Growth Energy™
Expanding America's Bioeconomy

December 13, 2024

The Honorable Adrian Smith
U.S. House of Representatives
502 Cannon House Office Building
Washington, DC 20515

The Honorable Randy Feenstra
U.S. House of Representatives
1440 Longworth House Office Building
Washington, DC 20515

The Honorable Michelle Fischbach
U.S. House of Representatives
2229 Rayburn House Office Building
Washington, DC 20515

The Honorable Darin LaHood
U.S. House of Representatives
1424 Longworth House Office Building
Washington, DC 20515

The Honorable Carol Miller
U.S. House of Representatives
465 Cannon House Office Building
Washington, DC 20515

The Honorable Claudia Tenney
U.S. House of Representatives
2230 Rayburn House Office Building
Washington, DC 20515

Dear Representatives Smith, Feenstra, Fischbach, LaHood, Miller, and Tenney:

Growth Energy appreciates the opportunity to comment further on the current slate of biofuels tax provisions and are pleased that you have asked for feedback on these provisions, specifically how the Committee should approach them as you undertake major tax legislation next year. Biofuel tax incentives are critical U.S. policy for rural communities and in these areas, farmers, biofuel producers, and rural workers are driving a new era for America's bioeconomy, which supports over half a million jobs and contributes more than $50 billion annually to America's GDP.

Growth Energy is the world's largest association of ethanol producers, representing 97 U.S. ethanol plants that each year produce 9.5 billion gallons of renewable fuel; 123 businesses associated with the ethanol production process; and tens of thousands of biofuel supporters around the country. Our members make renewable fuels and high-protein animal feed and supply plant-based ingredients for everything from bioplastics to safer cleaning products.

Included in this letter are responses to questions that are specifically detailed in your request for information. Should you require any additional information, please contact Growth Energy Vice President of Government Affairs, John Fuher, at 703-915-6549 or jfuher@growthenergy.org.

Q: 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?

- Yes, our association believes that 45Z, provided that the pending 45Z guidance at Treasury results in a workable credit for all U.S. ethanol producers, should be the basis under which the Committee and the Congress should extend biofuels tax incentives. We believe the extension should be for a period of 7-10 years, or a certain time period after a facility is "placed in service" to access the credit, with existing facilities being deemed placed in service as of a date no earlier than the effective date of the revisions to 45Z. In the case of credits that work in tandem with 45Z under the tax code, 45Q has a placed in service timeline of 12 years, and 45V has 10 years. We believe a similar 10-12 year placed in service structure with the same number of years of credits for existing facilities is warranted for 45Z, allowing industry to make needed investments and have a firm end date for this credit.

  Our industry is supportive of 45Z because it provides our members the ability to make costly capital investments to meet carbon constraints established by U.S. subnational policy and foreign trading partners. While we do not actively promote and seek these low carbon regimes, we have to work within these programs and see energy products in general will be required to meet a lower carbon intensity (CI) over the next several decades. And most of these investments needed to reduce CI are difficult – if not impossible – to do without something like the 45Z tax incentive.

  It is also important that 45Z allow a broad array of industrial facilities and biofuel feedstocks to be recognized as CI reducing practices. Regrettably, the direct precursor to 45Z, the 40B sustainable aviation fuel (SAF) credit, did not cover important biofuel facilities like corn wet mills and left off several primary and secondary ethanol feedstocks, like corn kernel fiber, sorghum (both starch and kernel fiber), proso millet, dextrose, wheat, and barley. If the pending 45Z guidance does not provide pathways for these feedstocks, the Committee and Congress should look at requiring Treasury to recognize these facilities and those feedstocks.

  Additionally, it is critical that 45Z include flexibility under the prevailing wage and apprenticeship components of the credit to recognize the unique labor challenges our industry faces. Our biorefineries are located in the heart of rural America and are among the highest quality jobs in their towns, but even still, these employers already struggle to find and recruit workers. We would ask that this reality be taken into account and flexibility given as the Committee and the Congress look at the underlying 45Z law. As an example, if a taxpayer has not intentionally disregarded the prevailing wage requirements and has made comprehensive and fulsome efforts to obtain the identity of a laborer or mechanic that may have completed prevailing wage covered work, the taxpayer should be given flexibility to fully cure the potential violation by paying a penalty to the IRS and/or establishing an escrow account that would be available to individuals that alert the taxpayer that they may be owed a corrective payment. Lastly, the Committee and Congress should provide a de minimis threshold and/or safe harbor distinguishing between maintenance work and alteration or repair work.

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Another issue we'd like to flag is the incentive level for SAF. Under the 40B credit, the base credit for SAF is $1.25 per gallon. Under 45Z, the base credit is zero. We would encourage the Committee and the Congress to look at increasing the base SAF credit under 45Z to an amount commensurate with the level under the 40B credit. This is necessary because SAF fuels need additional incentives in the short term to bring this technology to maturity. We'd like to see a credit that allows for burgeoning SAF producers to be able to utilize our homegrown products as a feedstock to power aviation and reduce aviation emissions.

While we support 45Z and encourage its extension, should the committee and Congress determine that there needs to be a new direction in biofuels tax policy, we would offer a few guiding principles for that policy discussion:

- Ethanol's technological advancements and its economic and environmental benefits should be recognized in biofuel tax credits.
- The credit should be generated at the point of biofuel production. The ethanol industry had a long-standing blending incentive that expired at the end of 2011, and the value for that incentive was captured entirely by other parts of the liquid fuel supply chain, providing limited impact to farmers and ethanol producers. We do not need an incentive to blend ethanol – we need an incentive that allows us to respond to the current ethanol market dynamics and ensure America maintains its dominant place as the world's largest ethanol producer and exporter – especially with increased focus on the CI of our energy sources.
- Any incentive needs to support U.S. agriculture and needs to ensure American farmers, and the agriculture industry are on a level playing field with its competitors.
- Any incentive should support domestic jobs, ensuring that we have growth in American employment, economic activity, and farm income.
- Biofuels tax policy should support the goal of American energy dominance and be designed to increase the production of American energy, helping lower stubbornly high consumer costs.
- Should the credit have a carbon component, it needs to be technology neutral and it needs to utilize the gold standard R&D GREET model from Argonne National Labs to determine CI.
- Energy markets function differently depending on the end use of the fuel and feedstock used to produce that energy. For example, ethanol and biomass-based diesel flow into different energy markets, and how to best incentivize and drive investment in those sectors might require different solutions. The Committee and the Congress should take this into consideration.

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

- Success for ethanol producers under 45Z is that we utilize this credit to deploy billions of dollars of capital to make robust energy investments in rural areas to increase American energy dominance and provide farmers with a growing market for more valuable commodities. By utilizing the 45Z production tax credit, we utilize an effective structure that inherently provides a more effective financing structure for capital deployment, paying on emissions reductions for produced fuel. Once we have seen this deployment of capital and an increase in farm markets, we would see this credit come to an orderly, well-planned phaseout as we would not require this credit in perpetuity.

Q: 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?

- This question is difficult to fully analyze as we are still waiting on the underlying 45Z guidance, which will play a huge role in determining the need for additional structural changes to the underlying 45Z law. One of the options outlined above – placing the credit in line with the 45Q or 45V placed in service model without disadvantaging existing facilities – would help alleviate this concern. And the best way to alleviate this concern is to extend the underlying credit so the term is not so short as to be impacted by delayed guidance, as we have seen under the current implementation of 45Z.

Q: 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?

- The CSA practices recognized under 40B – no-till, cover crops, and enhanced efficiency fertilizer (EEF) – are but a small sample of the many available CSA practices with verifiable emissions reductions that should be incentivized. And the requirement that all three CSA practices be implemented together ("bundled") to receive any credited GHG reduction is not workable for American agriculture, and it must be changed.

  At a minimum, the following CSA practices should be recognized:
  - Manure application
  - Precision fertilizer application through "4R" techniques (right time, right place, right form, right rate)
  - Bio-based fertilizer
  - Green or low-carbon ammonia

  There is not a one-size-fits-all approach to CSA. Farmers should be encouraged to adopt as many CSA practices as possible, with the flexibility to choose the CSA practices that work best for the specific circumstances at their farms. Farmers across the country face distinct challenges and advantages based on the location of their farm, types of crops grown, soil health, weather patterns, local equipment costs, and individual risk tolerance, among many other factors. For example, while cover cropping is a valuable CSA practice on many farms, it may not be feasible for farms in particularly dry or cold environments. But these farms could still implement a variety of other important CSA practices to achieve a similar GHG-reduction effect, such as manure application and no-till farming, which – like cover cropping – improves soil health and increases soil carbon sequestration.

Under the rigid "bundled" approach, farms that are unable to implement cover crops would not be incentivized to implement any CSA practices. The IRS should instead adopt a wholistic and flexible approach for 45Z that incentivizes farmers to adopt whichever verifiable CSA practices are most feasible and efficient for the particular circumstances of their farm.

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

- Two things need to be in place to address this problem. First, the 45Z incentive must utilize the GREET model, which tracks new and innovative feedstocks and biofuel facility practices to determine the appropriate value. Second, there needs to be a quick and easy to use process to determine the CI of new, novel processes that do not have a defined default value. Under the current 45Z law, this is called the "provisional emissions rate," and how this is structured is incredibly important for driving innovation in new fuels and new feedstocks.

Q: 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*
    - We support a prohibition on foreign biofuel feedstocks qualifying for the 45Z tax incentive along with an important 7-10 year extension of 45Z to create long-term certainty for biofuel producers. We do not believe U.S. policy should advantage foreign firms over domestic ones, especially when we have an abundance of crop-based feedstocks for biofuels here in the U.S. Our goal should always be to prioritize developing that capacity and encouraging innovation here at home. Further, we believe Congress must ensure that any foreign feedstock prohibition under 45Z does not impact USMCA trading partners.

- *Requiring that foreign feedstocks must obtain a higher standard of verification*
    - We would support this type of approach, especially provided the amount of verification and certification that is required of U.S. based feedstocks but is not always readily apparent for foreign-sourced feedstock.

- *Limiting feedstocks to domestic, but allowing certain trade partners (such as those with trade agreements, or those who do not currently discriminate against biofuels)*
    - We would support this type of approach, and any legislation must ensure that any foreign feedstock prohibition under 45Z does not impact USMCA trading partners.

- *Modifying how indirect land use change is considered for the purposes of determining the CI score of a feedstock producer*
    - While the science is not settled on indirect land use change (ILUC), to the extent there are any ILUC penalties, they should follow Argonne National Laboratory's R&D GREET model. This model is run by career scientists – not interest group stakeholders – and is the gold standard for lifecycle carbon analysis across the globe.

- *Utilizing Direct Land Use*
    - To the extent there is any direct land use penalties, they should follow Argonne National Laboratory's R&D GREET model. This model is run by career scientists – not interest group stakeholders – and is the gold standard for lifecycle carbon analysis across the globe.

- *Allowing foreign feedstock to participate in and benefit from 45Z, but at a lower credit amount*
    - We would support this type of approach, provided it does not impact our USMCA trading partners.

Q: 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?

- As we have detailed in previous questions, farmers should see a growing market for the crops and growing value for their crops, and keeping the farm community top of mind as the Committee and the Congress consider tax legislation should be a top priority.

  In particular, it is incumbent that any ability for farmers to earn additional revenue for their innovative farming practices provide a broad flexibility that allows farmers to utilize the farming practices that work best for their land and operation. This means increasing the CSA practices that qualify and tearing down the "bundled" approach from 40B.

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

- As was covered earlier, corn wet mills and several important primary and secondary ethanol feedstocks, like corn kernel fiber, sorghum, proso millet, dextrose, wheat, and barley, were left out of the 40B guidance. Absent these being included in the pending 45Z guidance, we would ask the Committee and Congress to ensure these facilities and feedstocks are not left behind.

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Thank you for the opportunity to comment on this important topic. We appreciate being able to provide our perspective on this important issue. In order to provide further reference for our perspective on the on-going 45Z guidance process, attached please find our letter from October 15 to Treasury and the IRS detailing our thoughts on 45Z implementation.

Sincerely,

Emily Skor
CEO
Growth Energy

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