs…. are now concerned that these projects may not qualify for a sufficient level of tax credit or any at all."

The list goes on and on, and we note that in addition to the diverse voices speaking at today's public hearing, just a sampling of similar comments filed into the docket from other groups include:

- The National Association of State Energy Officials (NASEO)
- The Massachusetts Department of Energy Resources
- Pennsylvania Governor Josh Shapiro
- The New Mexico Department of Environment (warned that the rule "disadvantages clean hydrogen produced with low-carbon natural gas.")
- North America's Building Trades Unions
- International Union of Operating Engineers
- United Association of Plumbers and Pipe Fitters

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[3] California, Oregon, Washington State Letter, REG–*117631–23: Suggestions for U.S. Treasury Department's Proposed Guidance on Hydrogen Production Tax Credit (45V),* (Feb. 26, 2024).
[4] United States Senate, Letter Re: Implementation of the Section 45V Clean Hydrogen Production Tax Credit (Nov. 6, 2023).
[5] Sen. Carper Statement on Treasury's Proposed Guidance for Clean Hydrogen Tax Credit, (Dec. 22, 2024) https://www.epw.senate.gov/public/index.cfm/2023/12/carper-statement-on-treasury-s-proposed-guidance-for-clean-hydrogen-tax-credit.
[6] Utility Workers Union of America, *Section 45V Credit for Production of Clean Hydrogen; Section 48(a)(15) Election to Treat Clean Hydrogen Production Facilities as Energy Property; IRS 2023-0066 and REG–117631–23* (Feb. 26, 2024) https://www.regulations.gov/comment/IRS-2023-0066-29408

- Allegheny Conference on Community Development, the Allegheny/Fayette Central Labor Council, AFL-CIO, and the Pittsburgh Regional Building & Construction Trades Council
- Colorado Energy Office
- The American Trucking Association
- Greater Houston Partnership
- New Jersey State Chamber of Commerce
- Greater Pittsburgh Chamber of Commerce
- Associated Builders and Contractors
- The Fertilizer Institute
- Airlines for America
- American Public Power Association

The Chamber's position on the Proposed Regulations is largely aligned with these stakeholders, and we respectfully request that Treasury address the many concerns related to the three pillars and their near certain negative impact on the ability of hard-to-abate sectors to decarbonize.

Three final points of concern: first, we urge Treasury to recognize the importance of 45V not only to DOE's broad hydrogen strategy, but to EPA's regulatory agenda. EPA is expected to soon finalize a power sector CO2 regulation requiring hydrogen co-firing on certain power plants and it expects compliance with that rulemaking to depend on large amounts of low-cost hydrogen.[7]

Specifically, the proposed rule assumes a clean hydrogen price of just $1 per kilogram through 2032, declining to 50 cents per kilogram thereafter, as, according to EPA, "tax credits and market forces are expected to accelerate innovation and drive down costs even further over the next decade."[8] Clearly, EPA is referring to a robust 45V credit, and clearly, there is misalignment between the EPA and the Proposed Regulations. In order for the EPA's vision of large-scale use of affordable clean hydrogen in the power sector to be realized, the 45V Credit must be structured in a manner that does not unduly restrict investment in hydrogen production.

Second, we urge Treasury to address flaws in the 45VH2-GREET model used to determine lifecycle GHG emissions. In particular, certain parameters in the GREET

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[7] *See* Chamber of Com. of the U.S.—Global Energy Inst., *A Closer Look at EPA's Powerplant Rule* (June 2023), https://www.globalenergyinstitute.org/sites/default/files/2023-06/USCC_EPA%20Powerplant%20Rule%20Analysis_2023.FINAL_.pdf.

[8] U.S. Env't Prot. Agency, Regulatory Impact Analysis for the Proposed New Source Performance Standards for Greenhouse Gas Emissions from New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emissions Guidelines for Greenhouse Gas Emissions from Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule (May 2023), https://www.regulations.gov/document/EPA-HQ-OAR-2023-0072-0007.

model are fixed assumptions (or “background data”), including upstream methane loss rates, CO2 emissions rates, emissions associated with power generation from specific generator types, and emissions associated with regional electricity grids. As the Clean Air Task Force describes it, this amounts to a “one-size-fits-none” approach that “fails to allow operators who can and want to prove they have lower leak rates to do so. On the other hand, it allows operators with leak rates far exceeding 0.9% to claim a rate that does not reflect conditions on the ground.”

Treasury should remove all fixed assumptions and allow hydrogen producers greater flexibility to input the actual carbon intensity of their feedstock and technology, which will encourage investments in emissions reductions technologies and allow taxpayers to better reflect their true lifecycle GHG emissions rate.

Third and final, we urge allowance of book-and-claim accounting processes for renewable natural gas and natural gas feedstocks to be used for clean hydrogen production. These systems have worked and will encourage greater investment in and production of emissions-reducing clean hydrogen.

In summary, the 45V Credit was designed by Congress to not only drive rapid growth and deployment of domestic clean hydrogen production facilities, but ultimately to provide supply-side incentives necessary to stimulate demand for end-use sectors to purchase and consume that clean hydrogen in order to achieve economy-wide emissions reductions goals. However, the Proposed Regulations would inadvertently halt and deter investors and developers from pursuing clean hydrogen development, so we urge major modifications to the proposal prior to finalization.

Thank you for the opportunity to provide comments today.