



November 4, 2022

Internal Revenue Service
CC:PA:LPD:PR (Notice 2022-50)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Submitted Electronically via regulations.gov

Re: Notice 2022-50, Request for Comments on Elective Payment of Applicable Credits and Transfer of Certain Credits

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 anticipated guidance for implementation of the elective payment provisions under § 6417 and the elective credit transfer provisions under § 6418 of the Internal Revenue Code (Code), as added by § 13801 of Public Law 117-169, 136 Stat. 2003 (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 greenhouse gas (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

¹ RFA Net Zero Pledge President: Ethanol to Achieve Net Zero Emissions by 2050 or sooner, July 2021, <https://ethanolrfa.org/pledge>

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 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 individual 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. Elective Payment of Applicable Credits and Transfer of Certain Credits

With our guiding principles in mind, RFA has comments particular to this request. RFA wants to ensure ethanol producers have maximum flexibility under these provisions to elect direct payment if they are the applicable entity; and maximum flexibility to retain or transfer credits. We interpret the intent of the inclusion of direct pay and transferable credits in the IRA as a strategy to establish new technologies and encourage accelerated growth. RFA believes that flexibility enables the policy to work. This includes:

- Allowing parties to elect to apply for different credits in different years depending on the timeline of the credit and their own adoption of technologies.

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>

- Flexibility within the definition of “facility” in order to enable partnerships.
- Language enabling credit for usage of captured carbon in addition to geological sequestration.
- Understanding of potential delays of permit applications for Class VI wells.
- Anticipating a future of net-negative fuels and leaving the door open to further credit for them in forthcoming regulations.
- Provisions ensuring that transferable credit remain valuable to transferees.

One particular code interpretation deals with direct pay under Section 6417. RFA would encourage a determination that the taxpayer in which the credit is attributable to under section 45Q(f)(3)(B) be treated as an applicable entity under section 6417(d)(1)(C). Section 45(f)(3)(A)(ii) provides the 45Q tax credit is attributable to “the person that owns the carbon capture equipment and physically or contractually ensures the capture and disposal, utilization, or use as a tertiary injectant of such qualified carbon oxide.” However, 45Q(f)(3)(B) allows the taxpayer upon which the tax credit is attributable to elect to allow the tax credit to transfer to the person that disposes of the qualified carbon oxide, utilizes the qualified carbon oxide, or uses the qualified carbon oxide as a tertiary injectant. Section 6417(a) states that an entity is eligible for direct payment “with respect to any applicable credit determined with respect to such entity.” This language in Section 6417(a) could be read as denying the benefit to the disposing entity allowed the credit pursuant to 45Q(f)(3)(B) because the initial eligibility for the credit is determined with respect to the capturing party. However, since Section 45Q specifically allows the tax credit to be claimed by the party that is disposing or utilizing the carbon in accordance with 45Q(f)(3)(B), such disposing or utilizing entity should be viewed as the entity upon which the applicable credit is determined for purposes of Section 6417(a). While in the case of tax-exempt entities it may make sense to limit eligibility strictly to the entity where the credit is determined, to prevent schemes that might attempt to insert tax exempt entities as tax credit transferees under Section 6418 (i.e., to attempt to skirt the limitation of Section 6417), such a concern is not applicable in this context. Congress specifically intended to allow a disposing or utilizing party to claim the credit. Accordingly, it would be consistent to view such a disposing or utilizing party as the entity upon which the credit is determined for purposes of Section 6417.

Regarding transferability under Section 6418, RFA asks the government to clarify that: (i) an eligible taxpayer may transfer all or a portion thereof of an eligible credit to more than one taxpayer; (ii) the taxpayer in which the IRC section 45Q credit is attributable to under section 45Q(f)(3)(B) may be permitted to make an election under section 6418(a); and (iii) “facility” as used in IRC section 6418(f)(1)(B) has the same meaning as a single process train of carbon capture equipment, as defined under 1.45Q-2(c)(3).

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



Geoff Cooper
President and CEO