Growth Energy™
Expanding America's Bioeconomy

September 8, 2025

The Honorable Scott Bessent
Secretary and Acting Commissioner of the Internal Revenue Service
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

RE: Growth Energy Comments on Implementation of the Amended Section 45Z Clean Fuel Production Credit

Dear Secretary Bessent:

In light of recent changes to the tax code, including Section 45Z, through the passage of the "One Big Beautiful Bill Act" (OBBB),[1] Growth Energy respectfully submits the following comments on the Internal Revenue Service's (IRS) implementation of the Section 45Z Clean Fuel Production Credit. These comments build upon and supplement Growth Energy's comments on IRS Notices 2025-10 and 2025-11, as well as our comments on the IRS' proposed rulemaking on prevailing wage requirements.

Growth Energy is the nation's largest association of biofuel producers, representing 97 U.S. plants that each year produce more than 9.5 billion gallons of low-carbon, renewable fuel; 131 businesses associated with the production process; and tens of thousands of biofuel supporters around the country. Our members are critical to the supply of biofuel in the United States and have substantial interests in ensuring the effective, efficient, and science-based implementation of the Section 45Z Clean Fuel Production Credit. Our industry is poised to assist the administration's energy goals by providing low-cost, innovative, and American-made fuel as we remain committed to helping our country diversify its energy portfolio and provide consumers with better and more affordable choices at the fuel pump.

While Growth Energy welcomes the changes to the Section 45Z tax credit enacted in the OBBB, it is critical that the IRS provide biofuel producers as much certainty as possible with respect to applicable rules and guidance for credit eligibility. Accordingly, we urge the IRS to move forward as expeditiously as possible with finalizing the Section 45Z implementing regulations, consistent with the suggestions we offer here and in our previous comments. In the interim, until such regulations are finalized, Growth Energy requests that the IRS clarify that taxpayers can rely for their tax planning purposes on the guidance set forth in Notices 2025-10 and 2025-11, including the draft text of the forthcoming proposed regulations, the emissions rate set

[1] *See* H.R. 1, the "One Big Beautiful Bill Act," Public Law 119-21, § 70521 (July 4, 2025) (hereinafter "OBBB").

forth therein, and the concurrently promulgated 45ZCF-GREET model (with the associated indirect land use change emissions adjustments addressed below).

We appreciate the agency's consideration of our input as it moves towards finalizing the regulations.

I. In Response to the OBBB Amendments, IRS Should Allow Taxpayers to Deduct Emissions Associated with Indirect Land Use Change from the Current 45ZCF-GREET Model

Prior to the passage of the OBBB, lifecycle analyses (LCAs) to calculate the carbon intensity (CI) of clean fuels for the purpose of determining applicable Section 45Z tax credits incorporated emissions associated with indirect land use changes (ILUC). As Growth Energy and other commenters have noted in the past, assessments of ILUC emissions in LCAs are inherently highly speculative and often fraught with incorrect assumptions. Congress has appropriately addressed this issue through passage of OBBB amendments that exclude emissions associated with ILUC in calculating the CI of clean fuels under Section 45Z.[2]

Growth Energy strongly supports this change and encourages IRS to adopt a readily-implementable approach to revised CI calculations using the existing 45ZCF-GREET model. Specifically, the most straightforward and efficient regulatory solution is to allow taxpayers to continue using the existing 45ZCF-GREET model and simply exclude the values associated with ILUC emissions when calculating overall CI scores, rather than promulgating an entirely new model to account for this change. Though (as discussed below) certain improvements should be made to the model, 45ZCF-GREET is the result of rigorous, peer-reviewed analysis and in many ways reflects the best available science on lifecycle GHG emissions for biofuel production. Promulgating a new model would be complex and time-consuming, creating further delays and uncertainty for producers seeking to claim the Section 45Z tax credit.

Because the 45ZCF-GREET model helpfully breaks out the emissions calculation associated with ILUC as a separate line item, it can readily be deducted from the overall emissions calculation. Allowing taxpayers to do so would provide much-needed certainty in the near-term for determining 45Z credit eligibility.

II. The 45ZCF-GREET User Manual Should Allow Producers to Account for All CCUS-Related Emissions Reductions Verified Using a Section 45Q Lifecycle Analysis

Ethanol producers are employing innovative carbon capture, utilization, and storage (CCUS) technologies across the industry that create both value and efficiencies in the use of CO2 for food and beverage products while reducing emissions. Approximately 25% of the ethanol industry already captures carbon dioxide, and a growing number of facilities plan to install the technology in the near future. Carbon dioxide captured from ethanol facilities is used in a wide and growing variety of

[2] *See* OBBB § 70521(c)(1).

applications, spanning the food and beverage industry, building materials, municipal water treatment, dry ice for medical storage, and even additional types of transportation fuels.[3]

While Growth Energy welcomes the U.S. Department of Energy's (DOE) May 2025 updates to the 45CZF-GREET User Manual, which now allow ethanol producers to account for CO2 captured and stored in Class II wells (i.e., for enhanced oil recovery use), the User Manual arbitrarily excludes the type of CCUS most often utilized in the ethanol industry. Specifically, it states that "CO2 capture and use in other applications, such as incorporation into a product, is not included as an option for reducing the GHG emissions rate of transportation fuels in 45ZCF-GREET."[4] The IRS should coordinate with the DOE to amend the 45ZCF-GREET User Manual to allow taxpayers to claim CI reductions achieved through utilization of captured carbon in a variety of products, including in the food and beverage industry, when those GHG emissions reductions are verified through a LCA by DOE under the Section 45Q tax credit framework or can be substantiated through use of GREET's carbon utilization calculation tools.

There is not a valid policy or technical reason to exclude captured carbon dioxide utilized in these applications from contributing to GHG emissions reductions for 45Z tax credit purposes when such calculations will not be double-counted. Once DOE's National Energy Technology Laboratory (NETL)[5] approves a CCUS LCA, those verifiable GHG emissions reductions should be eligible for inclusion in 45ZCF-GREET's CI calculation, just as is the case for captured carbon dioxide used in enhanced oil recovery applications. Limiting the CI reductions that can be claimed from CCUS for Section 45Z purposes to those verified through the DOE-NETL 45Q LCA would mitigate against any concerns the IRS may have about fraudulent or inaccurate CI claims while leveling the playing field for different uses of captured carbon dioxide with equally beneficial environmental impacts. The incorporation of CO2 captured by ethanol plants into commercial applications provides the same environmental benefits as enhanced oil recovery in that it displaces other fossil-derived sources of CO2

III. The IRS Should Provide for Greater Flexibility in Accounting for Climate Smart Agricultural Practices in Reducing CI

U.S. farmers continue to develop innovative farming practices that enhance efficiency and reduce impacts, making U.S. farm products more competitive in domestic

[3] Growth Energy, Putting Carbon to Work: Biorefineries' Critical Contributions to Net-Zero (June 2022) https://growthenergy.org/wp-content/uploads/2022/06/GROW-22019-Issue-Brief-Carbon-Capture-2022-06-22-R8.pdf.

[4] Guidelines To Determine Life Cycle Greenhouse Gas Emissions of Clean Transportation Fuel Production Pathways Using 45ZCF-GREET, U.S. DOE (May 2025) [hereinafter "45ZCF-GREET User Manual"], Section 2.4.4, https://www.energy.gov/sites/default/files/2025-01/45zcf-greet_user-manual.pdf.

[5] We note that NETL's approach to evaluating LCAs for 45Q tax credit purposes is unduly restrictive and applies the same flawed "incrementality" approach discussed below with respect to RECs, *see infra* § IV, effectively rewarding only CCUS activities that are more efficient on an LCA basis than the ethanol industry average. The NETL approach should be revised to reflect the statutory intent of 45Q, which is to reward carbon utilization that displaces fossil sources of CO2. Certainly, however, NETL's approval of a 45Q LCA under its current evaluation approach provides strong validation of the carbon reductions associated with a producer's CCUS activities.

and international markets. The IRS stated in Notice 2025-10 that it intends to develop regulations to allow taxpayers to claim additional CI reductions based on the use of "climate smart agriculture" (CSA) practices for biofuel production under the Section 45Z tax credits.[6] Growth Energy appreciates the continued recognition of the benefits of such practices and encourages the IRS to make those rules workable and flexible for biofuel producers and farmers. To do so, the IRS should allow biofuel producers to rely on the USDA Feedstock Carbon Intensity Calculator (USDA FD-CIC) to calculate CI reductions for purposes of the 45Z production tax credit.

The USDA FD-CIC—the use of which USDA codified via an interim rule on January 17, 2025—provides a well-established and readily-accessible model that is easily incorporated into CI calculations under the 45ZCF-GREET framework.[7] The USDA FD-CIC is based on DOE's Argonne GREET methodology, reflecting the best available science on carbon intensities of various agricultural feedstocks (including corn, soybean, and sorghum) grown using CSA practices. Moreover, the USDA FD-CIC provides CI calculations for feedstocks grown using one or more of the CSA practices incorporated into the model, including no-till, reduced till, cover crops, nitrification inhibitors, split in-season nitrogen application, and no fall nitrogen application.[8] By accounting for each practice individually, the model allows for greater flexibility for farmers seeking to implement such practices as appropriate for their particular farm and for biofuel producers in determining their CI scores for 45Z purposes. This approach helpfully differs from IRS' guidance on accounting for CSA in the section 40B sustainable aviation fuel (SAF) context.[9] There, the IRS limited SAF producers' ability to claim CSA CI reductions only to circumstances where a farmer employed three specific CSA practices together.[10] Given the USDA FD-CIC's ability to calculate CI scores for a broader range of individual CSA practices, the IRS' approach in the 40B SAF context is unduly restrictive, making innovation in the agricultural and biofuels sectors more costly and less competitive.

In developing further regulations and guidance on Section 45Z, therefore, the IRS should allow incorporation of CI scores using the USDA FD-CIC tool. Doing so will enable biofuel producers to continue to bring innovation to rural economies while also reducing costs and improving the competitiveness of U.S.-made fuels. In addition to incorporating the use of this tool under the Section 45Z framework, Treasury should also coordinate with USDA to continue to expand the FD-CIC to include further CSA practices that are recognized by the Natural Resources Conservation Service (NRCS)[11] and can provide accountable CI reductions.

To the extent Treasury is concerned with ensuring that claimed CI reductions are verifiable, the USDA FD-CIC rule contains recordkeeping requirements and verification

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[6] IRS Notice 2025-10 at § 3.04(3)(b).
[7] 90 Fed. Reg. 5497 (Jan. 17, 2025); *see also* https://www.usda.gov/usda-fdcic.
[8] *See* 7 CFR § 2100.012; *see also* 90 Fed. Reg. at 5500.
[9] *See* IRS Notice 2024-47 at § 4.01(1) (USDA CSA Pilot Program).
[10] *Id*.
[11] Climate-Smart Agriculture and Forestry (CSAF) Mitigation Activities List for FY2025, https://www.nrcs.usda.gov/sites/default/files/2023-10/NRCS-CSAF-Mitigation-Activities-List.pdf.

processes that ensure the veracity of the CI reductions for both farmers and farm product aggregators. Moreover, under that rule, all first points of aggregation, intermediary entities, and biofuel refiners must be audited annually by an accredited third-party verifier that ensures the veracity of the CSA practices and CI reduction benefits. The IRS needn't reinvent the wheel; it can piggyback on the procedures established by USDA for recordkeeping and verification, thereby harmonizing the approaches under parallel federal programs. Doing so would provide the greatest consistency and efficiency among related regulatory regimes while ensuring only verifiable CSA emissions reductions result in Section 45 credit.

Notably, the United States' current failure to incentivize CSA practices in its biofuels' programs disadvantages domestic producers in international markets which demand on-farm carbon reductions and already rely upon schemes such as the International Sustainability and Carbon Certification (ISCC) program to measure feedstock carbon intensities. ISCC has been successfully relying on third party auditors for years to validate even more detailed carbon intensity calculations than those contemplated by USDA FD-CIC.

IV. The Section 45Z Regulations Should Not Include Arbitrary Restrictions on the Use of RECs to Demonstrate CI Reductions

Renewable Energy Certificates (RECs) representing renewable electricity can be utilized by biofuels producers in the fuel production process, with important carbon intensity reduction benefits. However, the current 45ZCF-GREET Manual states that, in order to count toward CI reductions in determining Section 45Z eligibility, RECs should align with the criteria for relying on such certificates set out in the Section 45V regulations governing the clean hydrogen production credit.[12] Those criteria include the "three pillars" of "deliverability" (i.e., the electricity generation is in the same region as the biofuel production), "temporal matching" (i.e., the timing of the generation corresponds to electricity use in the biofuel production process), and "incrementality" (i.e., the generation is new and additive, rather than displacing existing capacity on the grid).[13]

The rationale for the three pillars approach in the hydrogen context, however, does not apply to the biofuels context, and Treasury and DOE should reconsider its application to 45Z credit eligibility. Specifically, the purpose of the "three pillars" approach was to account for the potentially substantial *indirect* emissions associated with induced power generation to meet that electricity demand where electrolytic hydrogen production requires substantial electricity resources. The "three pillars" were intended to ensure that RECs utilized for Section 45V tax credit eligibility represent genuine net CI reductions notwithstanding those potentially significant indirect emissions impacts. Biofuel production, however, bears no semblance to electrolytic hydrogen production in terms of electricity required. The magnitude of the electricity needs of the latter dwarf the former. As such, the risk that the CI reductions claimed by

[12] 45ZCF-GREET User Manual, Section 2.4.1.
[13] *Id*.

biofuels producers through RECs may be offset by induced indirect emissions from the electricity grid is therefore much lower or even non-existent.

Accordingly, the "three pillars" requirements for use of RECs has no statutory basis as applied to ethanol production under Section 45Z. Section 45Z incorporates by reference the definition of "lifecycle greenhouse gas emissions" in Clean Air Act section 211(o)(1)(H).[14] Under this definition, only "*significant* indirect emissions" must be accounted for in lifecycle emissions analyses.[15] Neither Treasury nor DOE nor EPA has established that biofuels producers' use of RECs has *any* indirect emissions impacts, and certainly none that would rise to the level of "significant."

Thus, requiring the three pillars criteria for the use of RECs in the Section 45Z context only creates unnecessary and burdensome restriction on biofuels producers' ability to deploy cost-effective carbon-intensity reduction strategies claim. It is simultaneously unsupported by 45Z's statutory requirements for lifecycle GHG analyses. When finalizing the Section 45Z regulations, Treasury should therefore ensure that the use of RECs in calculating the CI of a clean fuel is not subject to the "three pillars" criteria.

V. The IRS Should Provide Further Flexibility and Clarity in Demonstrating Compliance with the Prevailing Wage Requirements

A. Geographic Flexibility Where Prevailing Wage Determinations Are Unavailable

Like most provisions of the Inflation Reduction Act, Section 45Z imposes certain prevailing wage requirements for the construction, alteration, or repair of a qualified facility in the "locality in which such facility is located," as established by Davis-Bacon Act (DBA) wage determinations issued by the Department of Labor (DOL).[16] To claim this additional credit, taxpayers must pay the wages set by DOL under general wage determinations for a geographic area.[17] However, due to the unique geography of biofuels production and the types of labor required, biofuels producers are encountering situations where there is no DOL-issued prevailing wage determination or labor classification in the county in which their facilities are situated despite there being such determination/classification in an adjacent county. We understand that this may be the case where DOL does not have enough data to publish a prevailing wage determination or classification for a specific locality.

The current IRS regulations provide that, in such circumstances, taxpayers may request "supplemental wage determinations" or "additional classifications and rates for those localities or specific types of labor.[18] These additional procedural steps pose multiple challenges that could be avoided through an easily-administered solution. First,

[14] 26 U.S.C. § 45Z(b)(1)(B)(i).
[15] 42 U.S.C. § 7545(o)(1)(H).
[16] 26 U.S.C. § 45Z(f)(6)(A); 26 U.S.C. § 45(b)(7).
[17] 26 C.F.R. § 1.45-7(b)(1).
[18] 26 C.F.R. § 1.45-7(b)(3).

the supplemental wage determination processes impose regulatory burdens on DOL that may result in untimely processing of such requests, where it is critical that the biofuels producer has certainty regarding magnitude of credit eligibility for fuel pricing and other considerations. The regulations provide that "[t]he Wage and Hour Division will resolve requests for a prevailing wage rate for an additional classification within 30 days of receipt of the request or will advise the requester within the 30-day period that additional time is necessary."[19] Despite establishing a presumptive 30-day timeline, however, the rule provides no means of relief to taxpayers if DOL requests an open-ended amount of additional time or otherwise does not process the request in a timely manner.

To avoid lengthy delays that can cause significant uncertainty for biofuels producers, the IRS should amend the regulations to allow taxpayers to use the relevant prevailing wage determination or labor classification from the nearest locality when DOL is unable to provide one within the allotted 30-day timeframe. Doing so would align with the IRS' treatment of offshore facilities, for which "in lieu of requesting a supplemental wage determination" a taxpayer "may rely on the general wage determination for the relevant category of construction that is applicable in the geographic area closest to the area in which the qualified facility will be located."[20] The IRS can apply this same approach to onshore facilities in geographic areas lacking applicable wage determinations. This approach would still allow DOL to make determinations once it has sufficient data to do so while providing taxpayers with a safe harbor for claiming the prevailing wage tax credit in cases where DOL is unable to provide such determinations within the prescribed timeframe.

B. Penalty Mitigation Based on Annual Demonstrations of Compliance

Growth Energy understands and appreciates the importance of including compliance mechanisms to ensure that prevailing wages are actually paid to laborers when claimed by a taxpayer. The current regulations establish penalties for failure to satisfy the prevailing wage requirements (and failure to correct inadequate payments).[21] These regulations further establish heightened penalties if the IRS determines that there was an intentional disregard of the prevailing wage requirements.[22] To make this determination, the IRS considers various facts and circumstances, including (among others) whether taxpayers conducted reviews on a quarterly or more frequent basis as to (a) what the prevailing wage classifications are, (b) what the prevailing wage rates are, and (c) whether payroll reflects proper payment of prevailing wages.[23]

While Growth Energy appreciates the importance of reviewing such data on a periodic basis to ensure and demonstrate compliance, *quarterly* reviews impose an unnecessary burden on taxpayers. Growth Energy requests that IRS amend this provision to allow for *annual* reviews of applicable prevailing wage requirements and

[19] 26 C.F.R. § 1.45-7(b)(3)(iii).
[20] 26 C.F.R. § 1.45-7(b)(3)(iv).
[21] *See* 26 C.F.R. § 1.45-7(c).
[22] 26 C.F.R. § 1.45-7(c)(3).
[23] 26 C.F.R. § 1.45-7(c)(3)(iii)(B), (C), (F).

payroll compliance to demonstrate that there was no intentional disregard of the prevailing wage requirements.

C. Requirement to Demonstrate Prevailing Wage Compliance Only in the Taxable Year for Which the Credit is Claimed

To avoid any confusion and ensure that biofuels producers are claiming the full credit for which they are eligible, IRS should clarify in guidance or in the final Section 45Z regulations that, in order to claim the additional prevailing wage credit, taxpayers will only need to demonstrate compliance with prevailing wage requirements for the taxable year in which they are claiming the credit. Taxpayers would not need to meet prevailing wages requirements in any year prior or any year following the taxable year for which the credit is being claimed. This clarification aligns with the statutory language on prevailing wage requirements for Section 45Z and avoids potential confusion that could lead to unnecessary burdens on taxpayers.

VI. IRS Should Clarify that "Qualifying Sales" Includes Sales to Resellers

Treasury should clarify in the final 45Z regulations that sales of fuels to trades or businesses that will ultimately *resell* the fuel are "qualifying sales" under Section 45Z. IRS Notice 2025-10 provides that "qualifying sales" pursuant to section 45Z(a)(4) includes "a sale of transportation fuel by the taxpayer to an unrelated person if … (B) The fuel is sold for use in a trade or business by such person[.]"[24] The Notice further defines "sold for use in a trade or business" as "sold for use *as a fuel* in a trade or business within the meaning of Section 162 of the Code."[25]

As proposed, the term "use as a fuel" could be misinterpreted to mean that the trade or business must "consume" the fuel rather than resell it. This interpretation would unnecessarily circumscribe qualifying sales of a fuel in a manner that is inconsistent with the statute and ignores the realities of the biofuels industry. In general, Section 45Z focuses on the production of transportation fuels rather than the consumption of such fuels. Moreover, the statute defines "transportation fuel" to mean simply fuel "suitable for use" in a highway vehicle or aircraft, but does not explicitly require its use as such.[26] Other parts of Treasury's guidance reflects this broad definition, noting that "[t]o be considered suitable for use, a fuel need not actually be used as a fuel in a highway vehicle or aircraft."[27] The statute similarly does not limit the definition of "sale" to end consumers of transportation fuel.[28] Limiting this type of "qualifying sale" to trades or businesses that themselves consume the fuel would ignore the fact that many biofuels producers sell to marketers, wholesalers, distributors, traders, jobbers, or other resellers or intermediaries. It would entirely negate the value of the Section 45Z credit for the vast majority of the biofuels industry if sales to such entities were deemed ineligible.

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[24] IRS Notice 2025-10 at proposed § 1.45Z-1(b)(25)(i)(B) .
[25] *Id*. at proposed § 1.45Z-1(b)(25)(ii) (emphasis added).
[26] 26 U.S.C. § 45Z(d)(5).
[27] Notice 2025-10, p. 18.
[28] 26 U.S.C. § 45Z(a)(4).

Treasury should clarify that its inclusion of the language "use *as a fuel*" was not intended to exclude sales to resellers, but rather to ensure that such fuels are not being resold by that trade or business (the reseller) for some other end use (e.g., industrial uses, cosmetics, etc.). To avoid misinterpretation, Treasury should clarify that the term "use" in the qualifying sales provision includes the resale of transportation fuels and is not limited to consumption by that trade or business. As such, sales of transportation fuel by the taxpayer to fuels market resellers would qualify for the Section 45Z credit as Congress intended.

VII. Treasury Should Clarify That All Ethanol "Suitable for Use as a Fuel" Is Eligible for the Section 45Z Credit

Treasury should ensure that all ethanol sales, including ethanol exports, that meets the statutory eligibility criteria qualifies for Section 45Z credit. The Clean Fuels Tax Credit is available to any fuel that, among other things, is "suitable for use as a fuel in a highway vehicle or aircraft."[29] Consistent with the discussion above regarding the complexities of the ethanol distribution chain, the ethanol export market involves multiple buyers and resellers, making it difficult for the upstream producer to know the precise end user, particularly at the international level. Export markets may also have certain criteria that are unrelated to the statutory eligibility for the Section 45Z tax credit. Treasury should clarify in the Section 45Z regulations that a downstream buyer's specifications or ultimate uses of the ethanol should not affect the upstream producer's eligibility for the tax credit when, upon production, the ethanol is suitable for use as a fuel in a highway vehicle or aircraft (and otherwise meets the statutory eligibility criteria). This should be the case even if the fuel is ultimately used in an alternative application, including a marine vessel.

For example, the proposed regulations appear to inadvertently omit from credit eligibility undenatured ethanol that is exported to non-US fuels markets through cross-reference to the ASTM D4806 standard, contrary to the inclusive approach taken in the statute. Specifically, the proposed regulations define "low-GHG ethanol" as "ethyl alcohol that is a liquid fuel that meets the specifications of ASTM International D4806 for denatured fuel ethanol for blending with gasolines and that has an emissions rate that is not greater than 50 kg of CO2e per mmBTU."[30] ASTM D4806 applies to "denatured fuel ethanol intended for blending with unleaded or leaded gasolines for use as a spark-ignition automotive engine fuel."[31] While ethanol used in U.S. transportation fuels is denatured, ethanol exported for use in foreign transportation fuel markets is often not.

However, undenatured ethanol is "suitable for use" as a transportation fuel in many markets. For example, many E.U. member states stipulate that ethanol used in transportation fuel must be undenatured.[32] EPA has also previously acknowledged, in

[29] 26 USC § 45Z(d)(5).
[30] IRS Notice 2024-49, §3.03(5); see also 45ZCF-GREET Guidelines at Table 3.
[31] https://store.astm.org/d4806-21a.html.
[32] European Union Market Profiles, U.S. Grains Council, https://grains.org/bioethanol/ethanol-market-profiles/european-union.

the context of the U.S. Renewable Fuel Standard (RFS) Program, that undenatured ethanol is used in transportation fuel.[33]

Whether denatured or not, as long as exported ethanol at the time of its production meets all of the qualifications in the statute, it should not be excluded from Section 45Z eligibility due to the foreign buyer's specifications or intended uses. Excluding ethanol exports from the Section 45Z credit on such bases would undermine the Administration's stated goal of increasing liquid fuel exports.[34] The U.S. exported a record 1.96 billion gallons of ethanol in 2024, with primary markets including Canada, Mexico, the UK, and the EU. These exports not only bring additional revenues into the U.S., but also help to secure the U.S.'s position as a dominant global leader in energy production.

We urge the IRS to correct its proposed regulations by clarifying that any exported ethanol that meets the statutory criteria at the time of its production may generate 45Z credits. This is both necessary to conform with the statute and for consistency with U.S. energy policy.

VIII. Treasury Should Promptly Finalize the Provisional Emissions Rate Process

The statute allows for taxpayers to file a petition to establish a provisional emissions rate (PER) "in the case of any transportation fuel for which an emissions rate has not been established."[35] Yet the proposed regulations defer issuing guidance on the PER process until an undefined "later time" while noting that the agency "will not accept requests for PER determinations…until after such guidance is published."[36] This approach runs contrary to Section 45Z's statutory directive to issue guidance regarding implementation, "including calculation of emissions factors" by January 1, 2025.[37] Indefinite delay in clarifying the PER process undermines the very purpose of the PER to provide a mechanism for fuel producers to obtain certainty regarding 45Z credit generation notwithstanding the absence of a published value.

In finalizing much needed guidance or regulations on this, Growth Energy encourages the IRS to ensure the PER process is efficient and minimizes regulatory and administrative burdens. Under the proposed framework, producers must obtain approvals from both the DOE (to establish an "emissions value") and the IRS (to approve the PER petition).[38] It is not clear how this multi-step, multi-agency approval PER process would be any quicker or less onerous than establishing a final emissions rate by updating the 45ZCF-GREET model. We urge the IRS to revise and consolidate the PER process into a single, streamlined framework with specific deadlines for the

[33] "Foreign ethanol producer means a foreign renewable fuel producer who produces ethanol for use in transportation fuel, heating oil, or jet fuel but who does not add ethanol denaturant to their product as specified in paragraph (2) of the definition of "renewable fuel" in this section." 40 C.F.R. § 80.2 (emphasis added).
[34] See E.O. 14154, Unleashing American Energy (Jan. 20, 2025).
[35] 26 U.S.C. § 45Z(b)(1)(D).
[36] IRS Notice 2025-11 at § 4.06
[37] 26 U.S.C. § 45Z(e).
[38] IRS Notice 2025-11 at § 4.06; IRS Notice 2025-10 at proposed §1.45Z-2(f)(2).

agency to issue PER determinations. The IRS should also publish guidance delineating the basic requirements that will ensure efficient processing of applications.

IRS's proposed regulations also unnecessarily preclude producers from submitting a PER petition if the "pathway or primary feedstock" is included in the 45ZCF-GREET model.[39] However, there may be valid reasons a PER is appropriate in such circumstances. For example, if the background data incorporated into the model does not accurately reflect a particular fuel's carbon intensity, producers should be able to use the PER process to demonstrate the errors in the model.

Finally, to establish a more streamlined process that avoids unnecessary PER petitions, if EPA has approved a fuel as RFS-eligible and evaluated its lifecycle GHG emissions consistent with that program (either on-road or SAF), IRS should allow reliance on EPA's modeling process, rather than requiring a new PER application. Section 45Z explicitly defines "lifecycle greenhouse gas emissions" by reference to the RFS program "as described in section 211(o)(1)(H) of the Clean Air Act."[40] Reliance on EPA's RFS modeling processes is therefore consistent with the statute and will promote government efficiency by avoiding the re-evaluation of already-approved pathways.

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Growth Energy appreciates the IRS' consideration of this input as it develops Section 45Z regulations. We look forward to engaging further on this important work and would be happy to meet with your staff to present on these issues in more detail and answer any questions.

Sincerely,

Chris Bliley
Senior Vice President of Regulatory Affairs
Growth Energy

CC:

The Honorable Brooke Rollins, Secretary, U.S. Department of Agriculture
The Honorable Chris Wright, Secretary, U.S. Department of Energy
The Honorable Sean Duffy, Secretary, U.S. Department of Transportation
The Honorable Lee Zeldin, Administrator, U.S. Environmental Protection Agency

[39] IRS Notice 2025-10 at proposed §1.45Z-2(f).
[40] 26 U.S.C. § 45Z(b)(1)(B).