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Internal Revenue Service
CC:PA:LPD:PR (Notice 2022-58)
Room 5203, P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Re: Notice 2022-58 Request for Comments on Credits for Clean Hydrogen and Clean Fuel Production

Pinon, LLP respectfully submits the following comments in response to the Department of Treasury's and the Internal Revenue notice requesting comment on implementation of the recently passed Inflation Reduction Act (IRA). We appreciate the opportunity to provide input in this guidance process.

Pinion is a is a national leader in food and agriculture accounting and consulting. Our biofuels team has a deep understanding of the challenges faced by the industry and is dedicated to providing ways to solve or alleviate financial complexities. Pinion's sustainability team works with producers and agriculture companies to design and implement sustainability plans including carbon-reduction strategies.

The IRA represents the single largest investment in climate and energy in American history with significant opportunities for U.S. biofuels production. IRA provisions relating to Credit for Carbon Oxide Sequestration and the Clean Fuel Production Tax Credit will greatly benefit the nation's ethanol producers, farmers, and rural communities while simultaneously addressing the climate change challenge.

Low carbon biofuels are an important part of a clean energy future and a significant driver of rural economies. It is imperative that Department of Treasury and Internal Revenue Service guidance and regulations maximize the potential of this historic legislation. There are several important interpretations, clarifications, and determinations Treasury and the IRS should make regarding key provisions addressed in Notice 2022-58 requesting comments related to the clean fuel production credit.

Section 45Z establishes a tax credit that increases in size as the lifecycle greenhouse gas emissions (or carbon intensity) of a transportation fuel decreases. This "technology-neutral" approach has the potential to significantly reduce greenhouse gas emissions in the United States. To maximize these reductions, Treasury should develop guidance that allows biofuel producers to implement a wide array of actions to reduce their carbon intensity. These actions should include, but not be limited to, the purchase or installation of renewable electricity, carbon capture and storage, use of combined heat and power, and changes to on-farm practices. It is critical that Treasury use a granular approach in developing its regulations - the greater the recognition of diverse approaches, the greater the opportunity to implement those approaches and drive down greenhouse gas emissions. This will meet the intent of Congress and incentivize biofuel producers to reduce the greenhouse gas emissions of their fuel.[1]

Section 45Z(b)(1)(B) requires the Secretary to "annually publish a table which sets forth the emissions rate for similar types and categories of transportation fuels based on the amount of lifecycle greenhouse gas emissions … for such fuels." For this provision to maximize reductions of greenhouse gas emissions, it is absolutely essential that the table not use industry-wide calculations – for example for "ethanol" or "biodiesel." Such a blunt industry-wide approach would fail to incentivize behavioral shifts by individual producers and would be inconsistent with congressional intent. Instead, the table should allow subcategories of ethanol and biodiesel based on the use of renewable energy, carbon capture and storage, combined heat and power, on-farm practices, etc. Further, the guidance and the table should provide an opportunity for producers to submit alternative calculations based on new and innovative approaches. This flexibility will help incentivize innovation and lead to additional greenhouse gas reductions.

This granular approach is especially important when one recognizes the opportunity for the Clean Fuel Production Tax Credit to incentivize biofuels producers to pay farmers to undertake climate-smart practices on their farms. This would create an additional revenue stream for farmers and help reduce greenhouse gas emissions. To maximize this incentive, the Department of Treasury should adopt regulations and guidance for the Clean Fuel Production Tax Credit that incorporate the following principles:

- The regulations and guidance should clearly permit the use of greenhouse-gas-reducing on-farm practices to be factored into the carbon intensity score for biofuel produced by a taxpayer claiming the 45Z credit. On this point, greater granularity will produce greater results. The table published by Treasury should allow for a range of climate-smart on-farm practices to be incorporated into the CI score and should allow biofuel producers to seek recognition of new and innovative approaches to reduce greenhouse gas emissions from the feedstock they purchase. Treasury should recognize many on-farm GHG-reducing approaches including conservation tillage, cover cropping, and nutrient management.
- Biofuels producers who contract with farmers to undertake on-farm practices should not be penalized if a farmer fails to meet their commitments so long as the farmer was contractually obligated to implement the designed practices and so long as the farmer was participating in a

[1] Section 45Z(a)(2)(B) establishes the $1.00 credit for fuel with a carbon intensity of zero produced in facilities that comply with prevailing wage and apprenticeship requirements. While potentially outside the scope of the guidance and regulations that Treasury may issue, this program should be structured to provide a further incentive for biofuels that achieve a negative carbon intensity score – thus creating fuels that essentially serve as carbon sinks.

third-party verification program. While non-compliance could be used as a basis for assessing underpayment of taxes, companies should not be assessed penalties if they rely in good faith on representations from farmers who are participating in independent third-party verification. This safe-harbor approach should require simple third-party verification to ensure that practices are being implemented. The guidance and regulations should not require data collection to monitor, for example, the amount of carbon sequestered in the soil. Such data-driven verification would drive up the costs of participation and likely make such solutions unworkable.

- Since the purpose of the Clean Fuel Production Tax Credit is to assess the carbon intensity of fuel and to incentivize the use of low-carbon fuels, Treasury should not require a showing of additionality from farmers participating in climate-smart practices. Thus, if a farmer is producing corn on land that has traditionally been managed as no-till, the farmer (and by extension the ethanol company) should receive full credit for the no-till practice. Similarly, if a farmer has received some other form of compensation helping to incentivize their shift to climate-smart practices, the receipt of that compensation should not affect the carbon-intensity calculation for the feedstock being received by the biofuels company.[2]

In addition to these principles relating to on-farm practices, the Treasury guidance for the Clean Fuel Production Tax credit should clearly specify that:

1. The prevailing wage requirements only apply to employees and contract/subcontract labor involved in construction, alteration, and repair of such facilities - not to employees and contract/subcontract labor involved in day-to-day operations of such facilities. *See* 26 U.S.C. Section 45(b)(7)(A).

2. The apprenticeship requirements only apply to the construction of a qualified facility and only to employees and contract/subcontract labor involved in construction, alternation, and repair associated with construction of such facilities – not to employees and contract/subcontract labor involved in day-to-day operations of such facilities. *See* 26 U.S.C. Section 45(b)(8).

3. The 45Q and 45Z elections are conducted at a facility level and on an annual basis such that a taxpayer could claim a 45Q credit for a facility in 2023 and 2024 and then claim a 45Z credit for the same facility 2025 and 2026.

Thank you for the opportunity to submit these comments.

[2] While not within the purview of Department of Treasury, we would note that USDA and other government programs should work to align conservation programs with the 45Z tax credit to maximize the incentive to implement on-farm GHG reducing practices. Further, we would advocate that Congress should consider removing AGI limitations for USDA-funded climate-smart practices to facilitate rapid implementation of such practices at an even larger scale.