April 10, 2025

The Honorable Scott Bessent
Secretary
U.S. Department of Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Internal Revenue Service
CC:PA:01:PR (Notice 2025-10 and 2025-11)
Room 5203, P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Docket ID No. IRS-2025-0002

Submitted via Federal Portal: www.regulations.gov

RE: Section 45Z Clean Fuel Production Credit; Request for Comments (Notice 2025-10), Section 45Z Clean Fuel Production Credit; Emissions Rates; Request for Comments (Notice 2025-11)

Dear Secretary Bessent:

On behalf of the members of the American Coalition for Ethanol (ACE), I appreciate the opportunity to respond to requests for comment on notices 2025-10 and 2025-11 from the United States Treasury and Internal Revenue Service (IRS) regarding the 45Z Clean Fuel Production Credit, which applies to eligible transportation fuel produced domestically after December 31, 2024, that is sold by December 31, 2027.

ACE is a grassroots advocacy organization, powered by rural Americans who have built an innovative U.S.-based industry that delivers homegrown and low-carbon biofuel and food both domestically and for a growing world. Our members include U.S. ethanol biorefineries, investors in biofuel facilities, farmers, and companies that supply goods and services to the U.S. ethanol industry.

The 45Z credit not only promotes U.S. energy security, helping fulfill the Administration's energy dominance agenda, but can also create good-paying jobs and unlock new markets for farmers and domestic biofuel producers.

But today, the value of U.S. corn production has fallen and input costs have risen. According to the National Corn Growers Association, farmers are forecast to experience their third consecutive year of net profit losses in 2025, projected to lose more than $160 per acre on average.

U.S. farmers and ethanol producers have a lot of money on the line. They need market opportunities and a tax code which supports certainty and economic growth. Recently, the Farmer First Fuel Incentives Act was introduced in Congress. This bicameral and bipartisan legislation would extend the life of 45Z to December 31, 2034, beyond its current 2027 expiration date, and provide much needed long-term certainty.

But we also need the final rules for this critical tax credit. Treasury should rapidly finalize 45Z guidance and include the technical guidelines for biofuel crops and carbon intensity calculator developed by USDA in the final 45Z rules[1], so ethanol producers and farmers can unlock new market opportunities.

Below are other specific comments regarding Notice 2025-10 and Notice 2025-11:

Recommended Clarification Regarding "Qualifying Sale" Definition

We believe the preliminary guidance in Notice 2025-10 regarding a 'qualifying sale' for the clean fuel production tax credit could be misinterpreted and constrain many ACE-member ethanol facilities from qualifying for 45Z.

Specifically, we are concerned the guidance could limit the meaning of a qualified sale to require a direct purchaser of fuel to "use" the fuel to supply heat or power. Many ACE-member ethanol facilities do not directly sell fuel ethanol to an end user that uses the fuel in the production of a fuel mixture or sells such fuel at retail to another person and places such fuel in the fuel tank of such person. Instead, the fuel ethanol produced by many ACE-member facilities is often first sold to a marketer or distributor who takes title of the ethanol before reselling it to other parties, such as ethanol blenders, retailers, resellers, other marketers, or refiners. Thus, the chain of custody for most U.S. ethanol includes multiple steps and parties.

These intermediaries play a critical role in ensuring a functioning ethanol market because they enable price discovery, provide liquidity, and facilitate efficient distribution of ethanol. Restricting 45Z to transactions where fuel is directly consumed, without recognizing resale as a valid use in trade or business, would significantly disrupt the ethanol marketplace.

We recommend the final 45Z guidance and regulation confirm purchases by resellers and intermediaries, such as an ethanol marketer or distributor, for use in their trade or business, as a qualifying activity.

45ZCF-GREET

We strongly support the use of the 45ZCF-GREET model for both non-aviation and aviation fuel. We also support that the phrase "most recent determinations under the Greenhouse gases, Regulated Emissions, and Energy use in Technologies (formerly Transportation) model" is best understood as referring to determinations under the latest version of the 45ZCF-GREET, and, the Secretary's express delegation of authority to require the use of the 45ZCF-GREET as a successor model. Treasury must routinely incorporate updates to the latest version of the 45ZCF-GREET model to ensure use of the most up-to-date science for the 45Z credit.

[1] See Attachment A. March 18, 2025. Comments from the American Coalition for Ethanol (ACE) on United States Department of Agriculture (USDA) Technical Guidelines for Crops Used as Biofuel Feedstocks.

USDA Guidelines for Crops Used as Biofuel Feedstocks and Feedstock Carbon Intensity Calculator

While we support the 45ZCF-GREET model for both non-aviation and aviation fuel in 45Z, the modeling is incomplete until and unless Treasury and the IRS fully incorporate the USDA technical guidelines for biofuel crops used as feedstocks and their Feedstock Carbon Intensity Calculator (FD-CIC) tool into the final 45Z regulations.

The preliminary guidance indicated intention to propose rules "at a future date" to help taxpayers calculate lifecycle greenhouse gas (GHG) emissions by utilizing "climate smart agriculture"[2] practices, but Treasury need not reinvent the wheel.

USDA has already applied leading agronomic and scientific evidence into the technical guidelines and FD-CIC, and while not perfect, these tools are essential to making 45Z work for farmers and ethanol producers. We implore Treasury to read Attachment A, ACE comments to USDA in response to the technical guidelines and FD-CIC, and work closely with USDA so the final 45Z guidance incorporates the USDA guidelines and FD-CIC for use by taxpayers to calculate emissions rates for 45Z.[3]

Among the most positive features of the USDA guidelines is the ability for farmers to "stack" or combine conservation practices if they choose, for example, reduced-tillage and nutrient management on the same field of corn, and not artificially limit or cap the carbon credit values that can be derived from individual and stacked practices through the FD-CIC.

We have recommended USDA routinely update FD-CIC values for low carbon farming practices by incorporating the best available science and results from real-world activities. An example of real-world evidence is the two USDA-Natural Resource Conservation Service (NRCS) Regional Conservation Partnership Programs (RCPPs) currently being led by ACE that aim to provide meaningful funds to farmers for adopting conservation practices across designated project areas.[4]

These projects are specifically designed to address the perceived need by some entities for more empirical data on the CI benefits of conservation practices and help improve the accuracy of the DoE GREET model. We are grateful USDA's guidelines cite the ACE-led RCPP projects as valuable resources to update CI values for conservation practices and appreciate the continuing dialog between USDA and ACE on how our RCPP projects can be helpful to farmers and biofuel producers.

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[2] While the term "climate smart agriculture" has been used significantly in recent years, it is actually just a short hand way of discussing traditional agriculture conservation practices that farmers have been deploying with the help of USDA for decades. Practices such as reducing tillage, cover crops, and nutrient management have been core practices recommended by USDA for their conservation and productivity benefits through Farm Bill conservation programs administered by USDA's Natural Resource Conservation Service long before the invention of the term "climate smart agriculture".

[3] See Attachment A. March 18, 2025. Comments from the American Coalition for Ethanol (ACE) on United States Department of Agriculture (USDA) Technical Guidelines for Crops Used as Biofuel Feedstocks.

[4] https://ethanol.org/usda-rcpp

We have identified some areas in which the FD-CIC should be improved, including accounting for specific crop yield, climate, soil, and management-specific estimates of nitrogen use efficiency and nitrous oxide emissions. For example, matching the N fertilizer rate, timing, source, and placement to the crop need, soil, and climate can reduce the fertilizer requirement and nitrous oxide emissions. We would expect Treasury, the IRS, and USDA to coordinate any final adjustments to the FD-CIC to coincide with final rules for 45Z.

<u>Transportation Fuel</u>

We agree with the Treasury/IRS conclusion that electricity would not be eligible for the 45Z credit as electricity does not fit the definition of “transportation fuel” under the regulations.

<u>Provisional Emissions Rate (PER) and Inflation Adjustment Factor</u>

Notice 2025-10 indicates Treasury and the IRS will publish guidance establishing procedures for taxpayers to request a PER and providing for the 45Z inflation adjustment factor at a later date. We urge this guidance as soon as possible since 45Z has a short lifespan.

Thank you for your time and consideration of these comments.

Sincerely,

Brian Jennings, CEO
American Coalition for Ethanol