



SUBMITTED VIA WWW.REGULATIONS.GOV

December 3, 2022

Office of the Associate Chief Counsel
(Passthroughs & Special Industries)
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Re: Comments on Notice 2022-58

To Whom It May Concern:

The Advanced Biofuels Association (ABFA) is the leading voice of energy innovators working to decarbonize transportation fuel. Founded in 2006, ABFA's membership has grown over the last fifteen years to include companies that represent the full value chain of advanced biofuel production, blending, and distribution. From some of the world's largest companies to small start-ups and technology providers, the organization's strength comes from its members' diversity within the fuel economy. Our membership collectively represents production of more than 5 billion gallons of advanced biofuels annually. Advanced biofuels deliver at least a 50% greenhouse gas (GHG) emissions reduction, and often displace emissions from the distillate pool – our hardest to decarbonize sectors in the transportation space – fueling heavy-duty trucks, airplanes, and ships.

The enactment of the Inflation Reduction Act (IRA) was an important step in the decarbonization of our future and the inclusion of the Clean Fuel Production Credit found at section 45Z of the Internal Revenue Code is an important provision that will specifically incentivize the decarbonization of transportation fuel, including sustainable aviation fuel. While the majority of our members welcomed the transition from the clean fuel tax credits historically available to the Clean Fuel Production Credit at section 45Z, its efficacy will largely be determined by the tax credit's implementation. We therefore welcome the opportunity provided by the U.S. Department of Treasury and Internal Revenue Service for stakeholder input on the implementation on this important tax credit.

As an initial matter, we urge Treasury and IRS to issue guidance quickly and provide stakeholders with additional opportunities to provide feedback on the implementation of this credit. While the statute requires guidance to be issued not later than January 1, 2025, this will be too late; in order to unleash the full potential of section 45Z, decisions need to be made in the near term not the date the credit becomes effective. In addition, ABFA members and other stakeholders have significant experience in the marketplace and knowledge of advanced biofuels; Treasury and IRS should not only engage with its federal counterparts, but should also seek comment and input from stakeholders with significant frequency and before any final rules are issued.

The annual establishment of emissions rate and the process by which taxpayers can petition for a provisional emission rate will be of key importance. Under section 45Z, the Secretary is to publish a table with emission rates for similar types and categories. For non-aviation transportation fuel

the statute requires that the rates be based of the GREET Model from Argonne National Laboratory.

A majority of our members support the use of GREET for determining producer specific carbon intensity values for purposes of this credit. In this regard, ABFA urges close coordination with the Argonne National Laboratory and the broader U.S. Department of Energy. ABFA also urges the establishment of a table that is specific to the type, source of fuel, and process – the table should be detailed given the variable emissions rates. Taxpayers who can demonstrate lower emissions rate as verified by an independent third party should be permitted to use their actual rate as a provisional rate and not be forced to use the annual table. Provisional rates should not be binding on taxpayers to the extent they have changed their processing to improve the emissions rate and taxpayers should be able to periodically seek modification of such rates. The process to request a provisional rate should be efficient and one that recognizes all emissions reductions is critical to realizing the promise of the performance-based fuels tax credits.

With investments and innovation, advanced biofuels continue to have increasing negative emissions rate. Treasury and the IRS should clarify the rates for these fuels, which can have an emissions rate much lower than -2.5 kilograms of CO₂e per mmBTU. Such rates are possible and the production of such incrementally clean fuel should be incentivized.

Treasury and IRS must also clarify the coordinating rules on qualifying for section 45Z. Taxpayers should be permitted to take advantage of the IRA to the maximum extent legally possible. For example while the statute states that a qualified facility under section 45Z cannot include one for which a section 45Q credit was taken, guidance is needed on how to interpret that provision and ABFA urges a narrow reading. In addition, Treasury and IRS should make clear that to the extent other credits are not listed in section 45Z, e.g. the Investment Tax Credit at section 48, taxpayers can work to develop creative solutions and partnerships that meet the requirements of multiple credits.

Finally, ABFA encourages Treasury and the IRS to apply a broad interpretation of “produced in the United States” to best meet the congressional intent of the IRA and the Biden Administration’s ambitions for increasing volumes of renewable fuels in the U.S. fuel supply. A broad interpretation should permit *either* a specified percentage of U.S.-sourced feedstocks used in the production of transportation fuels or that domestic production of finished fuel takes place in the United States. Because feedstocks, including intermediate feedstocks, are an integral component of transportation fuels and only one step back from the finished fuel, it is appropriate for Treasury and the IRS to issue guidance that transportation fuels made with U.S. feedstocks satisfy the “produced in the United States” requirement.¹

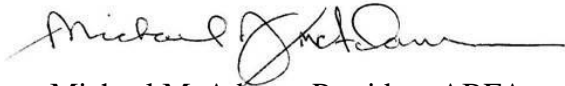
Likewise, we encourage Treasury and IRS to clarify that feedstocks, including intermediate feedstocks, may be sourced from outside the United States provided final fuel production occurs domestically. Specifically to SAF production, we suggest that Treasury and IRS review the

¹ Federal Trade Commission, *Complying with the Made in America Standard*, available at: <https://www.ftc.gov/business-guidance/resources/complying-made-usa-standard>, pg 8 (The evaluation of whether a product is made in the US includes raw materials).

relevant ASTM provisions at ASTM 7566 and 1655 to determine its guidance on feedstock procurement versus fuel production.²

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael McAdams", with a long horizontal flourish extending to the right.

Michael McAdams, President ABFA

² The Commercial Aviation Alternative Fuels Initiative (CAAFI), a public private partnership composed of airlines, aircraft and engine manufacturers, energy producers, researchers, international participants and U.S. government agencies, maintains a useful list of SAF pathways under ASTM 7566 and 1655 that outlines feedstocks and processing steps. Available at https://www.caafi.org/focus_areas/fuel_qualification.html