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Inflation Reduction Act of 2022

Provisions of Interest to NEFI Members & Supporters

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DISCLAIMER: This document highlights provisions of interest in pending federal legislation and is not intended for use as legal or tax guidance. We recommend that you consult with a qualified professional on how this legislation may affect your business**. This bill is has not yet passed. As such, it is subject to change or may fail altogether**. Note that NEFI has identified several areas of concern that are outlined in this document. We are communicating these concerns to Congress.

I. BACKGROUND

On July 27, Senator Joe Manchin announced a surprise agreement had been reached with Majority Leader Schumer on a **$369 billion package of energy and climate policies**. Assuming it has the votes to pass, the bill will be brought to the Senate floor as part of a broader filibuster-proof reconciliation package. Democrats are no longer using the *Build Back Better Act* and have rebranded the legislation the *Inflation Reduction Act or "IRA"* (bill text available here).

Most of the energy and climate provisions are based on those included in the House-passed version of the *Build Back Better Act.* Many have been modified to some degree during negotiations between Manchin and Schumer and included in the 725-page IRA. Other measures were added to secure Senator Manchin's support, including provisions to boost domestic oil and gas production and increase support for hydrogen fuels. Provisions added to pay for the bill include: a 15% minimum corporate tax rate for companies with over $1 billion in annual revenue (raising $313 billion), increased IRS tax enforcement for those with personal income over $400,000 (raising $288 billion), and alteration of carried interest rules ($14 billion).

As of the writing of this document, the parliamentarian had not completed review to ensure all provisions of the IRA are consistent with the Byrd rule. Many Senate offices continue to review the bill, including moderate Senator Kyrsten Sinema, who has previously expressed reservations about some of the revenue provisions. It is possible some provisions could be removed or amended to comply with the Byrd rule or to address concerns of individual Senators. Even if the IRA passes the Senate, it is unclear whether Speaker Pelosi can keep the party together in the House, where she has only a three-vote margin of error. Still, most Democrats have embraced the deal, and all are desperate for major legislative victories to tout on the campaign trail.

Note this document focuses on provisions that have a direct or substantial indirect effect on heating fuel dealers and their customers. This summary should by no means be considered either comprehensive or final. It is separated into three categories, below. Note that "good" or "bad" determinations are completely subjective and based on input from NEFI leadership.

II. "THE GOOD"

- **Prohibits the administration from issuing rights of way for utility-scale scale renewable energy projects on public land unless 62 million acres of federal lands and waters are offered for oil & gas leasing each year for ten years (Sec. 50265)**
    - The Interior Department must offer *at least* two million acres of public lands and 60 million acres of offshore waters for oil & gas leasing *every year for ten years*.
    - If it fails to meet this requirement, no rights of way can be granted for any utility-scale renewable energy project on public lands and waters.
    - This and the below sections were secured by Sen. Manchin, who (like NEFI) has long argued that short-term increases to conventional energy production are needed for the security of the U.S. and its allies, and as a bridge to cleaner fuels.
    - The total leased area that would be required for offshore waters is 600 million acres, *more than four times the entire Gulf of Mexico outer-continental shelf*.
- **Revives oil and gas lease sales canceled by the Biden Administration (Sec. 50264)**
    - The bill revives lease sales canceled or delayed by President Biden including: one in Alaska's Cook Inlet (Lease Sale 258) and three in the Gulf of Mexico (Lease Sales 257, 259 and 261).
    - This section also appears to require the Biden Administration to adopt Trump-era directives for 2022 oil and gas leasing established in 2017.
- **$500 million over ten years for downstream biofuel infrastructure grants (Sec. 22003)**
    - This money supports a cost-sharing grant program established under the Trump administration in 2019, housed at the U.S. Department of Agriculture (USDA), known as the *Higher Blends Infrastructure Incentive Program (HBIIP).*
    - NEFI endorsed this proposal when it was introduced as stand-alone legislation last year. Several NEFI members, mostly larger distributors, have benefitted from grants issued through the HBIIP program since it was created three years ago.
    - NEFI and its allies secured changes to the program that are included in the proposed bill, including an increase to the federal share from 50% (under the existing program) to 75% and the inclusion of downstream heating fuel distribution facilities as eligible entities under this program.
- **$20 billion for climate smart agriculture**
    - These funds are designed to help reduce carbon emissions of U.S. crops, and in turn, could help reduce the greenhouse gas profile of domestic biofuels
- **Extends renewable & alternative fuels tax incentives through 2024 (Sec. 13201, 13202)**
    - This includes biodiesel and renewable diesel blenders' tax credit, the second generation (cellulosic) biofuel producer credit, and alternative fuel mixture (propane autogas) tax credit; and are straight extensions with no changes.

- The extension is shorter than the four-years provided under the House-passed *Build Back Better Act.* The extension provides just enough time for the IRS to set up a complex new clean fuels production credit (below) that consolidates all renewable and alternative fuel incentives into one credit. Note that NEFI has advocated for a minimum three-year extension of these tax incentives.
- Upon their expiration, renewable and alternative tax credits would be consolidated into a new three-year "clean fuels production tax credit" beginning in 2025 (see below under Part III. "The Bad" for details on this provision).

- **Democrat leaders have agreed to consider permitting reform legislation this fall**
  - Senator Manchin said that environmental permitting reform will be considered this fall, and that it was a condition for his support of the IRA.
  - Manchin said the forthcoming permitting bill "will ensure all energy infrastructure, from transmission to pipelines and export facilities" will be given support by reducing red tape that can delay projects for up to ten years or more.

III. "THE BAD"

- **Creates a tax credit for sale and mixtures of sustainable aviation fuel (SAF) for tax years 2023-2026 (Sec.13203)**
  - Terminates aviation fuel eligibility for the existing biodiesel tax credit and creates a new $1.25 per gallon tax credit for SAF with proven emissions reductions of at least 50% from conventional aviation fuel, with an additional $0.01 per gallon for each percentage point of GHG reduction above this amount, up to $1.75.
  - "Sustainable aviation fuel" must (1) meet requirements of either ASTM D7566 or the Fischer-Tropsch provisions of ASTM D1655 Annex; (2) not be derived using coprocessing; (3) not be derived from palm fatty acid distillates or petroleum; and (4) be certified to achieve at least a 50% lifecycle GHG reduction percentage compared to conventional jet fuel (uses ICAO model instead of GREET/Argonne).
  - In 2025, all renewable and alternative fuel tax credits, including for sustainable aviation fuels, will be consolidated into a clean fuels production credit. This credit offers SAF a base value of $0.35 per gallon with additional amounts based on the "emissions factor" of the fuel. A higher rate of $1.75 per gallon is offered if prevailing wage and apprenticeship requirements are met.
  - **Important:** NEFI's leadership team, relevant policy committees, and staff have expressed concerns about creation of an overvalued SAF, which experts warn could disrupt the market for renewable liquid heating and transportation fuels. NEFI also has concerns about moving the credit from a blender incentive to an incentive for only domestic biofuel producers. We continue to communicate these concerns to Congress and allied stakeholder groups.

Creates a clean fuels producer credit based on proven greenhouse gas reductions for tax years 2025-2027 (Sec. 13704)

- Beginning in 2025, all tax incentives for renewable and alternative fuels are consolidated into a new clean fuels production credit with a base value of $0.20 per gallon with additional amounts based on the "emissions factor" of the fuel.
- It effectively changes all tax credits, including the biodiesel tax credit, from tax incentives for *fuel blending* to tax incentives for *domestic fuel production*.
- A higher rate of $1.00 per gallon is offered if the bill's prevailing wage and registered apprenticeship requirements are met. Higher rates are offered for Sustainable Aviation Fuel (as noted on the previous page).
- All values are adjusted for inflation.
- Uses GREET model to determine lifecycle emissions for non-Aviation fuels.
- Credit disallowed for any non-aviation fuel derived from coprocessing biomass with feedstock that is not biomass
- Unlike the House bill, which would have continued this tax incentive indefinitely, the IRA proposes to sunset the clean fuels production credit in 2027.
- **Important Update (8/1/22):** NEFI was initially concerned this section did not explicitly make heating fuels eligible for the new clean fuels production credit. However, on Sunday, July 31, the Senate Finance Committee issued a summary of the bill that qualifying fuels may be used for any business purpose, "including as transportation fuel, industrial fuel, or *for residential or commercial heat*." .

- **$4.5 billion over ten years for residential electrification rebates (Sec. 50122)**
  - Unlike house-passed bill, this would be run by states and not the Department of Energy. It breaks out to $4.275 billion for states and $225 million for tribes.
  - Funding for this new rebate program is 25% lower than the House-passed version in the *Build Back Better Act* and 50% lower than the original draft bill.
  - After removing administrative costs (3% federal and 20% for states), the total is reduced to only about $3.5 billion spread across 50 states.
  - Only low-to-moderate income households are eligible for this rebate program, which is defined as less than 150% of local median income.
  - The total aggregate limit for the rebate is $14,000 per home. Of that amount, here is what you can spend it on:
    - – $1,750 for a heat pump water heater
    - – $8,000 for a heat pump for space heating or cooling
    - – $840 for electric stove, range, oven, or heat pump clothes dryer
    - – $4,000 for electric load service center upgrade
    - – $2,500 for insulation, air sealing, and ventilation or for

  - – $2,500 for electric wiring

- The rebate is limited to 50% of project costs for households between 80% and 150% of local median income, while those below 80% of local median income are eligible for 100% of the costs (again, up to a maximum of $14,000).
- Must be new construction, replacing existing appliance, or installing an appliance that did not exist before.
- May not be combined with the performance-based, whole home energy efficiency rebates for the same home improvement project (see Sec. 50121)
- Even if a $14,000 rebate was sent to all U.S. homes that heat with fossil fuels, irrespective of household income, the cost would be *$980 billion*. Again, the bill provides only $3.5 billion (after administrative expenses) *over 10 years*.

- **$500 million to fund use of the Defense Production Act for "clean energy" (Sec. 30001)**
  - These funds support President Biden's June 6, 2022, determination that allows the Department of Energy to use the Defense Production Act (DPA) to "accelerate domestic production of five key energy technologies: (1) solar; (2) transformers and electric grid components; (3) heat pumps; (4) insulation; and (5) electrolyzers, fuel cells, and platinum group metals.
  - This is a relatively small amount of money given the list above.
  - The bill does not provide guidance on how or when the DPA should be used, and to our knowledge, the administration has not published any further details.

IV. "MIXED BAG"

- **$4.3 billion over ten years for performance-based, whole home energy efficiency rebates (Sec. 50121)**
  - This program would be administered by states governments
  - Offers per home rebates of:
    - – 50% of the project cost up to $2,000 for proven energy savings of 20% to 34% (capped at $200,000 for multi-family buildings)
    - – 50% of the project cost up to $4,000 for proven energy savings of 35% or more (capped at $400,000 for multi-family buildings)
    - – For savings between 15% and 19%, the rebate is based on per kilowatt or equivalent savings (calculated using the $2,000 for 20% formula)
  - For households that make less than 80% of local median income and multifamily buildings at least 50% occupied by such households:
    - – 80% of the project cost up to $4,000 for proven energy savings of 20% to 34% (capped at $200,000 for multi-family buildings)
    - – 80% of the project cost up to $8,000 for proven energy savings of 35% or more (capped at $400,000 for multi-family buildings)

    - For savings between 15% and 19%, the rebate is based on per kilowatt or equivalent savings (calculated using the $4,000 for 20% formula)

  - Energy savings must be consistent with BPI 2400
  - $200 per home is offered to contractors performing work in an "underserved community" (i.e., a low-income community or community of racial or ethnic minority concentration).
  - May not be combined with the residential electrification rebates for the same home improvement project (see Sec. 50122)

- **Increases and expands IRS Section 25C tax credits for home efficiency improvements through 2031 (Sec. 13301).**
  - The bill eliminates the $500 lifetime credit for home energy efficiency improvements and replaces it with a tax credit of 30% for qualified home energy improvements and related property.
  - This amount is limited to $1,200 for home retrofits that do not involve a qualifying heat pump or biomass-stove and $2,000 for those that do.
  - The amount for heat pumps and biomass-stoves in the IRA is lower than the House-passed bill, which would have made them eligible for the *entirety* of the 30% credit with no limits or individual appliance caps on the value of the credit.
  - Further limits based on type of property or improvement as follows:
    - $600 aggregate limit for windows or skylights that meet *Energy Star* most efficient requirements
    - $600 for electrical panel upgrades needed for other efficiency improvements
    - $250 for an exterior door (up to $500 for all exterior doors) that meet applicable *Energy Star* requirements
    - $150 for home energy audits meeting min. criteria outlined in the bill
    - $600 for oil and gas furnaces and boilers, and other energy efficient property (see below for efficiency criteria)
  - The below appliances must meet the highest efficiency tier (not including any advanced tier) established by the Consortium for Energy Efficiency (CEE) in effect at the beginning of the calendar year when the product was placed into service:
    - Electric or natural gas heat pump water heater
    - Electric or natural gas heat pump
    - Central air conditioner
    - Natural gas, propane, or oil water heater
    - Natural gas, propane, or oil furnace or hot water boiler
    - Roofs and advanced main air circulating fans are not eligible.

- Any biomass (i.e., wood) stove or boiler must meet a thermal efficiency rating of at least 75, measures by the higher heating value of the fuel.
- **IMPORTANT:** Language supported by NEFI is included that allows an oil furnace or hot water boiler to qualify for the tax incentive if:
  - – It is placed into service after December 31, 2022, and before January 1, 2027, meets or exceeds 2021 *Energy Star* efficiency criteria, and is rated by the OEM for use with at least 20% biofuel blends
  - – It is placed into service after December 31, 2026, achieves at least 90 AFUE, and is rated by the OEM for use with at least 50% biofuel blends
- Manufacturers will need to establish “qualified product identification numbers” for taxpayers to include on tax return for the taxable year in which the appliance was placed into service.
- It appears the bill allows homeowners to get these tax credits even if they also get either the whole home efficiency or electrification rebates from states.

- **Tax credit for qualified commercial clean vehicles through 2032 (Sec. 13403)**
  - Offered for the lesser of (A) 15% of the basis of such vehicle (30% in the case of a vehicle not powered by a gasoline or diesel internal combustion engine), or (B) the incremental cost of such vehicle, defined as “an amount equal to the excess of the purchase price for such vehicle over such price of a comparable vehicle.”
  - Credit is capped at $7,500 for any vehicle with a gross weight rating of less than 14,000 lbs. and $40,000 for other commercial vehicles.
  - Only qualified commercial electric and fuel cell vehicles may receive the full credit. Internal combustion engines are eligible for a reduce credit of 15%.

V. OTHER PROVISIONS OF INTEREST

- **$200 million over ten years for home efficiency contractor training grants (Sec. 50123)**
  - The purpose of the program is to provide financial resources to states for “training education of contractors involved in the installation of home energy efficiency and electrification improvements.”
  - States may use grants to reduce costs of training contractor employees; provide related testing and certification; and partner with nonprofit organizations to develop and implement the contractor training and education program.
- **$1 billion available through 2029 to assist states in adopting latest and zero energy building codes (Sec. 50131)**
  - Of this amount states are provided up to $330 million to help adopt residential building energy codes that meet or exceed the 2021 International Energy Conservation Code (IECC) or building energy codes that meet or exceed ANSI/ASHRAE/IES Standard 90.1–2019, or to fund a plan to ensure full compliance with these codes.

- The remaining $670 million is to be used by the DOE to provide grants to states and local governments that adopt zero energy codes that meet or exceed zero energy provisions in the 2021 IECC or to ensure full compliance with these codes.

- **Funding for loan guarantees of interest, as follows:**
  - $3.6 billion for 1703 loans for innovative clean energy projects (Sec. 50141)
  - $5 billion for 1706 loans for energy infrastructure reinvestment (Sec. 50144)
- **$27 billion available through FY2024 for a "Greenhouse Gas Reduction Fund" also being called a "clean energy technology accelerator" fund by Democrats (Sec. 60103)**
  - This is basically the IRA's version of a "green bank" and is housed at EPA.
  - Grants and financing provided under this program may be used for any project, activity, or technology that reduces or avoids greenhouse gas emissions and other forms of air pollution in partnership with, and leveraging support from the private sector, or to assist communities in efforts to avoid GHG and air pollution.
- **Alternative fuel refueling property is modified & extended through 2032 (Sec. 13404)**
  - Credit is 6% (or higher rate of 30% if prevailing wave and apprenticeship rules are met) up to $100,000 for each charging station or refueling pump.
  - Starting in 2023, only property installed in a low-income or rural area is eligible.
- **Other new or modified & extended federal tax credits of note:**
  - Energy efficiency improvements to commercial buildings (Sec. 13303)
  - New energy efficiency homes (Sec. 13304)
  - Residential battery storage technology (Sec. 13302)
  - Clean Vehicles (Sec. 13401) and previously owned clean vehicles (Sec. 13402)
  - Clean electricity production (Sec. 13701) and investment (Sec. 13702)
  - Carbon oxide sequestration (Sec. 13104)
  - Zero-emission nuclear power production (Sec. 13105)
  - Clean Hydrogen (Sec. 13204)

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