



February 26, 2024

Submitted Electronically Via Regulations.Gov  
Internal Revenue Service (IRS)  
CC:PA:LPD:PR (REG-117631-23)  
Room 5203, P.O. Box 7604, Ben Franklin Station Washington, DC  
20044

RE: NASEO Response to Notice of Proposed Rulemaking REG-117631-23

The National Association of State Energy Officials (NASEO) submits these comments in response to the Notice of Proposed Rulemaking REG-117631-23 regarding the credit for production of clean hydrogen (“45V”). NASEO has been supporting State Energy Offices as they advance clean hydrogen production and use through the formation of multi-state partnerships, development of clean hydrogen roadmaps, and leveraging of private-sector investments. When developing the final 45V guidance, NASEO encourages consideration of the availability of state-level data and differences among states’ existing clean energy resources.

First, the Notice of Proposed Rulemaking (NPRM) indicates taxpayers must use 45VH2-GREET to measure the carbon intensity of their hydrogen production facility. The 45VH2-GREET model relies on assumptions based on background data, such as the emissions associated with different power generation technologies. Some of this data represents the national average rate. However, emissions rates for different technologies vary significantly by state and, in the case of natural gas along the entire value chain. Allowing taxpayers to update the 45VH2-GREET model by inputting more granular, state-level data (where available) will result in more accurate life-cycle emissions estimates and carbon intensity calculations. For states with existing state-specific GREET models, the IRS should allow this information to be used for qualification.

Second, the additional approach outlined in the NPRM limits opportunities for the growth of a hydrogen economy with relation to existing nuclear plants and hydropower facilities. Several states have outlined the role that existing nuclear energy and hydropower can play in supporting hydrogen production. When pursuing relicensing or delaying retirements of these facilities, states can ensure that supporting clean

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hydrogen production is part of the process. Several of the hydrogen hubs awarded funding by the U.S. Department of Energy will depend on nuclear-produced hydrogen, for example. Not allowing those facilities to qualify for the tax credits could impact the economic feasibility of those hubs and investments in other states.

Third, because curtailment rates vary across regions, will likely grow over time in areas with high renewable energy growth, and are not evenly temporally distributed, the use of a fixed, assumed five percent will adversely impact uptake in many states. States with large amounts of renewable energy will have more curtailed energy available. NASEO supports a more tailored, granular approach that will more accurately account for curtailment and incentivize this market.

Finally, if the IRS includes an additionality requirement for capture of the clean hydrogen PTC and requires renewable resources to be constructed in the same timeframe as deployment of electrolyzers it will disadvantage some states and regions and slow clean hydrogen development. NASEO recommends an exemption to this approach in states where substantial amounts of existing renewables or other qualified resources exist. An exemption can support additionality goals and not disadvantage states with substantial existing renewable resources.

Thank you for the opportunity to comment on the proposed regulation.

Best regards,

A handwritten signature in black ink, appearing to read 'David Terry', with a long, sweeping flourish extending to the right.

David Terry, President, NASEO