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:

The National Corn Growers Association ("NCGA") represents almost 40,000 corn growers and the interests of more than 300,000 farmers that participate in state corn checkoff programs.[1] NCGA focuses on representing farmers' interests in issues concerning ethanol and other biofuels, sustainable agricultural practices, trade, and farm bills.[2] Specifically, NCGA represents corn farmers in their efforts to access the aviation market.[3] Thus, as advocates for corn farmers in America, NCGA believes it is important to consider the effects of the 45Z tax credit on farmers. NCGA believes farmers should be considered in the creation of this tax credit because they contribute importantly to the lifecycle of biofuels.

[1] *Mission & Vision*, National Corn Growers Association, https://ncga.com/about-ncga/who-we-are/mission-and-vision. (last visited Dec. 12, 2024).

[2] *Key Issues*, National Corn Growers Association, https://ncga.com/. (last visited Dec. 12, 2024).

[3] *NCGA Works on Sustainability Efforts as Growers Work to Access Aviation Market*, Sean Arians (Nov. 19, 2024), https://ncga.com/stay-informed/media/editorials/article/2024/11/ncga-works-on-sustainability-efforts-as-growers-work-to-access-aviation-market.

1. **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?**

In order to respond to this question more fully, it is critical to understand better how the tax credits under IRS Code section 45Z actually benefit the feedstock farmers (e.g., the corn growers). Currently, 45Z promises a higher tax credit to sustainable aviation fuel ("SAF") producers than IRS Code section 40B per gallon and it applies to a wider range of clean transportation fuels, including ethanol and biodiesel, instead of just SAF. However, if 45Z maintains 40B's rigid climate smart agriculture ("CSA") requirements, lack of framework for tracking CSA attributes and lack of transparency in value to the farmer, it will be just as burdensome to provide feedstock that can meet the requirements to achieve the tax credit.[4] Under the 40B model, farmers must implement a bundle of specific CSA production practices that create a rigid framework of compliance.[5] Further, farmers must maintain arduous recordkeeping standards while not guaranteed the benefits of the tax credit.[6]

NCGA is concerned that 45Z will include burdensome requirements without delivering clear benefits to farmers. Therefore, this question cannot be answered properly until we are able to evaluate the guidance for 45Z to determine if there is viable path with transparency in value of CSA practices. If the credit results in attainable and determinable benefits reaching farmers with transparency in value to farmers for CSA practices, NCGA believes the appropriate extension length would be ten years (i.e., 2034.) As outlined in the Farmer First Fuel Incentives Act,[7] extending the credit to 2034 would provide farmers with a decade of opportunity to benefit from the credit.[8] NCGA simply would like to evaluate 45Z for transparency and market opportunity to farmers before making a determination on this question.

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

The tax credit will be most successful if structured to provide a level playing field for feedstock commodities. That would include:

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[4] I.R.S. Notice 2024-37, 4 (April 30, 2024). [found at: https://www.irs.gov/pub/irs-drop/n-24-37.pdf]. [hereinafter "40B Guidance"].

[5] *Id.* at 10.

[6] *Id.* at 12.

[7] S. 5145, 118th Cong. (2024). [found at: https://www.congress.gov/bill/118th-congress/senate-bill/5145?overview=closed].

[8] Senator Marshall, *Sen. Roger Marshall on RFDTV*, YOUTUBE (Nov. 1, 2024), https://www.youtube.com/watch?v=wwpY_sKCBZ8.

a. A broad range of practices (see response for questions 4 and 5),
b. Utilization of a GREET model that accurately reflects land use change and maintains/updates the Feedstock Carbon Intensity Calculator ("FD-CIC") calculator, and
c. Utilizes a chain of custody model that provides a transparent market providing farmers access into how an asset value was determined and opportunities to market that asset in a way most impactful to their own farm.

CSA feedstocks originate on the farm and farmers bear the cost of CSA investments, but the tax credit is only available to clean fuel producers, not farmers; therefore the benefits may not flow to the farmers.[9] The structure for success outlined above is intended to address this disparity by providing price transparency and a pathway for increased demand for biofuel feedstocks in the future. With price transparency, farmers are able to see the value of their crop and demand for corn may increase. If the tax credit is successful, NCGA recommends extending it, rather than phasing it out, to ensure steady benefits for farmers.

3. **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?**

NCGA urges the Treasury to release the 45Z guidance as soon as possible. Farmers and biofuel producers currently face uncertainty on how to best capitalize on the new tax credit. The longer the delay in providing the 45Z guidance, the larger the gap in incentives to produce SAF and other clean fuels. With 40B expiring at the end of 2024 and 45Z taking its place, guidance is of great importance to specify how the tax credit works and the benefits that may be gained for biofuels and to jumpstart the fledgling SAF industry.

NCGA is concerned with Treasury's potential use of the GREET model for purposes of 45Z. In its modified form, NCGA does not support the latest GREET model. NCGA recommends the Treasury revert to the traditional GREET model. The GREET model is an effective way to calculate the carbon intensity ("CI") score of the biofuel production lifecycle, but NCGA recommends that the model provide flexibility to each farmer or producer to apply it to their specific situation. A "one size fits all" model does not work given the geographic and feedstock crop diversity.

NCGA is supportive of using the GREET model, updated annually, for 45Z with consideration of new practices changes and accurate representation of land use change and

[9] 40B Guidance, *supra* note 1, at 2.

transportation impacts of all feedstocks included in the model. GREET and the Feedstocks Carbon Intensity Calculator (FD-CIC) should maintain consistency across both models/tools.

NCGA recommends that, when considering Land Use Change ("LUC"), the GREET model utilized for 45Z should accurately reflect true grassland conversion, forest conversion, and land removed from production of solar farms or urban sprawl so that these factors do not negatively impact a farmer's land use change score. NCGA urges the Treasury to issue further guidance on the calculations used under 45Z and how these calculations may relate to the current GREET model so farmers can invest in the CSA practices and understand how these practices will affect the coming season of crops.

4. **What products or practices are not currently allowed as a Climate Smart Agriculture Practice when calculating a feedstock producer's Carbon Intensity score, but should be?**

Under 40B, corn farmers are restricted to using three CSA practices: no-till farming, planting cover crops, and applying enhanced efficiency nitrogen fertilizer.[10] NCGA believes such a prescriptive framework will deter farmers from participating because of inability or inaccessibility. NCGA believes the CSA practices accepted under 45Z should be comparable to those accepted under Natural Resources Conservation Service ("NRCS") CSA programs.[11] Not only should 45Z incentivize a wide variety of CSA practices to maximize greenhouse gas emissions reductions, but it should also be updated annually to incorporate new CSA practices to account for technological advances and farmer capabilities. NRCS utilizes a dynamic process in which each year, they evaluate new practices against two main criteria:

a. Is the activity expected to result in a direct impact on net greenhouse gas emission reductions or removals within a given scope as supported by the scientific literature?

b. Does NRCS have a science-based approach for quantitatively estimating mitigation benefits using currently available NRCS activity data to support outcome reporting associated with CSA and Forest Mitigation Activities?[12]

NCGA recommends CSA practices be evaluated based on similar criteria tailored to the biofuel industry. Evaluation of these practices should consider regional differences,

[10] *Id.* at 10.

[11] *FAQs: Climate-Smart Agriculture and Forestry Mitigation Activities and Inflation Reduction Act Funding*, Natural Resource Conservation Service, https://www.nrcs.usda.gov/our-agency/faqs-climate-smart-agriculture-and-forestry-mitigation-activities-and-inflation (last visited Dec. 12, 2024).

[12] *Id.*

economic abilities, and specific crop differences. Further, the goals of these practices should be technology neutral, i.e., farmers should not be required to use technology that they may not have access to in order to achieve emissions reductions. Requiring certain technologies excludes small-and-medium sized farmers who may not have the economic abilities or manpower capacity to participate in this process. Ultimately, NCGA cautions against having such a prescriptive framework of allowed CSA practices because it may discourage farmer participation. NCGA recommends instead using a "menu" of CSA practices that farmers can choose from based on their economic, manpower, or technological capabilities.

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

NCGA recommends clear guidance on CSA practices that remains flexible and open to recommendations. NCGA recommends the participation process mimic the fuel pathways petition process under the Renewable Fuel Standard ("RFS").[13] Farmers and producers could submit petitions for new practices through a screening tool to first determine the practices' viability.[14] If determined viable or effective, farmers or producers could then formally submit a petition for lifecycle analysis and determination.[15] This process provides a clear process of demonstrating applicability and sustainability benefits, and also allows practices to be well-tested and verified before farmers depend on them. Technical Service Providers ("TSPs") from the United States Department of Agriculture ("USDA") or Certified Crop Advisors ("CCAs") can help farmers and producers test and prepare new products and practices for petition submission.[16] As emphasized in Question 4, farmers should not be required to adopt any one CSA practice, but rather be allowed to select practices that align with their farming abilities and circumstances. NCGA recognizes the need for flexibility in practices due to geographical impacts and ability for operations to select the best practices that work for the size of their farm, large or small.

6. **What are the benefits or risks of the following modifications:**

   a. **Requiring that only feedstocks produced domestically may qualify for the production of Clean Fuel for 45Z**.

[13] 40 C.F.R. § 80.1416; *see also Fuel Pathways under Renewable Fuel Standard*, EPA (Nov. 26, 2024), https://www.epa.gov/renewable-fuel-standard-program/fuel-pathways-under-renewable-fuel-standard.

[14] *Id.*

[15] *Id.*

[16] *Technical Service Providers*, Natural Resource Conservation Service, https://www.nrcs.usda.gov/getting-assistance/technical-assistance/technical-service-providers. (last visited Dec. 12, 2024).

NCGA supports a policy whereby that the credit only applies to domestic feedstocks. As an advocate for American farmers, NCGA believes that prioritizing domestic production and flexible climate smart farming practices will incentivize American-grown products to put farmers first. Crediting only domestic feedstocks will stabilize the market and support domestic use for American grown commodities in an increasingly competitive global market. Further, this would bolster American energy independence in support of American producers and domestic biofuels.

b. Requiring that foreign feedstocks must obtain a higher standard of verification.

NCGA believes that if the tax credit applies to foreign feedstocks, these feedstocks should have the same standards as domestic feedstocks and include the carbon intensity of transportation to the plant as a part of their full life cycle analysis. This would also require a change to the LUC calculation to be attributable to both crops produced in a season where applicable. We also support the development of import criteria for Palm Oil and Used Cooking Oils to test for purity and ensure accurate representation of the carbon intensity of feedstocks being used for SAF.

c. Limiting feedstocks to domestic, but allowing certain trade partners (such as those with trade agreements, or those who do not currently discriminate against biofuels).

As stated above in subsection b, NCGA believes that all participants in this tax credit system should be subject to the same standards and benefits to maintain the integrity of the system. Thus, if certain trade partners are allowed to participate, NCGA believes they should be subject to the same standards and benefits as domestic producers.

d. Modifying how indirect land use change is considered for the purposes of determining the carbon intensity score of a feedstock producer.

One important concern is that input coefficients assumed in GREET should be carefully evaluated to ensure they are set appropriately for different cropping regions. For example, additional thought and consideration should be given to how Indirect Land Use Change ("iLUC") is handled within GREET. Specifically, this value is outside the scope of the farm and has implicit assumptions about how new utilization pathways would alter crop prices and potentially lead to altering of the landscape. Such a process is necessarily complicated as prices and land use decisions are driven by a multitude of factors. It is unclear that differentiation of a product, such as low CI corn, would serve as a similar driver for LUC as baseline assumptions used in a field to fuel conversion platform, or if instead it

would only lead more farms to pursue carbon-smart farming practices. In a carbon scoring system, a farm's previous land use history has a strong correlation to carbon levels within the soil profile and is associated with the CI score that would belong to grain grown on the converted farm. CI scores should be driven by on-farm processes and management decisions within the farm's control as farms are seeking clarity in what they can do to participate.

Further with respect to LUC, it is absolutely essential that USDA report in its public datasets as its own standalone variable the number of acres converted annually from truly native grassland or prairie to annual or perennial crop production. USDA should also report as a standalone variable the number of acres that move from managed perennial crop production, such as alfalfa or other forms of haylage or pasture, into annual crop production. This latter of the two variables is not the conversion of "native" grassland as it has always been understood and USDA's current reporting system inexplicably conflates the two as the same thing. This leads to erroneous CI scoring (and LUC intensity) for corn production, resulting in a major disincentive to growers pursuing the large conservation and climate smart benefits that would flow from incorporating perennial cover into their otherwise annual crop rotation program.

e. Allowing foreign feedstock to participate in and benefit from 45Z but at a lower credit amount.

If the tax credit applies to foreign feedstocks, NCGA believes such feedstocks should only jumpstart the fledgling SAF industry. There should be an "off-ramp" from foreign sourced to sourcing only domestic produced feedstocks. This timeline of acceptance of foreign feedstocks should sunset in not more than 3 years. Foreign feedstocks should be subject to the same requirements and quality assurance testing in order to maintain integrity of the system as described above. However, NCGA cautions that foreign feedstocks may increase the carbon intensity score for such foreign producers because of transportation to the U.S. and that should be included in the scoring calculation.

7. <u>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?</u>

NCGA recommends that the guidelines and requirements for the credit should align with USDA Farm Service Agency ("FSA") programs to ensure accurate data and accounting for farmers.[17] Farmers should be able to report data on the adoption and maintenance of their CSA practices in tandem with their reports to the FSA, including reports on cropland use, information on crop, no-till, cover crop, verified planting and tillage pass data, receipts and

[17] *Find a Program*, Farm Service Agency, https://www.fsa.usda.gov/. (last visited Dec. 12, 2024).

invoices for cover crops, biologicals, enhanced efficiency fertilizers and seed, and satellite and drone imagery. NCGA recommends USDA officials, including TSPs, CCAs mentioned above, be made available as contact persons for small-and-medium farmers looking to benefit from the tax credit.

NCGA further recommends engaging trade associations to create industry specific reporting standards for the tax credit. Using such associations would help with efficient and consistent program administration. NCGA and other trade associations would provide standard benchmarks for corn ethanol. Further, trade associations and the USDA would monitor self-certification to ensure the accuracy and validity of emissions reductions.

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

NCGA believes corn and soybean feedstocks are best suited for the 45Z tax credit to support domestic, American grown solutions. NCGA appreciates the opportunity to submit comments to further progress 45Z and the biofuels industry in America. We look forward to keeping home grown fuels at the center of American energy independence and welcome further opportunities to address questions or concerns in the future.

Sincerely,

Neil Caskey

Chief Executive Officer

National Corn Growers Association, in specific collaboration with:
Iowa Corn Growers Association
North Dakota Corn Growers Association
Missouri Corn Growers Association
Ohio Corn & Wheat Growers Association
Minnesota Corn Growers Association
Kansas Corn Growers Association
Illinois Corn Growers Association
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