



November 4, 2022

Internal Revenue Service  
CC:PA:LPD:PR (Notice 2022-51)  
Room 5203  
P.O. Box 7604  
Ben Franklin Station  
Washington, DC 20044

Submitted Electronically via regulations.gov

**Re:** Notice 2022-51, Request for Comments on Prevailing Wage, Apprenticeship, Domestic Content, and Energy Communities Requirements Under the Act Commonly Known as the Inflation Reduction Act of 2022

The Renewable Fuels Association (RFA) appreciates the opportunity to provide these comments to the Office of Associate Chief Counsel (Passthroughs & Special Industries) as well as the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) regarding the provisions of §§ 30C, 45, 45L, 45Q, 45U, 45V, 45Y, 45Z, 48, 48C, 48E, and 179D of the Internal Revenue Code (Code), as amended or added by Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA).

RFA is the leading trade association for America's ethanol industry. Its mission is to advance the development, production, and use of low-carbon fuel ethanol and co-products by strengthening America's renewable fuels industry and raising awareness about the benefits of renewable energy. Founded in 1981, RFA serves as the premier meeting ground for industry leaders and supporters. RFA's 300-plus members are working to help America become cleaner, safer, more energy secure, and economically vibrant.

Of particular relevance to the goals of the IRA, RFA's producer members have committed to bold carbon intensity reduction targets. These include ensuring that by 2030 ethanol reduces GHG emissions by at least 70 percent, on average, when compared directly to gasoline and that by 2050, ethanol achieves net-zero lifecycle GHG emissions.<sup>1</sup> Our comments will focus on the interpretation of tax measures which will empower and accelerate the carbon reduction potential which is central to the spirit of the IRA. RFA's comments are informed by input from producer members' concerns about the interpretation of tax provisions within the IRA, as well as RFA's collaboration with related industry groups and coalitions.

## **I. General Ethanol Industry Priorities and Principles for IRA Provisions**

The IRA represents the most significant federal commitment to low-carbon biofuels since the Renewable Fuel Standard was expanded by Congress in 2007. The IRA recognizes

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<sup>1</sup> RFA Net Zero Pledge President: Ethanol to Achieve Net Zero Emissions by 2050 or Sooner, July 27, 2021, <https://ethanolrfa.org/media-and-news/category/news-releases/article/2021/07/rfa-pledge-to-president-ethanol-to-achieve-net-zero-emissions-by-2050-or-sooner>

the important role renewable fuels like ethanol can play in a lower-carbon future for this nation. Specifically, the legislation includes provisions that provide funding for clean fuel production, higher biofuel blend infrastructure, enhanced opportunities for ethanol to play a greater role in sustainable aviation fuel, and carbon capture, utilization, and storage. However, the IRA's tax provisions will need to be interpreted correctly for the legislation to achieve its goals. In particular, lifecycle analysis (LCA) methods, flexibility for individual producers in the calculation of individual fuel pathways in order to encourage greenhouse gas (GHG) reduction, and timely guidance on regulations for tax incentives to meet the timeframes of the IRA's programs for clean fuel production (45Z) and carbon capture, utilization, and storage (45Q) will be essential to the legislation's success.

The credits available to fuel producers under the Clean Fuel Production Credit (45Z) are dependent on a calculation of the full lifecycle carbon emissions of the production and use of a particular fuel. As fuel producers invest in technology and process improvements to lower their particular carbon intensity, the LCA modeling will need to offer flexibility and granularity so producers can benefit from their investments in a timely manner. Furthermore, these improvements will be made on different timeframes by different producers and individual pathways for individual ethanol plants instead of default values will be needed to provide the incentive for investment intended in the legislation. Different technologies in different combinations will allow ethanol producers to make improvements to their carbon intensity.

The goal of net zero or better ethanol is within sight.<sup>2</sup> Given the timeframes of IRA measures, pathway LCA calculations will need to be efficient, thorough, and individual to plants. RFA would encourage collaboration with the Department of Energy, particularly Argonne National Laboratory's Greenhouse Gases, Regulated Emissions, and Energy Use in Transportation (GREET) model. The IRA calls for use of Argonne GREET for non-aviation fuels. However, Argonne GREET has the thorough approach, ongoing review, and comprehensive science (including values for indirect land use change), to be used for LCA calculations for sustainable aviation fuel credits as well.

Finally, time is of the essence. With credits expiring in 2024 in the case of sustainable aviation fuel and 2027 for fuels under 45Z, ethanol producers need to begin investing in improvements immediately. As business decisions are being made, the ethanol industry will need to be confident that credits will be based on reliable science and that credits will retain the value Congress intended in the law. This means clear rules for pathway LCA, reasonable reporting requirements and flexibility for prevailing wage and apprenticeship requirements, and provisions that ensure transferrable credits retain their value to transferees.

## **II. Comments on Prevailing Wage, Apprenticeship, Domestic Content, and Energy Communities Requirements**

With regard to the particular subjects of this request for comment, RFA feels that there are a number of interpretations relating to prevailing wage, apprenticeship, domestic content, and energy communities' requirements that will have significant impacts on the outcomes of the legislation. Within these areas, the ethanol industry is ready to work with the IRS and other agencies to formulate reasonable timeframes and definitions for the implementation of the provisions in the act. Of particular interest are the prevailing

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<sup>2</sup> For more information on net-zero ethanol, see *Pathways to Net-Zero Ethanol: Scenarios for Ethanol Producers to Achieve Carbon Neutrality by 2050*, Isaac Emery, Ph.D., of Informed Sustainability Consulting LLC, February 14, 2022, <https://d35t1syewk4d42.cloudfront.net/file/2146/Pathways%20to%20Net%20Zero%20Ethanol%20Feb%202022.pdf>

wage and apprenticeship requirements in the Clean Fuel Production Credit under Section 45Z and the Carbon Capture, Utilization, and Storage credits under Section 45Q.

First, to the extent possible, IRS should strive to minimize the documentation and reporting requirements for substantiation of compliance with prevailing wage requirements. The ethanol industry creates over 400,000 direct and indirect jobs with a higher-than-average union density and very competitive compensation within the markets they serve. We also see great urgency in starting construction projects to deploy new technologies in order to qualify for tax benefits under the IRA. As a result, we ask that the compliance measures are streamlined to allow rapid investment and avoid the potential of administrative delay regarding classification of jobs or unclear reporting requirements.

Toward the same end, IRS should clarify their definitions of “construction, alteration, or repair” so that a taxpayer may determine which activities constitute the “construction of such facility or equipment” for purposes of IRC section 45Q(h)(3)(A)(i) and which activities constitute the “alteration or repair” of such facility or equipment for purposes of IRC section 45Q(h)(3)(A)(ii). As an established industry, some existing functions will require a transition to compliance with new regulations and clarity will enable ethanol producers and contractors to move forward.

Regarding the registered apprentice requirement, RFA asks IRS to consider that certain projects in certain areas will likely not have access to apprentices from registered apprentice programs and should develop reasonable options for those project developers. This may be especially important for ethanol producers in rural/remote areas that may not have reasonable access to apprentices from registered programs. The provisions allow exceptions for “good faith efforts” to secure registered apprentices, but further guidance would be helpful. For example, IRS could allow developers to apply for a waiver if they can show they made a reasonable attempt to secure registered/qualified apprentices but could not do so in a reasonable timeframe or at a reasonable cost.

IRS asks what factors should be considered when determining what constitutes a “good faith effort.” A few of RFA’s suggestions include:

- Availability of registered apprentice within desired project timeframe;
- Cost of travel and time needed to get qualified apprentices to work site;
- If non-registered workers are available who are able to demonstrate a comparable level of skill (which would require definition as well), they should be allowed to satisfy this requirement;
- Department of Labor and IRS involvement in connecting workers with qualifying apprenticeships would also be helpful.

IRS also seeks input on the appropriate duration of employment required for registered apprenticeships. We would suggest that IRS apply the registered apprenticeship requirement at 25% of the duration of the construction, alteration, or repair project.

Finally, RFA would encourage flexibility with the definitions included in Energy Community requirements. Whether areas are defined by census tract, city or county lines, or physical proximity to certain defined retired energy facilities, inflexible rules could make for inequitable outcomes among ethanol plants.

RFA looks forward to working with IRS, Treasury, and other agencies on the implementation of the IRA. We thank you again for the opportunity to provide comments. If you have any questions, or need any additional information, please feel free to contact Edward Hubbard, Jr., Esq., General Counsel for the Renewable Fuels Association, at ehubbard@ethanolrfa.org or (202) 315-2452.

Sincerely,  
RENEWABLE FUELS ASSOCIATION

A handwritten signature in black ink that reads "Geoff Cooper". The signature is written in a cursive, flowing style.

Geoff Cooper  
President and CEO