November 4, 2022

<u>Via Electronic Filing – www.regulations.gov</u>

The Honorable Charles Rettig
Commissioner
Internal Revenue Service
1111 Constitution Avenue NW
Washington, DC 20224

RE: Notice 2022-51 (Docket No. IRS-2022-0025-0001)

Commissioner Rettig:

NATSO, Representing America's Travel Plazas and Truckstops, and SIGMA: America's Leading Fuel Marketers (together, the "Associations") represent more than 80% of retail sales of motor fuel in the United States.[1] We submit these comments on behalf of America's retail fuel community in response to the Internal Revenue Service's ("IRS's" or the "Agency's") request for information ("RFI") on prevailing wage, apprenticeship, domestic content, and energy communities requirements under the Inflation Reduction Act of 2022 ("IRA").[2]

I. Overview of the Retail Fuel Industry and its Perspective on Renewable Fuels Policy

America's retail fuel industry is comprised of independent businesses. Although some retail fuel locations might bear the name of a large oil company, this is not indicative of any ownership stake in the business or the real estate, but simply of a marketing relationship or announcement to passing motorists that a certain company's product is available for purchase at that location (comparable to a soft drink advertisement in a grocery store window). These businesses are free to purchase fuel from suppliers of their choosing. In their effort to provide the most competitively priced fuel to their customers, and thus increase their market share, many of the Associations' members buy and blend biofuels into the gasoline and diesel sold at their locations. Incorporating renewable fuels into their fuel supply is thus entirely consistent with their business model, and with the industry's history of adding new fuels to their offerings as they become available and economically attractive to consumers.

---

[1] NATSO currently represents approximately 5,000 travel plazas and truckstops nationwide, comprising both national chains and small, independent locations. SIGMA represents a diverse membership of approximately 260 independent chain retailers and marketers of motor fuel.

[2] Internal Revenue Service, Department of the Treasury, "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," (October 5, 2022); hereinafter referred to as "RFI"; *available at* https://www.irs.gov/pub/irs-drop/n-22-51.pdf

For these reasons, fuel retailers support robust biofuel incentives when those incentives result in meaningful benefits for consumers in the form of lower prices at the pump. The industry prefers long markets with a variety of supply options to offer their customers. Fuel retailers are agnostic as to what fuels we sell, although they do have a strong bias in that they believe it is best for the American consumers – and America's industrial and geopolitical position in the global marketplace – to have reasonably low- and stable-priced energy.

Existing federal tax policies (such as the Biodiesel Tax Credit at 26 U.S.C. 40A) and other incentive programs (such as the Renewable Fuel Standard at 42 U.S.C. 7545(o)) are generally consistent with these objectives. The Associations' members have invested hundreds of millions of dollars in the physical and intellectual capital necessary to modernize their operations to align with these policy signals. Fuel retailers have aggressively advocated for these policies before Congress and executive agencies. We look forward to working closely with the IRS as it begins the IRA implementation process.

The IRA instructs the IRS to develop policies that will have immediate, direct, and traceable impacts on the supply of, and the price that consumers pay for, gasoline and diesel. The Associations and their members are eager to be resources for the Agency as it effectuates this directive. Our objectives are to maximize the climate benefits of renewable fuels and minimize fuel supply disruptions and inflationary consequences for consumers. These outcomes are best achieved via incentive structures that tether environmental attributes to consumer adoption through price, *i.e.*, when consumers pay less at retail for fuels with more favorable emissions characteristics.

Developing a tax incentive scheme that provides greater value to alternative fuels that have more favorable lifecycle greenhouse gas emissions outcomes (such as the Clean Fuel Production credit at 26 U.S.C. 45Z) can further these objectives. The IRA's incentives for sustainable aviation fuel ("SAF"), however, are misaligned with these principles: The legislation envisions a higher tax credit for SAF than for over-the-road biofuels, even when SAF's environmental upside is inferior to over-the-road uses. Congress fortunately anticipated and sought to mitigate this perverse outcome by subjecting SAF to more onerous GHG emission modeling assessments than over-the-road fuels. Specifically, the IRA subjects SAF to the International Civil Aviation Organization's ("ICAO") scheme, or any other "similar" model, whereas over-the-road biofuels are explicitly required to use the Argonne GREET model, which looks more favorably on biofuels' emissions reductions than does the ICAO scheme).[3]

Although beyond the scope of this docket, the Associations look forward to engaging with the Agency on these topics in due course.

II. Comments on the Agency's Request for Information on Prevailing Wage, Apprenticeship, Domestic Content, and Energy Communities Requirements under the IRA

Although some fuel retailers own equity stakes in biofuel production facilities, the Associations' primary interest in this RFI relates to the impact that prevailing wage and apprenticeship requirements will have on biofuel prices. (Biofuels are often a critical component

[3] *Compare* 26 U.S.C. 45Z(b)(1)(B)(iii) (SAF modeling) *with* 26 U.S.C. 45Z(b)(1)(B)(ii) (non-SAF modeling).

of the final product that fuel retailers sell to consumers, so understanding and anticipating their cost and price structures is essential to a well-functioning retail fuels market.

Toward that end, it would be useful for the Agency to provide market participants additional clarity on the following topics:

Apprenticeship Requirements

(1) The IRA indicates that for facilities that begin construction before Jan. 1, 2023, "qualified apprentices" must work 10% of the total labor hours that go toward construction, alteration, or repair work on the facility. The IRA appears to be silent, however, on the actual "effective date" by which facilities already under construction must meet this requirement (although it seems to envision the effective date being some time before 1/1/2024). Further clarity around the effective date by which facilities currently under construction must meet this requirement would be useful.

(2) The IRA stipulates that taxpayers will not be treated as failing to satisfy the apprenticeship requirements if the taxpayer, among other things, satisfies "good faith effort" requirements as described in 26 USC 45(b)(8)(D)(ii). Additional clarity around how this good faith effort exception will be administered would be useful.

Prevailing Wage Requirements

(1) Under the IRA, beginning on Jan. 1, 2025, clean fuel production facilities will only be eligible for the $1/gallon baseline credit if it pays "prevailing wages" to any laborer (or contract / subcontractor) working on construction, alteration, and repair. The IRA does *not* appear to impose prevailing wage requirements on other, regular operational functions that are not "construction," "alteration" or "repair." Further clarity around these terms and the precise types of work functions common within clean fuel production facilities that are (and are *not*) subject to the prevailing wage requirements would be useful.

(2) Under the IRA and other applicable laws, "prevailing wages" are determined by the U.S. Department of Labor and will differ depending on a worker's function. Additional specifics and clarity around qualifies as a "prevailing wage" for certain job functions in the various labor markets throughout the country would be useful.

Thank you for the opportunity to provide these comments. We look forward to working with you on these important issues.

Sincerely,

David H. Fialkov
Executive Vice President, Government Affairs
NATSO, Representing America's Travel Centers and Truck Stops
SIGMA: America's Leading Fuel Marketers