March 25, 2026

The Honorable Scott Bessent
Secretary
U.S. Department of the Treasury

The Honorable Kenneth Kies
Assistant Secretary for Tax Policy
U.S. Department of the Treasury

The Honorable Derek Theurer
PDO Deputy Secretary
U.S. Department of the Treasury

William Paul
Principal Deputy Chief Counsel
Internal Revenue Service

Dear Gentlemen:

We write today to provide comments regarding the prevailing wage and apprenticeship (PWA) requirements set forth in T.D. 9998,[1] as applied to the Section 45Z Clean Fuel Production Credit, and the Treas. Reg. §1.45Z-3 regulation that further define the PWA requirements under section 45Z. Since the publication of these final rules on June 25, 2024, the companies we represent have been diligently attempting to comply with their provisions. We strongly support the objectives of Treas. Reg. §1.45Z; however, our members' efforts to apply this regulation to our businesses to claim the enhanced section 45Z credit have raised a number of issues. We have the following concerns regarding application of the PWA rules in the 45Z context, and we are hopeful you will consider addressing them.

I. PWA Rules for Facilities in Construction Prior to the Inflation Reduction Act (IRA)

Taxpayers have faced substantial uncertainty regarding how to manage the PWA rules for section 45Z purposes since their original enactment in the Inflation Reduction Act of 2022 (IRA). The original transition rules set forth in subsections 45Z(f)(6) and (f)(7) were wholly prospective in nature and addressed only the application of the PWA rules for projects placed in service after the January 1, 2025,[2] effective date for section 45Z. This created significant problems and inequity for projects that started construction before the enactment of the PWA rules under the IRA and placed in service after December 31, 2024.

After the enactment of the IRA and the PWA rules, the only guidance taxpayers had to rely on in managing PWA was set forth in Notice 2022-61. Taxpayers logically assumed this guidance would ultimately be extended for section 45Z purposes. In particular, taxpayers assumed that a single unified approach to grandfathering projects from the scope of PWA would ultimately apply for all IRA credits.[3] Due to the absence of meaningful and actionable PWA guidance for section 45Z, taxpayers were unable to develop

[1] 89 Fed. Reg. 53184 (June 25, 2024).

[2] We note that the NPRM released on February 4, 2026, proposing regulations to implement section 45Z, does not address the application of the PWA rules to section 45Z other than to define "PWA Requirements" by cross-reference to Treas. Reg. § 1.45Z-3.

[3] We note that this approach is aligned with the understanding that long-standing guidance under the legacy ITC and PTC regimes of section 48 and section 45, respectively, apply for most all other energy related tax credits, including section 45Z, even where such guidance has yet to be updated to explicitly address its application to projects generating section 45Z PTCs.

practical approaches to addressing PWA for facilities already well into construction before these rules were enacted.

The promulgation of the final PWA regulations in June 2024 was the first time taxpayers were made aware that construction delays could cause a facility to become subject to PWA requirements. The following example illustrates this outcome:

> Taxpayer X commenced development of a biofuels production facility prior to the enactment of the IRA. Due to natural disasters, fires or other unavoidable construction delays, the facility was placed in service on August 1, 2025. Based on the plain language of section 45Z(f)(6) and (f)(7) and Treas. Reg. § 1.45Z-3, the facility would be required to obtain PWA information for the construction period between 2023 and August 1, 2025, in addition to being subject to penalties and interest for lack thereof.

This example highlights the unduly burdensome application of the PWA rules under section 45Z(f)(6) and (f)(7) and Treas. Reg. § 1.45Z-3. Although Treas. Reg. § 1.45Z-3 attempts to provide a limited transition period for PWA during the construction period,[4] it failed to address the common instance of facilities for which construction began prior to the existence of the PWA rules and to the PWA grandfathering date set forth in Notice 2022-61. As a result, taxpayers would be unfairly subject to penalties and interest for noncompliance with a law that was not, under the IRS's own guidance, applicable to pre-IRA construction periods with respect to all other tax credits.

There is no indication that Congress anticipated, or intended, such an outcome. Notice 2022-61 was consistent with congressional intent and established a clear, workable, and administrable bright-line rule for determining the application of PWA requirements for other IRA credits. By contrast, the retroactive and inflexible application of the PWA rules in the section 45Z context does not further that intent.

We acknowledge that the statutory transitional rules in sections 45Z(f)(6) and (f)(7) expressly reference the placed-in-service date as determinative of PWA applicability for section 45Z purposes. Nevertheless, equitable relief is warranted for taxpayers that have taken timely and affirmative steps to address technical PWA noncompliance for projects such as the one described above.

Requested Solution: We are seeking equitable relief for projects that began construction prior to January 29, 2023, but were not placed-in-service until after December 31, 2024. This equitable relief could take several forms, including but not limited to: (i) sub-regulatory guidance such as an IRS Notice[5] offering targeted relief to taxpayers seeking to bring these projects into a PWA compliant status to claim the maximum allowable 45Z PTC; (ii) an industry directive; or (iii) a voluntary amnesty program with pre-defined rules of the road for taxpayers willing to take the appropriate steps to bring these projects into PWA compliant status.

This request should take into account the following factors:

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[4] See Treas. Reg. 1.45Z-3(c) ("Applicability date. This section applies to qualified facilities for clean fuel production placed in service in taxable years ending after June 25, 2024, and the construction of which begins after June 25, 2024. Taxpayers may apply this section to qualified facilities for clean fuel production placed in service in taxable years ending on or before June 25, 2024, and qualified facilities for clean fuel production placed in service in taxable years ending after June 25, 2024, the construction of which begins before June 25, 2024, provided that taxpayers follow this section in its entirety and in a consistent manner.").

[5] Such a Notice could be modelled on, e.g., Notice 2021-41, providing targeted relief on certain key matters related to tax credits as a result of the COVID pandemic.

(1) Retroactive remediation of PWA compliance across multiple, unrelated construction service providers over a multi-year period is impracticable, and in most cases, unworkable. If Treasury determines that some degree of retroactive remediation is necessary, such remediation should be narrowly scoped, timelimited, and subject to a reasonable, goodfaith compliance standard. At a minimum, remediation should not be required for work subject to PWA that occurred prior to January 1, 2025.

(2) Retroactive application of the apprenticeship requirements under section 45(b)(8) would only require taxpayers to pay significant penalty payments without any real enhancements to apprenticeship programs across the energy industry. This is not the intent of the law nor the intent of Congress. Taxpayers should not be subject to these penalties when they did not have the opportunity to adhere to these rules in a timely manner; and

(3) Taxpayers that have shown a good faith effort to comply with PWA for projects that were not placed in service by January 1, 2025, should not be subject to penalties and interest. The IRS should issue guidance to support a mechanism that helps taxpayers who have been clearly disadvantaged by these rules. Taxpayers should not be subject to penalties and interest for failing to follow rules that did not exist when they began their construction activities.

We respectfully urge Treasury and the IRS to develop equitable relief in whatever form deemed most appropriate so taxpayers may meet the 2025 tax return filing requirements.

II. Other Dates of Applicability Issues

A. Although subsections 45Z(f)(6)(B)(i) and (ii) excuse facilities placed in service prior to 2025 from compliance with PWA requirements with respect to *construction*, such facilities are not excused from ongoing compliance with respect to *alterations or repairs* performed after 2024. In Treas. Reg. § 1.45Z-3(b)(2), Treasury has followed the statute by requiring continued compliance with PW requirements for alterations and repairs even for facilities placed in service prior to 2025. The regulation does not reflect, however, the statement made in the Preamble of T.D. 9998, that Treasury interprets the PWA requirements as applying only to facilities placed in service *after 2021:*

> Under section 13010(k) of the IRA, the rules of section 45(b)(7) and 45(b)(8) apply with respect to facilities that are placed in service after December 31, 2021. Thus, **the Treasury Department and the IRS interpret the PWA requirements of sections 45Z(f)(6) and 45Z(f)(7) generally as applying to any qualified facility that is placed in service after December 31, 2021**, subject to the transition rule described in Section II. of this Summary of Comments and Explanation of Revisions. (Summary of Comments and Explanation of Revisions, Section IX.G.) (Emphasis added.)

The implication of this statement is that the PWA requirements do not apply at all to any clean fuel facility placed in service before 2022. On its face, however, Treas. Reg. § 1.45Z-3(b)(2) simply provides that any facility placed in service before 2025 must comply with the requirements for alterations and repairs, thereby including even facilities placed in service before 2022.

Understandably, without confirmation that the preamble statement may be relied upon to relieve taxpayers of PW compliance as to alterations and repairs of facilities placed in service before 2022, taxpayers that are using older facilities to produce clean fuel are confronted with an ambiguity as to

whether they are obligated to comply with PW with regard to alterations and repairs since the regulation is inconsistent with the Preamble statement.

Requested Solution: We request guidance clarifying that facilities placed in service prior to 2022 are not subject to PW compliance with respect to alterations and repairs.

B. Additionally, the statutory language of the IRA and the final PWA rules raise an ambiguity regarding the applicability of PWA compliance for section 45Z. The IRA provides that the PWA requirements apply to section 45Z "with respect to any taxable year beginning after December 31, 2024, **for which the credit is allowed under this section**." (Emphasis added.) (P.L. 117-169, Aug. 16, 2022, Section 13704(a)). This bolded language could be taken to mean that PWA compliance as to alterations and repairs is required only in years for which the 45Z enhanced credit is claimed.[6]

However, in the final PWA guidance applicable to 45Z, Section 1.45Z-3(b)(2) simply states that a qualified facility placed in service prior to January 1, 2025, is one "that meets the prevailing wage requirements of section 45(b)(7) and § 1.45-7 with respect to any alteration or repair of such qualified facility that is performed in taxable years beginning after December 31, 2024," implying that PWA compliance is required for all years beginning with 2025, regardless of whether the enhanced credit is claimed.

Requested Solution: We request that the Treasury Department provide additional guidance with respect to the PWA rules to clarify that PW compliance for alterations and repairs is required only for those years for which the enhanced 45Z credit is claimed.

III. Definition of Alteration or Repair

Since the release of the final PWA regulations, taxpayers continue to experience frustration with the definitions of "alteration or repair" included in the final PWA rules. For instance, many taxpayers believe that the current definition of maintenance is so narrow that almost every activity is classified as a "repair." For taxpayers in the clean fuel industry, certainty as to whether an activity is a repair or maintenance is crucial as failure to comply with the applicable requirements for repairs will prevent taxpayers from accessing the full credit amount.

For example, clean fuel production plants are extremely complicated and involve a number of parts subject to routine wear. A production plant must be actively maintained on both a daily and routine basis and many parts are subject to periodic replacement protocols. For example, many parts have a commonly accepted useful life but are generally only replaced when they fail to avoid incurring the significant waste and capital cost of procuring replacement parts before they are necessary.

Requested Solution: We request that the Treasury Department continue to work with taxpayers to further refine the definition of "alteration or repair," particularly as distinguished from "maintenance." There are several ways to do this, all of which could be handled in a Revenue Procedure:

(1) Provide additional examples of maintenance and "alteration or repair."

(2) Clarify that taxpayers may demonstrate that tasks are properly treated as "maintenance" by reference to written materials provided by an equipment manufacturer.

[6] We note that the statute refers to a year in which the credit is "allowed," not "allowable," the difference being that the former is generally interpreted as meaning actually claimed, whereas the latter is generally interpreted as meaning permissible or capable of being claimed.

(3) Clarify that "maintenance" is treated as amounts that would not be capitalized to the qualified facility and "repair or alteration" includes only costs that may be capitalized to the qualified facility, in each case, under existing U.S. federal income tax capitalization requirements.

(4) Provide a de minimis threshold for the cost of labor or number of hours of labor required per task. This could correlate with the $2,000 contract applicability threshold from Davis-Bacon that is intended to apply in the context of 45Z PWA requirements. In other words, if the labor associated with a task would cost less than $2,000 at a service provider's typical rate (or the wages typically paid by the taxpayer to its employees for similar work), then the task is not treated as "repair or alteration."

IV. Prevailing Wage

"Prevailing Wage" in 45Z relies on Davis-Bacon Act wage determinations issued by the Department of Labor for the "locality" in which the facility is located, which means that a taxpayer must pay the wages set by DOL under general wage determinations for a geographic area. However, the unique geography of biofuels production and the relative novelty of the technology create situations where the DOL has insufficient data to issue a prevailing wage determination in some counties where these facilities are located.

While current IRS regulations provide a mechanism to request "supplemental wage determinations" or "additional classifications and rates for those localities or specific types of labor," that process creates additional burdens and delays for the taxpayer.

Requested Solution: We request that taxpayers claiming the 45Z credit be permitted to use the relevant prevailing wage determination or labor classification from the nearest locality (defined as any locality adjacent to or sharing a border with the subject locality) if that information is not available for the locality where the facility is located.

V. Compliance Testing

A. While periodic reviews are important and necessary to ensure and demonstrate compliance with the PWA requirements, pursuant to regulation 1.45-7(c)(3)(iii)(B), taxpayers find themselves compelled to perform burdensome current quarterly reviews.

Requested Solution: We request that additional guidance for the PWA rules instead allow for annual reviews for compliance.

B. Frequently, work undertaken to effect an "alteration or repair" is performed by a contractor rather than directly by the taxpayer. Notwithstanding any contractual agreement requiring the contractor to provide the necessary payroll data to allow the taxpayer to meet PWA compliance record-keeping requirements, many of these actors are small companies that may go into bankruptcy, refuse to provide information for various reasons (including concerns about personally identifiable information (PII)), or simply disappear.

Requested Solution: We request that the additional guidance for the PWA rules allow the taxpayer to rely on an affidavit provided by the contractor affirming its compliance and permit such affidavit to satisfy the taxpayer's compliance obligation. We also request that a good faith exception apply in cases where the taxpayer has attempted multiple times without success to reach an unresponsive or uncooperative contractor and has been unable to procure the data required or an affidavit of compliance.

VI. Penalty Abatement

Taxpayers often find themselves in the position of having underpaid by extremely small amounts. However, in addition to being required to cure the underpayment, they are also potentially subject to a $5,000 penalty multiplied by the total number of workers who were paid wages below the prevailing rate (section 45(b)(7)(B)(i)(II)), regardless of how small the required corrective payment might be. While regulation 1.45-7(c)(6)(i) provides a penalty waiver under certain circumstances, the amount of time provided to the facility owner to correct the underpayment (1 month) is very restrictive, particularly if the quarter in question happens to be the final quarter of the year.

Requested Solution: We request that any additional guidance for the PWA rules create a safe harbor *de minimis* dollar amount beneath which no penalty is incurred for underpayment. In addition, development of a *de minimis* amount of failure to comply, under which no cure payment is required, would be helpful in cases for which information is not available to allow for the corrective payment to the affected worker. Finally, we ask that taxpayers be provided 90 days beyond the end of the quarter in question to make corrective payments.

Conclusion

Thank you for all the hard work you have put into the further implementation of the IRA and OBBBA and for your commitment to ensuring the clean energy provisions work as intended. We hope that you will consider the above requests for guidance in the spirit in which they are offered, and that is to make these rules more administrable and workable for both industry and government. We encourage you to reach out to any of the undersigned as a resource on these issues.

Sincerely,

Advanced Biofuels Association

Alternative Fuels & Chemicals Coalition

American Biogas Council

American Petroleum Institute

Clean Fuels Alliance America

Fuel Cell and Hydrogen Energy Association

Growth Energy

Methanol Institute

Renewable Fuels Association

RNG Coalition

SAF Coalition