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Treasury Department and IRS issue final regulations for Section 45V hydrogen production tax credit

January 10, 2025 | Client Update | 2-minute read

The Treasury Department and IRS released final regulations regarding the clean hydrogen production tax credit, providing additional flexibility and investment certainty.

On January 3, 2025, the U.S. Treasury Department and Internal Revenue Service (IRS) announced final regulations for the credit for production of clean hydrogen established by Section 45V of the Inflation Reduction Act. The final regulations were officially published and effective on January 10, 2025, and generally applicable to taxable years beginning after December 26, 2023 (when proposed regulations were published).

The Section 45V production tax credit (PTC) for clean hydrogen provides for an income tax credit of up to $3.00 per kilogram of hydrogen produced, adjusted for inflation. For qualifying hydrogen production, the credit provides a varying, four-tier incentive depending on the carbon intensity of the hydrogen production process, with hydrogen produced with the lowest lifecycle greenhouse gas emissions receiving the largest credit. The credit value also depends on whether the project meets certain prevailing wage and apprenticeship requirements. The final rules clarify how producers of hydrogen, including those using electricity from sources such as natural gas with carbon capture, renewable natural gas (RNG) and coal mine methane, can determine eligibility for the credit.

The final rules differ from the prior proposed rules by generally expanding the rules to clarify how the clean hydrogen PTC applies to additional energy sources and offering increased flexibility. Notably, the final rules expand the credit to hydrogen produced with electricity generated in certain states with greenhouse gas emissions limits (such as Washington and California) or from qualifying nuclear power plants deemed at risk of retirement.

Given the additional certainty and flexibility provided by the final rules, which incorporates feedback from industry participants, we expect to see an increase in deal activity related to hydrogen production projects. However, as the incoming administration's view on the clean hydrogen PTC remains unclear, industry participants should continue to actively monitor updates.

Law clerk Leon Ren contributed to this client update.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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