

October 30, 2023

Internal Revenue Service
CC:PA:LPD:PR (REG-100908-23)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Submitted Electronically via regulations.gov

Re: REG-100908-23, Request for Comments on Increased Credit or Deduction Amounts for Satisfying Certain Prevailing Wage and Registered Apprenticeship Requirements

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 proposed regulations for increased credit or deduction amounts available for taxpayers satisfying prevailing wage and registered apprenticeship (collectively, PWA) requirements established by 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.¹ 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 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,

¹ 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>

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.² 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 Requirements

RFA appreciates the progress represented by this proposed rulemaking. Our members are happy to see adoption of reasonable terms with respect to the Good Faith Effort Exception, added clarity about prevailing wage determinations, and further guidance on compliance requirements. The ethanol industry is ready to work with the IRS and other agencies as the day-to-day practices are implemented throughout our industry. At a high level, our industry's priority is to ensure that further communication is clear and timeframes are reasonable. Complying with PWA requirements is something new to the industry and we will have to answer practical

² 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>

questions and find workable solutions as the process unfolds. These comments will attempt to put our concerns in tangible context to illustrate the areas where we will need consultation and flexibility.

(a) Integrating Prevailing Wage Compliance

The ethanol industry takes pride in its role in revitalizing rural economies, creating good-paying jobs, and adding value to crops. 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 believe that wage standards within the industry are already commendable and that paying prevailing wage will not be the issue. Where we request clarity, communication, and education will be in ensuring compliance with benefits and other standards we may not yet be accustomed to.

Pursuant to this, RFA suggests an on-ramp for penalties for improper wages that have been cured. RFA encourages IRS to remove penalties for wages cured in good faith for the initial years of 45Z. Although we understand the rationale behind penalties is to discourage intentional noncompliance, RFA anticipates that any noncompliance in the initial period will more likely be a result of inexperience than intentional disregard. As with other provisions, RFA would ask that IRS be cognizant of the adaptation required by these rules and that compliance efforts will often be taken on by ethanol plants with 50 or fewer staff in total.

(b) Defining “Alteration or Repair”

While applying Davis Bacon Act definitions of “construction, alteration, or repair,” IRS should consider the way ethanol facilities operate. Not only will these definitions need to be applied to unique scenarios in our industry, but ethanol plant operators will need to make business decisions quickly based on such determinations. As an established industry, many of our existing functions will require a transition to compliance with these new regulations. Clarity will enable ethanol producers and contractors to move forward efficiently. Additional guidance and understanding particular to our industry will need to be developed to respond to the unique scenarios presented by the realities of ethanol facility maintenance and improvement.

Ethanol plants’ daily operation includes ongoing repair and maintaining functionality of many components. We do not believe the intent of the IRA is to disrupt long-term staff arrangements by triggering compliance over minor upkeep, but other operational scenarios quickly become less clear. As an example of this, a commonly accepted definition of “repair” would include work done to restore functionality. However, ethanol plants do not operate equipment to failure, so we do not believe many component replacements should amount to repair. Further, we encourage IRS not to interpret like-kind replacement as alteration. This would include replacement of functionally similar equipment with improved design or technology. Triggering compliance with any equipment replacement would create far too much grey area as components are being replaced with similar equipment frequently, often with the work being handled in-house.

Especially with the limited timeframe of 45Z, uncertainty about “alteration or repair” could create risk for a producer who intends to claim the credit yet conducts various projects through the year – some requiring PWA compliance and some not. This would have a chilling effect on investment. As an example, if during a planned maintenance shutdown, it is discovered that extensive work is needed, perhaps triggering compliance, an ethanol producer would run the risk of a longer shutdown while apprentices are brought in. Especially as the industry learns the nuances of PWA, RFA requests flexibility in making these business decisions in good faith.

(c) Challenges to Apprenticeship Requirement Compliance

RFA appreciates the inclusion of the Good Faith Effort Exclusion. Due to remote location or limited duration of work, qualified apprenticeship programs may not be able or interested in working on some of our projects. If properly administered, the Good Faith Effort Exclusion should provide a solution. RFA asks IRS to consider that certain projects in rural or remote areas will likely not have access to apprentices from registered apprentice programs and should develop reasonable options for those projects.

Furthermore, RFA asks that IRS be mindful that the partnerships needed to comply with PWA will take time to build. With ethanol producers located in different laborsheds and evaluating investment in different technologies, our industry will need to develop working relationships with countless apprenticeship programs and navigate the various challenges that may occur. RFA's members ask that these realities are contemplated by IRS and their Department of Labor counterparts.

As a mature industry operating at scale, integrating these new practices will represent a significant change, and we hope to minimize the disruption. Our industry will do our part to learn and adapt, but there will be a learning curve. RFA requests cooperation from IRS and DOL in the form of communication and flexibility through the process.

Finally, in administering all PWA requirement compliance, IRS should strive to minimize the documentation and reporting requirements for substantiation of compliance. There is considerable urgency in starting construction projects to deploy new technologies 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.

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