

U.S. TREASURY RELEASES FINAL REGULATIONS FOR 45V HYDROGEN PRODUCTION CREDIT

On January 3, 2025, the U.S. Department of the Treasury (“**Treasury**”) and the Internal Revenue Service (“**IRS**”) released [final rules](#) implementing the Section 45V clean hydrogen production tax credit established by the Inflation Reduction Act (the “**Final Rules**”). While some open questions are sure to remain, the Final Rules, together with an updated version of the 45VH2-GREET model and user manual (expected to be issued by the U.S. Department of Energy by the end of this month), will provide project developers and investors with much-needed clarity on a particular project’s eligibility for the Section 45V credit.

The Final Rules were promulgated a little over a year following Treasury and IRS’s issuance of [proposed rules](#) for the Section 45V credit (the “**Draft Rules**”). The Draft Rules proposed restrictions that were met with protest by many industry stakeholders, evidenced by the 30,000 comments received by the Treasury and IRS in response. The Final Rules relax the proposed rule in several ways, particularly by expanding the class of qualifying energy attribute certificates (“**EACs**”) that may be used to offset the lifecycle GHG emissions of grid-connected hydrogen production facilities so as to meet certain Section 45V eligibility thresholds. The Final Rules retain the requirement that EACs must generally satisfy the “three pillars” of incrementality, temporal matching, and deliverability, but while the Draft Rules included significant restrictions on which EACs satisfy the three pillars (discussed in detail in [this prior Clifford Chance briefing](#)), the Final Rules, relaxed these restrictions in a number of ways:

- **Incrementality.** Under the Draft Rules, a hydrogen facility could only use EACs generated by a facility that achieved “commercial operation” no more than 36 months before the hydrogen facility was placed in service. This restriction was preserved in the Final Rules, but several new exemptions were provided for EACs generated by certain nuclear facilities and certain facilities that have had carbon capture and sequestration equipment installed within the last 36 months, even if the underlying facility has been operational for more than 36 months. In addition, hydrogen facilities located in states with qualifying renewable energy portfolio standards may, in some circumstances, use EACs generated by other facilities in that state even if such other facilities have been operational for more than 36 months.

- **Temporal Matching.** The requirement that temporal matching for EACs be hourly has been postponed to January 1, 2030. The Draft Rules would have required hourly temporal matching beginning January 1, 2028. Annual matching is now permitted prior to 2030.
- **Deliverability.** The Draft Rules required that EACs be sourced from a facility within the same geographic region as the hydrogen facility, as delineated in the National Transmission Needs study released by the U.S. Department of Energy in October 2023. The Final Rules generally maintain this requirement but clarify that a hydrogen facility is in the same region as another facility if they are both interconnected to a balancing authority within the same region (rather than strictly delineated geographic regions). More significantly, the Final Rules now permit the deliverability requirement to be met in certain instances of cross-region delivery where the deliverability of generation can be tracked and verified.

The Clifford Chance clean hydrogen team is continuing to review the Final Rules and will provide additional analyses in the near future on the key elements to Section 45V credit eligibility under the Final Rules.

CONTACTS

Jonathan Castelan
Partner

T +1 713 821 2831
E jonathan.castelan
@cliffordchance.com

Marcia Hook
Partner

T +1 202 912 5116
E marcia.hook
@cliffordchance.com

Alex Leff
Partner

T +1 713 821 2804
E alexander.leff
@cliffordchance.com

**Ty'Meka Reeves-
Sobers**
Partner

T +1 713 821 2837
E tymeke.reevessobers
@cliffordchance.com

Peter Hughes
Counsel

T +1 202 912 5135
E peterc.hughes
@cliffordchance.com

Henry Myers
Associate

T +1 212 878 4951
E henry.myers
@cliffordchance.com

Lauran Smith
Associate

T +1 202 912 5196
E lauran.smith
@cliffordchance.com

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

www.cliffordchance.com

Clifford Chance, Two Manhattan West, 375
9th Avenue, New York, NY 10001, USA

© Clifford Chance 2025

Clifford Chance US LLP

Abu Dhabi • Amsterdam • Barcelona • Beijing •
Brussels • Bucharest • Casablanca • Delhi •
Dubai • Düsseldorf • Frankfurt • Hong Kong •
Houston • Istanbul • London • Luxembourg •
Madrid • Milan • Munich • Newcastle • New
York • Paris • Perth • Prague • Riyadh* • Rome
• São Paulo • Shanghai • Singapore • Sydney
• Tokyo • Warsaw • Washington, D.C.

*AS&H Clifford Chance, a joint venture
entered into by Clifford Chance LLP.

Clifford Chance has a best friends relationship
with Redcliffe Partners in Ukraine.