



August 7, 2023

Office of the Associate Chief Counsel (Passthroughs and Special Industries)
U.S. Internal Revenue Service
CC:PA:LPD:PR (Notice 2022-58)
Room 5203, P.O. Box 7604, Ben Franklin Station
Washington, DC 20044

Via Federal eRulemaking Portal at: www.regulations.gov (IRS-2022-0058)

Re: Supplemental Comments on the Credit for Clean Hydrogen Production (Notice 2022-58)

Dear Sir/Madam:

The comments attached to this letter supplement the Clean Hydrogen Future Coalition's response to IRS Notice 2022-58 (the "Notice"), which requested comments on the clean hydrogen production credit as added by the Inflation Reduction Act of 2022 (P.L. 117-169, 136 Stat. 1818 (Aug. 16, 2022)).

Thank you for your consideration of these additional comments.

Sincerely,

A handwritten signature in blue ink that reads "Shannon Angielski". The signature is written in a cursive, flowing style.

Shannon Angielski
President, CHFC

August 17, 2023

CHFC Position on Book and Claim Accounting Factors of Renewable Natural Gas (RNG)

The Clean Hydrogen Future Coalition (CHFC) was founded to bring together a diverse group of stakeholders to promote clean hydrogen as a critical pathway to achieve global decarbonization objectives. The coalition's membership represents a diverse group of energy companies, labor unions, utilities, NGOs, equipment suppliers, and project developers who are committed to the advancement of a net-zero CO₂ economy that is supported by infrastructure across the supply chain necessary to fully scale clean hydrogen production and use in the U.S.

The Coalition supports policy designs that stimulate the production and use of low-cost, clean hydrogen with a fully transparent lifecycle greenhouse gas accounting system applied consistently across the value chain. To that end, the Coalition has been very engaged on the implementation of the 45V clean hydrogen production tax credit and the Department of Energy's (DOE) proposed clean hydrogen production standard (CHPS) to ensure that this policy delivers on the intent of stimulating the clean hydrogen economy in the U.S.

The following position on the use of book and claim of environmental attributes for the use of renewable natural gas¹ (RNG) to offset the carbon intensity of hydrogen production under both the Section 45V tax credit and the DOE's proposed CHPS represents the spirit of the CHFC's foundational principles to decarbonize the economy, and to remain technology neutral and focus on reducing carbon intensity across the supply chain.

Use of Book and Claim Accounting for RNG

A taxpayer should be able to utilize indirect book accounting factors, i.e. the purchase and retirement of environmental attributes and use of contracts, to demonstrate that the clean hydrogen production method is using the feedstocks and energy inputs that were included in the GREET model lifecycle analysis (LCA) of the production process. An entity that holds environmental attributes tied to the RNG used to produce clean hydrogen should be required to retire the attributes.

Rationale:

Allowance of market-based mechanisms using the GREET model to determine the LCA of the feedstock is consistent with legislative intent for section 45V, as articulated in a colloquy between Senator Wyden and Senator Carper:

Mr. CARPER. "In section [45V], the term 'lifecycle greenhouse gas emissions' for a qualified hydrogen facility is determined by the aggregate quantity of greenhouse gas emissions through the point of production, as determined under the most recent Greenhouse gases, Regulated Emissions, and Energy use in Technologies—GREET—model. It is also my understanding of the intent of section [45V], 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." See Congressional Record, Aug. 6, 2022, p.4165.

¹ CHFC uses the term renewable natural gas (RNG) interchangeably with all forms of biogas, defined as a gaseous fuel produced through fermentation or other processes using organic matter.

Allowance of book and claim mechanisms is also consistent with many state regimes, such as California's Low Carbon Fuel Standard (LCFS) system and is employed with strict record keeping requirements across the U.S. and internationally.² It is used in nearly all North American renewable gas procurement programs and is included in the Environmental Protection Agency's (EPA's) Renewable Fuel Standard (RFS).

The California LCFS program specifically allows that "RNG injected into the common carrier pipeline in North America (and thus comingled with fossil natural gas) can be reported as dispensed as bio-CNG, bio-LNG, or bio-L-CNG, or as an input to hydrogen production, without regards to physical traceability." Additionally, RNG quantities injected into the pipeline must be substantiated in the pathway application and subsequent Annual Fuel Pathway Reports that link the environmental attributes of RNG with the corresponding quantities of natural gas withdrawn.³

Practical Restrictions of Book and Claim Accounting for RNG

Treasury should provide for a practical book-and-claim accounting system under Section 45V, consistent with Congressional intent for implementation of the tax credit.

Deliverability/Physical Tracing

CHFC recommends that direct receipt of RNG to a clean hydrogen producer not be required to qualify for the credit, nor should book-and-claim accounting be combined with pipeline flow restrictions regarding physical traceability (as long as the RNG is injected into a gas pipeline system). Limiting book-and-claim accounting based on the physical flow of pipelines is inconsistent with the contractual basis for claims of using RNG and should not affect the RNG use claim of the entity holding the environmental attributes. Lastly, environmental attributes associated with the RNG that is being used to produce clean hydrogen and comply with the Section 45V carbon intensity requirements should not be allowed to be used for other programs such as the renewable fuels standard program.

Rationale:

RNG production facilities can be located throughout the country and may not be close to the site where the clean hydrogen will be produced. RNG can be distributed to the hydrogen production site through a gas pipeline system. Federal regulations allow entities to inject and withdraw RNG or natural gas anywhere on the system. Since the RNG can be both injected and stored in the gas pipeline network, book-and-claim accounting allows end users to contract for and receive credit for the RNG and its associated environmental attributes even if the end user does not physically receive the RNG to its facility. Although the reduction of emissions associated with the carbon dioxide intensity (CI) of the RNG may not be avoided directly at the hydrogen production facility, equal emissions are avoided throughout the gas pipeline system in the other end uses consuming the RNG. Book-and-claim accounting should be allowed so long as the environmental attributes of the RNG are not being claimed elsewhere on the gas distribution system.

For example, a clean hydrogen producer located in Texas should be able to contract with an RNG producer in California to purchase the RNG and its associated environmental attributes for use in its clean hydrogen production process if the RNG is injected into the gas pipeline system. Even if it cannot be demonstrated that the RNG is delivered directly to the clean hydrogen producer in Texas, the purchase of the environmental attributes will demonstrate that the clean hydrogen is produced with the CI of the RNG (calculated using the GREET model requirements). Again, the end result is that the introduction of the low CI RNG into the gas pipeline system results in the use of lower carbon intensity gas on the system.

² See, e.g., CA LCFS: RESO 18-34 LCFS Attachment A, Final Reg Order (ca.gov).

³ California LCFS 95488.8 (j)(2)(A) and (B)

Time Matching

Hourly time matching does not apply to the book-and-claim delivery of RNG, since RNG does not have to be used as it is produced to realize its environmental benefits and can also be stored over long periods of time and drawn on when needed. For record keeping purposes, CHFC proposes RNG's environmental attribute credits must be used within a year of the RNG injection into the gas system.

Additionality

The CHFC's position on additionality is that it not be required, given the output from existing RNG projects is usually contracted for, so new users of RNG for clean hydrogen projects will likely have to find additional RNG supplies. In cases where a contract ends or there is no contract (for purchase of the RNG and for the environmental attributes associated with the source of RNG), RNG from existing sources should be allowed to participate in the 45V tax credit on the same basis as a new source.