RENEWABLE FUELS ASSOCIATION

December 13, 2024

Committee on Ways and Means
1139 Longworth House Office Building
Washington, DC 20515-6348

Attn: Reps. Adrian Smith, Randy Feenstra, Michelle Fischbach, Darin LaHood, Carol Miller and Claudia Tenney

Submitted electronically via form: https://forms.office.com/g/GVWEs9xJ4g

Re: Ways and Means 11-18-2024 Request for Information on Biofuel Policy

The Renewable Fuels Association (RFA) appreciates the opportunity to provide these comments to the Committee on Ways and Means in response to the 11-18-2024 Request for Information on Biofuel Tax Policy. We appreciate the Committee's engagement on this important policy and look forward to next steps.

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.

If properly structured and implemented, 45Z (and/or a successor biofuels tax credit program) could create important new market opportunities for farmers, lower fuel prices for consumers, enhance energy security, and reduce emissions. We look forward to collaborating with the Committee on Ways and Means to unlock this potential.

General Questions

Should 45Z continue to be the basis for providing a biofuels tax credit after 2027? If so, what is the appropriate extension length for 45Z and why?

As currently structured, eligibility for the 45Z tax credit (and its ultimate value to the eligible taxpayer) is determined entirely by the lifecycle carbon intensity (CI) of the fuel. While CI reduction is a crucially important policy objective, expansion of domestically-produced biofuels provides other societal benefits that are worthy of public investment and tax policy support. Discussions of future biofuels tax policy support should consider the proven ability of biofuels to create jobs in the manufacturing and agriculture sectors, enhance

domestic energy security, boost demand for farm commodities, reduce harmful criteria pollutant emissions, and lower consumer fuel prices.

If lifecycle CI is maintained as the sole determinant of tax credit eligibility and value, duration of the tax credit program must be significantly extended—otherwise, the program will fail to deliver its intended results. For most biofuel producers, CI-reduction projects will require substantial time and investment. Many projects require 1-2 years (or more) for permitting, engineering, and design; sourcing, installation, and testing of new equipment; implementation of supply chain management tools; and other critical developments. Meanwhile, construction of entirely new biorefining facilities to produce sustainable aviation fuel (SAF) requires a much longer timeframe.

Clearly, the current 3-year program (expiration on Dec. 31, 2027) does not provide enough time for biofuel producers to complete projects and ensure a return on investments made to reduce CI. Thus, if CI remains as the solitary determinant of eligibility, we believe an appropriate extension length for 45Z would be at least 5 to 7 years (i.e., expiration on Dec. 31, 2032 or Dec. 31, 2034).

What does success look like for the tax credit? How should the credit be phased out at the end of the extension?

A successful tax credit program would result in greatly expanded production and use of U.S.-produced low-carbon biofuels; creation of new value-added markets for U.S. farm commodities; lower fuel prices for consumers; and reduced dependence on foreign energy sources (e.g., imports of crude oil, critical minerals, EV batteries, solar panels, etc.).

Success can only be achieved if the tax credit program is durable, broadly scalable, and implemented in an efficient and straightforward manner for taxpayers.

If the tax credit is successful in achieving these objectives, it could be phased out over a relatively short period. However, complementary policy measures (non-budgetary) may be necessary to ensure the successes achieved under the tax credit are sustained over the long term (e.g., continued growth in Renewable Fuel Standard volumes; increased production of flex fuel vehicles; increased minimum octane standards for gasoline; certification/approval of fuel blends containing higher levels of ethanol like E20-E30).

If modifications are made to the 45Z tax credit, the Department of the Treasury will need to publish new guidance. Given the delay in publishing guidance for the current credit, what are the risks and benefits of immediate modifications to the 45Z tax credit? What if the modifications took effect at a sufficiently delayed period to allow for new guidance to be published?

The Department of Treasury's delay in issuing 45Z guidance has caused significant uncertainty in the biofuels and agriculture industries. Biofuel producers and farmers have postponed projects and suspended plans to implement CI-reducing technologies and

practices. The transition to a new administration and new Congress in 2025 (and the potential for modifications to the existing 45Z credit program) is adding further uncertainty and confusion in the marketplace about the near-term outlook for biofuels tax policy.

To provide a "bridge" to any new guidance that may result from modifications to 45Z, we believe the existing suite of biofuel tax credits—including I.R.C. § 40(b)(6), the Second-Generation Biofuel Producer Credit—should be extended for one year (expiration on Dec. 31, 2025), as specified in H.R. 10104. Extending the existing credits would provide certainty to biofuel producers in 2025 while new rules are being drafted to reflect any potential modifications to 45Z.

In addition, a more streamlined approach for registering for 45Z and securing IRS approval would help ensure biofuel producers are immediately ready when final rules are promulgated.

Credit Eligibility

What products or practices are not currently allowed as a Climate Smart Agriculture Practice when calculating a feedstock producers Carbon Intensity score, but should be?

It is difficult to respond to this question because Treasury has not yet identified the Climate Smart Agriculture (CSA) practices allowed under 45Z as part of a biofuel producer's CI calculation.

In general, a broad array of CSA practices should be included. A good starting point is the USDA Natural Resources Conservation Service's (NRCS) "Climate-Smart Agriculture and Forestry (CSAF) Mitigation Activities List for FY2024," which contains an extensive list of practices that are expected to reduce GHG emissions. At a minimum, we believe the following practices should be included, with no requirement for "bundling":

- No-till, reduced till, mulch till, ridge till, and strip till;
- Legume and non-legume cover cropping;
- Perennial cover grown in field strips;
- Replacement of synthetic fertilizers with manure application;
- Reduced nitrogen (N) fertilizer application rates and "4R" practices (i.e., right source, right rate, right time, right place);
- Enhanced efficiency N fertilizers (e.g., urease and nitrification inhibitors); and
- Farm equipment fuel efficiency and/or renewable fuel/energy use.

Many of these practices, and their impact on GHG emissions outcomes, are already included in the Argonne National Laboratory's Feedstock Carbon Intensity Calculator (FDCIC).

It is critically important that if any modifications are made to 45Z, the Argonne GREET model is clearly specified as the required methodology for CI calculations. In addition, the current statutory references in I.R.C. § 45Z(b)(1)(B) to consistency with the Clean Air Act 211(o)(1)(H) definition of "lifecycle GHG emissions" and the use of "a successor model" have proven problematic and confusing. If modifications are made, those references should be eliminated.

How should new and emerging agricultural products or practices be considered for eligibility?

In conjunction with USDA and DOE, the Treasury Department should periodically (perhaps biennially) issue a request for information focused on new and emerging technologies and practices that should be further examined for possible inclusion in the Argonne GREET model.

What are the benefits or risks of the following modifications:

- ***Requiring that only feedstocks produced domestically may qualify for the production of Clean Fuel for 45Z***
- ***Requiring that foreign feedstocks must obtain a higher standard of verification***
- ***Limiting feedstocks to domestic, but allowing certain trade partners (such as those with trade agreements, or those who do not currently discriminate against biofuels)***
- ***Modifying how indirect land use change is considered for the purposes of determining the CI score of a feedstock producer***
- ***Utilizing Direct Land Use***
- ***Allowing foreign feedstock to participate in and benefit from 45Z, but at a lower credit amount***

The treatment of feedstock origin under biofuels tax credit programs is a complex issue that demands a careful approach. In principle, U.S. tax incentives should prioritize domestic products made from domestically produced raw materials. But in practice, biofuel and feedstock markets are global in scope, and great care should be taken to avoid unintended consequences that disrupt economic efficiency, jeopardize trade with trusted partners, or risk inconsistency with other regulatory programs. Striking the proper balance will require a thoughtful and nuanced approach.

In addition, not all imported feedstocks are created equally. Certain feedstocks from certain origins (e.g., used cooking oil from China) carry a much higher risk of accidental or purposeful contamination or misclassification. Meanwhile, other imported feedstocks come from countries (e.g., Brazil) that have discriminatory trade barriers in place preventing importation of U.S. biofuels. Thus, rather than taking a one-size-fits-all approach to feedstock imports, we encourage a more targeted strategy that focuses on

establishing a level playing field for U.S. biofuel producers and farmers. For example, more rigorous testing and certification requirements could be considered to ensure the validity and integrity of certain feedstocks from certain origins (Chinese UCO). As another example, biofuels made from feedstock imports from a certain country could be deemed ineligible, or subject to a lower credit value, if that country has existing trade policies in place (tariff and non-tariff barriers) that prevent importation of U.S. biofuels.

Moreover, some of the concerns related to imported feedstock could be largely ameliorated if Congress compelled EPA to harmonize its biofuels lifecycle CI analysis, RIN designations, and pathway petition process with the Treasury's Argonne GREET model analysis and 45Z pathway approvals.

In general, what modifications should we consider to ensure that American farmers can participate in and benefit from the 45Z Clean Fuel Production Tax Credit?

Any statutory modifications to 45Z should explicitly specify that Climate Smart Agriculture (CSA) practices are to be included in the lifecycle analysis framework used to determine CI values (i.e., the existing statute is silent on the inclusion of CSA).

As highlighted elsewhere in our response, a wide array of CSA practices should be included to encourage the broadest participation possible by American farmers. It is also essential that there are no "bundling" provisions that require farmers to adopt multiple CSA practices simultaneously.

Additionally, certain details will make a big difference in the rate of adoption. For instance, the 40B SAF tax guidance specifies that certification bodies must be accredited from the American National Standards Institute (ANSI) for ISO 14065. In keeping with established business standards, unrelated party certification bodies requirements should not specify a particular ISO verification body or require US based bodies. These credits will scale much more quickly if more ISO-certified verification bodies are available and the industry can address this requirement in keeping with common and established business practices.

Finally, and perhaps most importantly, any modifications to 45Z should ensure that farmers and biofuel producers are allowed to use book-and-claim accounting for CSA practices. Book-and-claim is a chain-of-custody model in which the administrative record flow does not necessarily connect to the physical flow of material or product throughout the supply chain. Thus, the GHG reductions related to the CSA practices can be "decoupled" from the physical feedstock and transferred separately from the farmer/grain supplier to the low-carbon fuel producer (i.e., the entity registered with IRS under 45Z) via a dedicated instrument (perhaps a "CSA certificate"). In such a system, the buyer (fuel producer) and seller (CSA farmer or CSA grain supplier) need not be connected via a physical supply chain.

As a result, the buyer owns the GHG reduction benefits of the CSA feedstock without physically possessing the specific feedstock at their biorefinery. Still, it is the buyer's purchase of the CSA-related GHG reductions that incentivizes the farmer's adoption of CSA practices. Adopting a book-and-claim system for CSA would allow farmers who are not in close physical proximity to ethanol, SAF, or other biofuel facilities to be rewarded for adopting CSA practices. It would also allow the grain market to continue operating rationally and efficiently. Book-and-claim also would allow the ethanol, SAF, or other biofuel producer to manage geographic risk (i.e., in the event that an adverse weather event or drought near their facility made them unable to obtain CSA feedstock) and deliver on low-carbon fuel volume commitments.

If the government were to require that physical commodities grown using CSA practices be rigidly tracked through the supply chain and delivered to biofuel production facilities, this could cause significant distortions in grain flows and pricing. As a result, program participation and the associated GHG emissions benefits would be limited unnecessarily. Even certain mass-balancing approaches for tracking CSA feedstock could result in market distortions and unnecessary economic burdens that would likely deter farmers from pursuing the adoption of CSA and deter biofuel producers from sourcing CSA feedstock.

What forms of fuel or transportation modes are currently excluded from 45Z, but should be considered for inclusion?

While not excluded from 45Z, we believe the program's treatment of sustainable aviation fuel (SAF) must be modified in order to truly stimulate investment in, and expansion of, SAF production.

The existing 40B SAF blenders credit (which expires on Dec. 31, 2024) has a much higher base credit value for SAF than the current 45Z credit. While both 40B and 45Z have a maximum credit value of $1.75 per gallon for SAF with a 100% CI reduction, the base credit value for SAF with a 50% GHG reduction is $1.25 per gallon under 40B but drops to just $0.10 per gallon under the current 45Z program. Thus, the transition from 40B to 45Z results in a large decrease in credit value for SAF that offers a 50-90% CI reduction. To sustain and promote new investment, the value of the 45Z must be enhanced to improve the economics of SAF production and send the right market signal to SAF financers.

We believe the $1.25 per gallon base credit value for SAF from 40B should be retained for SAF under the 45Z program (i.e., the credit value for SAF achieving an emissions rate of 50 kg of CO2e per mmBTU should start at $1.25 per gallon and increase $0.01 for each additional kg CO2e/mmBTU reduction).

It should also be noted that the current 45Z structure strongly encourages SAF producers employing the alcohol-to-jet (ATJ) pathway to use imported ethanol (rather than domestic ethanol) as their feedstock. This occurs because U.S.-produced ethanol with a CI below 50 kg CO2e/mmBTU is already eligible for the 45Z credit. The SAF producer could not claim

45Z for SAF made from U.S. ethanol that has already benefited from the 45Z credit. Thus, the SAF producer would seek to use imported ethanol as the feedstock because the foreign ethanol producer is not eligible to claim the 45Z tax credit.

Additionally, EPA's outdated lifecycle GHG analysis under the RFS generally prevents the generation of an advanced biofuel (D5) RIN for SAF made from corn ethanol, while SAF made from imported sugarcane ethanol generally qualifies for a D5 RIN. EPA's current RFS regulations in conjunction with the current 45Z structure sends a powerful signal to SAF producers using the ATJ process that they should use imported sugarcane ethanol as feedstock in lieu of U.S. corn ethanol.

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RFA looks forward to working with the Committee on extensions and enhancements to this important program. 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 Jared Mullendore at jmullendore@ethanolrfa.org or (202) 289-3835.

Sincerely,

Geoff Cooper
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Renewable Fuels Association